

PLEASE READ CAREFULLY BEFORE ACCEPTING THE TERMS AND CONDITIONS OF THIS MASTER SUBSCRIPTION AGREEMENT, WHICH ALONG WITH ANY ADDITIONAL TERMS ATTACHED HERETO AND ANY ORDER FORMS ENTERED INTO BY YOU AND EMS LINQ, LLC (“**LINQ**”) ARE COLLECTIVELY REFERRED TO AS THE “**AGREEMENT.**” UNLESS OTHERWISE DEFINED HEREIN, CAPITALIZED TERMS SHALL HAVE THE MEANINGS SET FORTH IN SECTION 10 BELOW.

BY ACCEPTING, YOU ARE AGREEING ON BEHALF OF THE ENTITY ORDERING THE LINQ PRODUCT (“**YOU**”) THAT YOU WILL BE BOUND BY AND BECOME A PARTY TO THE AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT OR DO NOT HAVE THE AUTHORITY TO BIND THIS AGREEMENT, DO NOT SIGN (EITHER MANUALLY OR ELECTRONICALLY) THE ORDER FORM ISSUED TO YOU BY LINQ.

1. **Subscription.**

1. Use of the LINQ Product.

1. Terms of Use. The parties acknowledge and agree that the terms and conditions contained in this Agreement and the terms of use, which are attached in Exhibit A, will govern Your use of the LINQ Product for the Subscription Term, unless explicitly stated otherwise in a written agreement between the parties.
2. LINQ Product Features and Components. LINQ reserves the right to make modifications to the LINQ Product or particular features or components of the LINQ Product, from time to time, at its sole discretion; **however, the Agreement at the time of execution shall govern.** LINQ will exercise reasonable commercial efforts to notify You of any such material modifications to the LINQ Product, provided however, that LINQ will not have any liability for failure to provide such notice. **LINQ accepts**
2. Support. During the Subscription Term, and at no additional charge to you, LINQ shall provide You technical assistance by telephone on use of the Software, the identification of Software problems, and the reporting of Errors. You shall designate in writing to LINQ no more than three (3) technical contacts to request and receive telephone support services from LINQ.
3. Professional Services. If purchased by You and set forth on an Invoice, LINQ will provide services which will enable attendees to use the Software which are periodically held at LINQ’s facilities or at other locations as LINQ and You may agree (“**Professional Services**”). In consideration of payment of the fees associated with the Professional Services set forth on an Invoice, You are entitled to receive the number of hours of Professional Services as indicated on the Invoice. You shall be solely responsible for all transportation, lodging, meals or any other expenses incurred by LINQ or your Users attending such Services. If You purchased hardware from LINQ, Professional Services may include installation of hardware as well. In the event You cancel or postpone scheduled Professional Services within 14 days of the agreed upon date, You are responsible for all expenses incurred by LINQ and fifty-percent (50%) of the scheduled Professional Services fee. All quoted installation dates, including dates related to terms such as “installation,” “completion of training” and “live,” if any, are estimates only.
4. Your Responsibilities. You shall: (a) be responsible for all Your Users’ compliance with the terms and conditions of this Agreement, (b) be solely responsible for the accuracy, integrity, and legality of Your Data and the means by which it acquires and uses such Your Data, (c) use the LINQ Product only in accordance with the applicable online user guide and applicable laws, rules, regulations (including, without limitation, export, data

protection and privacy laws, rules and regulations) and any LINQ Product documentation, (d) use commercially reasonable efforts to prevent unauthorized access to or use of the LINQ Product, and (e) notify LINQ in writing immediately of (i) any unauthorized use of, or access to, the LINQ Product or any User account or password thereof or (ii) any notice or charge of noncompliance with any applicable law, rule or regulation asserted or filed against You in connection with Your Data. For the avoidance of doubt, User accounts and passwords are specific to individual Users, and under no circumstances may User accounts or passwords be shared among or by different Users; provided, however, that Your administrator(s) may reassign a User account during the Subscription Term, if a former User no longer requires a User account.

5. Restrictions. You shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to the LINQ Product or any modified version or derivative work of the LINQ Product created by or for You, (b) provide the LINQ Product, or any modified version or derivative work of the LINQ Product created by or for You, on a timesharing, service bureau or other similar basis, (c) remove or alter any copyright, trademark or proprietary notice in the LINQ Product,

(d) copy any features, functions or graphics of the LINQ Product for any purpose other than what is expressly authorized in this Agreement, (e) modify, remove or disable any portion of the Linq Product, (f) send, store, or authorize a third party to send or store spam, unlawful, infringing, obscene or libelous material, or Malicious Code, (g) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the LINQ Product or Your Data contained therein, (h) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, the LINQ Product,

(i) use any Intellectual Property Rights protected by applicable laws and contained in or accessible through the LINQ Product for the purpose of building a competitive product or service or copying its features or user interface, or (j) use the LINQ Product, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without LINQ's prior written consent.

6. Third Parties. You may use third party contractors to assist with the installation, use and modification of the LINQ Product for Your own internal business use, including creation of Modifications on Your behalf. You agree not to disclose any Confidential Information of LINQ to any contractor or allow any subcontractor to create Modifications unless and until the contractor has agreed in writing to (a) protect the confidentiality of such Confidential Information in the manner required by Section 6 and then only to the extent necessary for the contractor to perform those services subcontracted to it, and (b) assign all such contractor's rights, title and interests (including all Intellectual Property Rights) in such Modifications to You to ensure You can comply with Section 3.1.1. You will be solely responsible for all payments to its contractors and will remain responsible for compliance by its contractors with the terms and conditions of this Agreement.

2. **Third-Party Software; Third-Party Modules.**

1. Third-Party Software. The LINQ Product utilizes or includes certain Third Party Software. Your use of the LINQ Product, including all Third Party Software accessible via APIs, is governed by the applicable ThirdParty Software terms and conditions. If a Third Party Software provider requires LINQ to remove such software from the LINQ Product due to violation of applicable law or third-party rights, You agree to cooperate with LINQ to ensure its removal from the LINQ Product and Your systems.

2. Third-Party Modules. You may use Third-Party Modules to add functionality to the LINQ Product, provided that such use is limited to internal use by You in a manner that does not violate any provisions of Section 1.6. Any use by You of Third-Party Modules and any exchange of Your Data between You and the ThirdParty

Module provider are solely between You and the Third-Party Module provider. LINQ does not warrant or support Third-Party Modules.

3. Third-Party Privacy Policies. You understand and agree that any of Your Data exchanged with Third-Party Software or Third-Party Module is governed by that provider's respective privacy policy.
4. Third Party APIs. Features that interoperate with third party services (such as Google) depend on the continuing availability of the API and program for use with the LINQ Product. If a third party ceases to make the API or program available on reasonable terms to LINQ, LINQ may cease providing such third party features without entitling You to any refund, credit, or other compensation.

3. **Proprietary Rights and Data Protection.**

1. Ownership.

1. Ownership of LINQ Product and Modifications. LINQ owns all right, title and interest, including all Intellectual Property Rights, in and to the LINQ Product, any and all Modifications (collectively, the "LINQ Property"). You hereby assign and agree to assign to LINQ all right, title and interest worldwide in the Intellectual Property Rights embodied in any and all Modifications. To the extent any of the rights, title and interest are not assignable by You to LINQ, You grant and agree to grant to LINQ an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) under Your Intellectual Property Rights to use, disclose, reproduce, license, sell, offer for sale, distribute, import and otherwise exploit the Modifications in its discretion, without restriction or obligation of any kind or nature. Except as expressly stated otherwise in this Agreement, LINQ retains all of its right, title and ownership interest in and to the LINQ Property, and no other Intellectual Property Rights or license rights are granted by LINQ to You under this Agreement, either expressly or by implication, estoppel or otherwise, including, but not limited to, any rights under any of LINQ'S or its Affiliates patents.
2. Trademarks. LINQ's name, logo, trade names and trademarks are owned by LINQ, and no right is granted to You to use any of the foregoing except as expressly permitted herein or by written consent of LINQ.
3. Freedom to Operate and Innovate. Nothing in this Section 3 shall inhibit, hamper, encumber or otherwise impede LINQ'S freedom to create Modifications or improve, extend and/or modify any and all LINQ Products.
4. Suggestions. You or your Users may, from time to time, provide suggestions, enhancement or feature requests or other feedback to LINQ with respect to the LINQ Property or other LINQ products, services or related documentation (whether or not such is disclosed or delivered by LINQ to You under this Agreement) (collectively, "Feedback"). You agree that all Feedback is and shall be given by You is entirely voluntarily.

2. Your Data/Your Information.

1. Ownership of Your Data. You own and retain all Intellectual Property Rights in and to Your Data.

2. Data Processing. You grant LINQ the right to use, access and process Your Data solely to the extent necessary for LINQ to provide the LINQ Product and services to You, including, without limitation to address service or technical problems, or at Your request, in connection with providing Support Services to You. LINQ agrees not to use, access, disclose or process any of Your Data, except (a) to perform the obligations under this Agreement, (b) comply with applicable laws, and (c) in accordance with the Terms of Use in Exhibit A, attached hereto.
3. Non-Modification and Non-Disclosure. LINQ shall not (a) modify Your Data, or (b) disclose Your Data except as compelled by law in accordance with Section 6.1, as expressly set forth in this Agreement or as otherwise permitted in writing by You.
4. Business Information.

LINQ rejects the deletion of this entire section. We propose the following language:
You agree to allow LINQ and, with Your prior written approval, its Affiliates to store and use Your business contact information, including names, business phone numbers, and business e-mail addresses, anywhere it does business. Such information will be processed and used in connection with LINQ'S business relationship, and, with Your prior written approval, may be provided to contractors acting on LINQ'S behalf, LINQ'S ~~business~~ business partners who promote, market and support certain LINQ products and services, and assignees of LINQ and its subsidiaries for uses consistent with LINQ'S business relationship.

3. Data Protection.

1. Relationship of the Parties. To the extent that Your Data contains personal data about any living individual ("**Data**"), LINQ will process that Data only as a Data Processor acting on behalf of You (as the Data Controller) and in accordance with the requirements of this Agreement.
2. Your Compliance with Privacy Laws. You will at all times comply in full with the requirements of any applicable privacy and data protection laws.
3. Purpose Limitation. LINQ will process the Data in accordance with Your instructions under Applicable Privacy Law(s) and will not: (a) assume any responsibility for determining the purposes for which and the manner in which the Data is processed, or (b) process the Data for its own purposes.
4. Usage Data. In the course of providing You with the services described in the Agreement, **and to the extent allowed by governing Texas laws**, LINQ may also collect, use, process and store diagnostic and usage related content from the computer, mobile phone or other devices Your Users use to access the LINQ Product or Service. This may include, but is not limited to, IP addresses and other information like internet service, location, the type of browser and modules that are used and/or accessed (the "**Usage Data**"). Usage Data does not, however, include Your Data. **LINQ accepts this request.**
5. Aggregated Data Use. Notwithstanding Sections 3.3.1 or 3.3.3, You agree that LINQ may process the Data and Usage Data to create and compile anonymized, aggregated datasets and/or statistics about the LINQ products or services in order to: (a) maintain and improve the performance and integrity of LINQ products or services, (b) understand which LINQ products or services are most commonly deployed and preferred by customers and how customers interact with LINQ products or services, (c)

identify the types of LINQ products and services that may require additional maintenance or support, and (d) comply with all regulatory, legislative and/or contractual requirements, provided

in each case that such aggregated datasets and statistics will not enable You or any living individual to be identified.

6. Security. LINQ will have in place and will maintain throughout the Term, appropriate technical and organizational measures against accidental or unauthorized destruction, loss, alteration or disclosure of the Data, and adequate security programs and procedures to ensure that unauthorized persons will not have access to any equipment used to process the Data.
7. Subprocessing. You authorize LINQ to subcontract processing of Data under this Agreement to a third party provided that: (a) LINQ flows down its obligations under this Agreement, to protect the Data in full, to any subcontractor it appoints, such that the data processing terms of the subcontract are no less onerous than the data processing terms set out in this Agreement, and (b) LINQ will remain fully liable to You for the acts, errors and omissions of any subcontractor it appoints to process the Data. LINQ accepts.
8. Adequacy. LINQ will at all times provide an adequate level of protection for Data that it processes on behalf of You.
9. HIPAA and PHI in Relation to LINQ Products. You understand and acknowledges that neither the Service nor the LINQ Products or systems are configured to receive and store personal health information (“PHI”), as that term is defined under the Health Insurance Portability and Accountability Act (“HIPAA”) and that LINQ is neither a “Covered Entity” nor a “Business Associate,” as those terms are defined in HIPAA. As such, You agree, on behalf of Yourself and Your Users, not to use the LINQ Products or provide access to or submit any PHI to LINQ when requesting technical and or Support Services, in either case, to, directly or indirectly, submit, store or include any PHI as part of the Your Data. You agree that LINQ may terminate this Agreement immediately, if You are found to be in violation of this Section.
10. Family Educational Rights and Privacy Act (FERPA). LINQ shall comply in all respects with the Family Educational Rights and Privacy Act (FERPA) and all other state and federal laws applicable to the security and confidentiality of pupil records. LINQ will designate and train responsible individuals on ensuring the security and confidentiality of pupil records and LINQ will establish and validate that security protocols that are in use at their facilities or leased facilities meet or exceed the stated and expected security surrounding FERPA which include firewalls, intrusion detection, web based security and authentication protocols. In addition, LINQ will provide such information reasonably requested by You in order for You to verify LINQ’s compliance with FERPA and such other state and federal laws applicable to the security and confidentiality of pupil records.
11. Security Breach. In the event of a security breach, LINQ will notify You and those affected by such breach regarding the extent of the breach, time of the breach, and steps taken to ensure their security and privacy. LINQ will use commercially reasonable efforts to notify those affected within 48 hours. LINQ will notify You via telephone & email; parents will be notified via email.
12. Privacy Policy. You acknowledge that LINQ’s privacy policy (which may be viewed at <https://www.linq.com/wp-content/uploads/2021/09/EMS-LINQ-Consolidated-Privacy-Policy-723-2021.pdf>) shall apply to any Personal Data received or collected by LINQ from the Users.

4. Payment.

1. Fees and Payment. You agree to pay all fees specified in the relevant Order Form. Except as otherwise provided, fees set forth in each Order Form hereunder will be: (a) quoted and payable in United States dollars, and (b) non-cancelable and non-refundable. Fees are due thirty (30) days from the invoice date, unless otherwise noted in an Order Form. You agree to provide LINQ with complete and accurate billing and contact information and to notify LINQ of any changes to such information. **Unless otherwise provided in writing**, on each anniversary of the effective date of an Order Form, LINQ is entitled to increase the fees specified in the Order Form by the greater of (i) three (3%) of the then-existing annual subscription fees, or (ii) then-current subscription fees for the LINQ Products, as set forth in the LINQ price list in effect as of such date. **LINQ accepts.**
2. Additional Licenses. Additional User licenses may be added during any given month at the then-current Subscription fee. You understand and agree that You will be charged a pro-rata fee for the initial month in which licenses are added and for each of the monthly periods remaining in the then-current Subscription Term. The Subscription Term for the additional licenses will terminate on the same date as the pre-existing Subscriptions. You will be responsible for submitting a new Order Form to LINQ to request the additional licenses during the Subscription Term. You also understand and agree that the number of Subscription licenses purchased under a specific Order Form cannot be decreased during the relevant Subscription Term set forth on such Order Form.
3. Renewal. All additional fees required for renewal of a Subscription Term will be reflected in a quotation issued by LINQ in advance of the expiration of the current Subscription Term (each a **"Renewal Quote"**), and any pricing or changes in the number of Licenses for such renewal Subscription Term will be reflected in the Renewal Quote. Fees for any subsequent renewals shall be set at the then-current LINQ pricing, unless otherwise stated on the Order Form, Renewal Quote or otherwise agreed to in writing by the parties.
4. Travel Expenses. Unless otherwise agreed, You will also pay LINQ for travel expenses (lodging, meals, transportation and other related expenses) incurred in the performance of Professional Services and Support Services. Except as otherwise set forth in Section 1.3 or elsewhere in this Agreement, all such additional charges will be due and payable concurrently with payment for the applicable services. **In no event shall this Section conflict with the Texas Prompt Payment Act or other governing Texas laws.** LINQ reserves the right to impose a minimum labor charge for each on-site visit. The rates and charges specified in LINQ's acknowledgment of Your order will apply to those services originally ordered; however, LINQ reserves the right to change service rates or other terms as a condition of entering into any subsequent service engagement. If You pay in advance for any Professional Services, all such services must be scheduled and delivered within twelve (12) months of such payment, unless otherwise agreed in writing by LINQ; any portion of any prepaid services amount that has not been used by You toward services rendered within such twelve (12) month period will be forfeited. **LINQ accepts.**
5. Overdue Charges. Overdue amounts are subject to interest at a rate of one percent (1.0%) per month, or the maximum rate permitted **by governing Texas laws**, whichever is lower. If any charge owing by You to LINQ is thirty (30) days or more overdue, LINQ may, without limiting its other right and remedies, suspend services until such amounts are paid in full. **LINQ accepts.**
6. Taxes. Unless otherwise provided, fees specified in quotes or Order Forms, do not include any Taxes.

5. Term and Termination.

1. Term. **Unless otherwise provided**, this Agreement shall commence as of the effective date of this Agreement, and unless earlier terminated as provided herein, shall continue for a period of three (3) years (the **"Initial Term"**). Unless terminated in accordance with the termination provisions of this Agreement, **unless otherwise provided**, the Agreement shall automatically renew for successive one (1) year terms unless either party provides advance written notice

of its intention not to renew this Agreement at least ninety (90) days prior to the end of the Initial Term or any subsequent Term. The Initial Term and any and all renewal terms shall collectively be referred to as the “**Subscription Term**”. LINQ accepts.

2. Termination by You or LINQ. Either party may terminate this Agreement and any then-current Order Forms prior to the end of a Subscription Term if the other party: (i) materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for thirty (30) days following written notice of the breach or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. You may terminate this Agreement for convenience during the Initial Term or any Renewal Term by providing the other Party thirty (60) day written notice. In the event that, during any term hereof, the Your governing body does not appropriate sufficient funds to meet Your obligations under this Agreement, You may terminate this Agreement upon sixty (60) days written notice to other Party. You agree, however, to use best efforts to secure funds necessary for the continued performance of this Agreement. This provision shall be a continuing right to terminate this Agreement at the expiration of each budget period pursuant to the provisions of Texas Local Government Code Ann. LINQ accepts this language, except we request 60 days’ notice for termination for convenience.
3. Effect of Termination. No refund of payments will be made, unless termination of this Agreement and any then-current Order Forms is a result of an uncured material breach by LINQ under Section 5.2, in which case You will be entitled to a refund of the pro rata portion of fees associated with the remainder of the Subscription Term. You understand and agree that upon expiration of the Subscription Term or termination of this Agreement, whichever occurs first, the rights granted under this Agreement and, in connection with any then-current Order Forms, will be immediately revoked and LINQ may immediately deactivate Your account. At LINQ’s request, You agree to return any hardware provided to You as part of the LINQ Product. You acknowledge and agree that LINQ may keep copies of Your Data solely to the extent necessary for the performance of its obligations under this Agreement. In no event shall any termination relieve You of the obligation to pay any fees payable to LINQ for the period prior to the effective date of termination, unless otherwise stated in this Agreement.
4. Surviving Provisions. Sections 1.5, 3.1, 3.3.4, 3.3.5, 5.3, 4, 5.4, 6, 7.3, 8, 9, and 10 shall survive termination or expiration of this Agreement.

6. Confidentiality.

1. Confidentiality. The parties acknowledge that in the course of performing their obligations under this Agreement, each may receive Confidential Information. Each party covenants and agrees that neither it nor its agents, employees, officers, directors or representatives will disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (a) to those employees, representatives, or contractors of the Receiving Party who require access to the Confidential Information to exercise its rights under this Agreement and who are bound by written agreement, with terms at least as restrictive as these, not to disclose third-party confidential or proprietary information disclosed to such party, or (b) as such disclosure may be required by law or governmental regulation, subject to the Receiving Party providing to the Disclosing Party written notice to allow the Disclosing Party to seek a protective order or otherwise prevent the disclosure. Nothing in this Agreement will prohibit or limit the Receiving Party’s use of information: (i) previously known to it without obligation of confidence, (ii) independently developed by or for it without use of or access to the Disclosing Party’s Confidential Information, (iii) acquired by it from a third party that is not under an obligation of confidence with respect to such information, or (iv) that is or becomes publicly available through no breach of this Agreement. The Receiving Party acknowledges the irreparable harm that improper disclosure of Confidential Information may cause; therefore, the injured party is entitled to seek any and all relief allowable under governing Texas laws, for any violation or threatened violation of this Section. The terms of this Agreement, Original Code and the structure, sequence and organization of the LINQ Product are Confidential Information of LINQ or its licensors. LINQ accepts.
2. Destruction. Within five (5) days after a Disclosing Party’s request, the Receiving Party shall return or destroy the Disclosing Party’s Confidential Information; provided, however, that the Receiving Party shall

be entitled to retain archival copies of the Confidential Information of the Disclosing Party solely for legal, regulatory or compliance purposes unless otherwise prohibited by law.

7. **Warranties, Exclusive Remedies and Disclaimers.**

1. LINQ Warranties. LINQ warrants that (a) it has the legal power to, and hereby does, enter into this Agreement, (b) the LINQ Product shall perform materially in accordance with the online user guide for the applicable LINQ Product or the user manual accompanying the LINQ Product, and (c) LINQ will use commercially reasonable measures to detect whether the LINQ Product contains any Malicious Code. If the LINQ Product does not conform to the warranty specified in Section 7.1(b) above, You must notify LINQ within thirty (30) days of the breach of warranty, and LINQ agrees to use commercially reasonable efforts to cure the non-conforming portions of the LINQ Product before You pursue any other remedies. LINQ is not responsible for any non-compliance with this warranty resulting from or caused by any (i) Malicious Code present in the Your Data made available to LINQ by You, or (ii) Modifications made by anyone other than LINQ, including by way of example, Modifications made by You or any Authorized Partners. Your sole and exclusive remedy for a breach of any of warranties contained in this Section 7.1, **to the extent allowed under governing Texas laws**, shall be to terminate the Agreement pursuant to Section 5.2 and, notwithstanding anything to the contrary in Section 4.1, have LINQ refund to You the pro rata unused portion of any pre-paid Subscription fees. **LINQ accepts.**

2. Your Warranties. You warrant that (a) You have the legal power to, and hereby do, enter into this Agreement, (b) You have all rights in and to Your Data necessary to permit LINQ to exercise its rights to access and use Your Data as permitted by this Agreement, and (c) Your Data or the media on which the Your Data resides does not contain any Malicious Code.

3. Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED IN SECTION 7.1 AND AS PERMITTED BY APPLICABLE LAW, THE LINQ PRODUCT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY **GOVERNING TEXAS** LAW. LINQ'S PRODUCT OR SERVICE MAY BE SUBJECT TO LIMITATIONS OR ISSUES INHERENT IN THE USE OF THE INTERNET AND LINQ IS NOT RESPONSIBLE FOR ANY PROBLEMS OR OTHER DAMAGE RESULTING FROM SUCH LIMITATIONS OR ISSUES. **LINQ accepts.**

8. **Limitation of Liability.**

1. Limitation on All Damages. EXCEPT **AS PROVIDED FOR BY GOVERNING TEXAS LAWS AND** FOR A BREACH OF SECTIONS 1.4, 1.5, 1.6 or 6.1, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORTS, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE, THE LESSOR OF THE TOTAL AMOUNT PAYABLE TO LINQ UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR GIVING RISE TO THE LIABILITY OR TWENTY FIVE THOUSAND DOLLARS (\$25,000). THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 4. **LINQ accepts.**

2. Disclaimer of Consequential Damages. EXCEPT FOR A BREACH OF SECTIONS 1.4, 1.5, 1.6 or 6.1, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR REVENUE OR FOR ANY INDIRECT, SPECIAL, COVER, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING UNDER THIS AGREEMENT AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY **GOVERNING TEXAS** LAW. **LINQ accepts.**

3. Scope of Limitations on Liability. THE LIMITATIONS SET FORTH IN THIS SECTION 8 SHALL APPLY NOT WITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH CLAIMS ARE BROUGHT (CONTRACT, TORT, INCLUDING NEGLIGENCE OR OTHERWISE). Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County. LINQ accepts.

9. **General.**

1. Publicity.

2. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without the consent of the other party, to its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any attempted assignment in breach of this Section 9.2 shall be void.

3. Relationship of the Parties. LINQ and You are independent contractors, and nothing in this Agreement or any attachment hereto will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. LINQ represents and maintains that LINQ is an Independent Contractor and is not an employee of the County, or any agency thereof, and represents and warrants that LINQ does not desire or request any fringe benefits provided to employees of the County, and/or any agency of the County. LINQ agrees to be responsible for any federal income tax, withholding, or social security tax liability that might arise from payments received hereunder. LINQ will incur no financial obligation on behalf of the County without prior written approval from the County. LINQ will be responsible for all personal and professional expenses. LINQ accepts.

4. No Third-Party Beneficiaries. There are no third party beneficiaries to this Agreement.

5. Choice of Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Texas and the federal U.S. laws applicable therein, excluding its conflicts of law provisions. LINQ and You hereby (i) irrevocably submit itself to and consent to the exclusive jurisdiction of the federal or state courts located in Hidalgo County, Texas for the purposes of any suit, action or other proceeding in connection with any controversy, claim or dispute relating to this Agreement or to enforce a resolution, settlement, order or award made pursuant hereto. LINQ accepts.

6. Attorney's Fees. LINQ accepts.

7. Manner of Giving Notice. Notices regarding this Agreement shall be in writing and addressed to You at the address You provide, or, in the case of LINQ, when addressed to EMS LINQ Inc., Attn. General Counsel, 2528 Independence Blvd, Wilmington, NC 28412 USA. Notices regarding the LINQ Product in general may be given by electronic mail to Your e-mail address on record with LINQ.

8. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor

problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's reasonable control, and denial of service attacks.

9. Entire Agreement. This Agreement and any Order Forms or exhibits attached hereto or referenced herein represent the entire agreement of the parties and supersede all prior discussions, emails, and/or agreements including requests for proposals ("RFP"), between the parties and is intended to be the final expression of their Agreement. To the extent there is a conflict between this Agreement and any additional or inconsistent terms, including any pre-printed terms on Your purchase order, the terms of this Agreement shall prevail, unless expressly stated otherwise. Notwithstanding any language to the contrary therein, and except as set forth in Section 4.1, no terms stated in a purchase order or in any other order document (other than an Order Form expressly incorporated herein) shall be incorporated into this Agreement, **and to the extent permitted by governing Texas law**, all such terms shall be void. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. The Agreement and all exhibits hereto, including any related Order Forms may not be modified or altered except by written instrument, and no amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed (either manually or electronically) by an authorized representative of You and LINQ. All rights not expressly granted to You are reserved by LINQ and its licensors. LINQ accepts.
10. Equitable Relief. Except as otherwise provided, remedies specified herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity **as provided under Texas law**. LINQ accepts.
11. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

10. Definitions.

1. **"API"** means application programming interfaces provided by LINQ as part of the LINQ Product, which set forth rules and specifications that Third Party Modules may utilize to access Your Data in accordance with this Agreement.
2. **"Authorized Partner"** means a LINQ Product partner that is in good standing with LINQ under a fullyexecuted LINQ agreement and is associated with an Order Form under this Agreement.
3. **"Your Data"** means any data, information or material submitted by You, or stored by You in the LINQ Product.
4. **"Your Software"** means online, Web-based applications and offline software products that are developed by or for You, the use of which software is governed by the applicable terms and conditions specified by such software.
5. **"Confidential Information"** means information that one party (the "Disclosing Party") provides to the other party ("Receiving Party") during the term of this Agreement that is identified in writing at the time of disclosure as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.
6. **"Intellectual Property Rights"** means any patents and applications thereto, copyrights, trademarks, service marks, trade names, domain name rights, trade secret rights, and all other intellectual property and proprietary rights.

7. **"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.
8. **"Modifications"** means any work based on or incorporating all or any portion of the LINQ Product, including, without limitation, modifications, enhancements and customizations to the LINQ Product developed by LINQ, You, a third party on either such party's behalf or any combination of such parties.
9. **"Order Form"** means a document for purchases of Subscriptions hereunder, including purchase orders, signed quotations, order notifications and order confirmation documents (either in writing or via the Web), that are agreed to by LINQ, or entered into between LINQ and You from time to time. Order Forms are deemed incorporated herein by reference.
10. **"Original Code"** means LINQ Product source code.
11. **"Personal Data"** means any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.
12. **"Software Releases"** has the meaning ascribed to it in Exhibit A of this Agreement.
13. **"Subscription"** means Your right to use the LINQ Product for the Subscription Term, per the terms of the Agreement and the related Order Form(s).
14. **"Subscription Term"** has the meaning set forth in Section 5(1).
15. **"LINQ Product"** means any software or hardware that LINQ supplies, licenses or sells to You from time to time during the Term, as set forth in the Order Form, including any software that is downloadable from a third party app store and Modifications.
16. **"Support Services"** shall have the meaning defined in Section 1.3.
17. **"Taxes"** means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature.
18. **"Third-Party Modules"** means software developed by a third party that You may use to add functionality to the LINQ Product, the use of which software is governed by the applicable terms and conditions specified by such third party.
19. **"Third-Party Software"** means online, Web-based applications and offline software products that are developed by third parties, and may interoperate with the LINQ Product, the use of which software is governed by the applicable terms and conditions specified by such third party.
20. **"User"** means an individual user that You authorize to use the LINQ Product and on whose behalf You pay the licensee fees; provided, that the number of Users shall not exceed the number of licenses that You purchase.

21. **“You or you”** means the hospital, college, university, school district, corporation, or other entity or individual who has been invoiced.

Exhibit A

Terms of Use

1. Service. Subject to the Terms of Use and the terms of the Agreement, You shall have the right to access, use and modify the LINQ Product during the Subscription Term solely for Your own internal business purposes. The LINQ Product may be accessed through a web browser and/or mobile web client.
2. Software Releases. During the Subscription Term, if You have paid the applicable fees and are in compliance with the terms and conditions of the Agreement, LINQ may provide automatic updates to the LINQ Product with Software Releases. **“Software Releases”** may be comprised of Maintenance Releases and/or Feature Releases (as defined below).
 1. **“Maintenance Releases”** means an update to the LINQ Product which includes fixes to known defects and does not intentionally introduce any new or modified application behavior.
 2. **“Feature Releases”** means a software update which includes both fixes to known defects and introduces new or modified application behavior or changes the available features or functionality of the LINQ Product.
3. Third Party Analytics Tools. You acknowledge that LINQ may use third party web analytics tools (such as Google Analytics) that serve cookies or similar tracking technologies through the LINQ products and services, on end user devices, to collect Usage Data for the purposes described in Section 3.3.5. You will take such measures as are necessary to inform Your end users about LINQ’s use of such web analytics tools in connection with the LINQ Products and related services. You hereby provide Your consent to LINQ to use cookies or tracking technologies served by those web analytics tools, in a manner that is consistent with industry practice.
4. Development. You agree that You will not, directly or indirectly, conduct any activity that will degrade performance beyond an acceptable level, including but not limited to: (a) conducting automated functionality tests or load tests on the LINQ Product, (b) creating Internet links to the LINQ Product, and/or (c) deploying custom modifications that adversely impact the LINQ infrastructure due to incompatible code, inefficient code or architecture practices. If You do any of the foregoing, LINQ shall have the right to terminate or suspend Your account and access to the Service without any refund or credit until You correct such violation to LINQ’s reasonable satisfaction.
5. Handling of Your Data Post Termination. Upon written request by You made within ninety (90) days of the effective date of expiration or termination of the Agreement (the **“Post-Term Period”**), LINQ agrees to make available to You, a copy of Your production environment. Further, during the Post-Term Period and upon Your request, LINQ shall grant the You limited access to the Service for the sole purpose of permitting You to retrieve Your Data, provided that You have paid in full all good faith undisputed amounts owed to LINQ. Upon expiration of the Post-Term Period, LINQ will have no further obligation to maintain for or provide to You any of Your Data and may thereafter, unless legally prohibited, delete all of Your Data in its systems or otherwise in its possession or under its control.

EMS LINQ

Connecting the K-12 Community

2528 Independence Blvd Suite 200
Wilmington, NC 28412

Phone: 800.541.8999
Fax: 910.799.5427
[Email: ryerger@linq.com](mailto:ryerger@linq.com)

Quote #: Q-53240-1
Date: 1/27/2022 4:10 PM
Start Date: 1/1/2023
End Date: 12/31/2027
Expires On: 4/27/2022

Customer Contact
Linda Fong
(956) 318-2511 x4668
linda.fong@auditor.co.hidalgo.tx.us

Bill To
Hidalgo County Auditor's Office
2808 S Business Hwy 281
Edinburg, TX 78539

Superintendent:

SALESPERSON	EMAIL	SERVICE PERIOD	PAYMENT METHOD
Robert Yerger	ryerger@linq.com	12 months	Net 30

Terms & Conditions

Year 1

(January 1, 2023 - December 31, 2023)

This grouping of products represents your first invoice. It includes your first year subscription products as well as any one-time fees.

QTY	PRODUCT	UNIT PRICE	MEMO	TOTAL PRICE
1	LINQ ERP	\$71,794.00		\$71,794.00
Subtotal:				\$71,794.00

Year 2

(January 1, 2024 - December 31, 2024)

QTY	PRODUCT	UNIT PRICE	MEMO	TOTAL PRICE
1	LINQ ERP	\$71,794.00		\$71,794.00
Subtotal:				\$71,794.00

Year 3

(January 1, 2025 - December 31, 2025)

QTY	PRODUCT	UNIT PRICE	MEMO	TOTAL PRICE
1	LINQ ERP	\$71,794.00		\$71,794.00
Subtotal:				\$71,794.00

Year 4

(January 1, 2026 - December 31, 2026)

QTY	PRODUCT	UNIT PRICE	MEMO	TOTAL PRICE
1	LINQ ERP	\$71,794.00		\$71,794.00
Subtotal:				\$71,794.00

Year 5

(January 1, 2027 - December 31, 2027)

QTY	PRODUCT	UNIT PRICE	MEMO	TOTAL PRICE
1	LINQ ERP	\$71,794.00		\$71,794.00
Subtotal:				\$71,794.00

Tax:	\$0.00
Shipping:	\$0.00
Grand Total:	\$358,970.00

Fees for subsequent years within the term bound by the Start Date and End Date detailed on this quote will be equal to the 'Annual Ongoing Fees' amount uplifted by 3.0% in each following year. With a commitment of three or more years, annual uplifts are waived. The waiver is for the initial term only and may or may not be available at the time of renewal or in future agreements.

On-Going LINQ Subscription/Maintenance & Support Fees are invoiced at then current rates & enrollment per terms of the Master Subscription Agreement, which may be subject to an annual increase after the first year for non-multi-year contracts and/or enrollment increases.

Any applicable state sales tax has not been added to this quote. Subscription Start and expiration Dates shall be as set forth above, which may be delayed based upon the date that LINQ receives your purchase order.

In the event that this quote includes promotional pricing, such promotional pricing may not be valid for the entire period stated on this quote.

Ground shipping or most reasonable shipping costs will be added to the invoice after shipment for all Hardware orders.

You will be required to pay LINQ for travel expenses (lodging, meals, transportation, and other related expenses) incurred in the performance of Professional and Support Services.

All invoices shall be paid within thirty (30) days of the date of invoice; **however, in no way shall payments conflict with the Texas Prompt Payment Act. LINQ accepts.**

All purchase orders must contain the exact quote number stated within. Customer agrees that purchase orders are for administrative purposes only and shall not impact the terms or conditions reflected in this quote and the applicable LINQ Master Subscription Agreement.

This quote is subject to and incorporates the terms and conditions of the LINQ Master Subscription Agreement found at <https://www.linq.com/legal-msa/>

The parties below acknowledge that they have read the agreement, understand it and agree to be bound by its terms.

Customer:
Signature:
Name:
Business Title:
Authority Level:
Date:

Hidalgo County Auditor's Office

EMS LINQ STANDARD TERMS AND CONDITIONS

These **Standard Terms and Conditions** are applicable to all SaaS services by **EMS LINQ, Inc.** (“**EMS LINQ**”) for any customer (“**Customer**”) and may be referenced in an Order Form executed by **EMS LINQ** and **Customer** with respect to such SaaS services. **Notwithstanding the foregoing, these Standard Terms and Conditions shall not be applicable in the case EMS LINQ and Customer have entered into a Master Subscription Agreement pertaining to the SaaS services. Changes to these terms and conditions are not necessary because we have entered into a Master Subscription Agreement.**

1. Provision of Service.

1.1 EMS LINQ Responsibilities. During the Term of the Agreement, pursuant to and in accordance with the terms hereof, **EMS LINQ** will: (i) use commercially reasonable efforts to make the Service available to **Customer** in accordance with the Documentation and the SLA; and (ii) not use **Customer** Data except to provide the Service, or to prevent or address service or technical problems, verify Improvements to the Service, in accordance with the Documentation, or in accordance with **Customer's** instructions. **EMS LINQ** reserves the right, in its sole discretion, to make any changes to the Service and Documentation that it deems necessary or useful to: (i) maintain or enhance (x) the quality or delivery of the Service, (y) the competitive strength of or market for the Service, or (z) the Service’s cost efficiency or performance, or (ii) comply with **governing Texas** Laws.

1.2 Customer Responsibilities. **Customer** and Authorized Parties may access and use the Service solely for the internal business purposes of **Customer** and its affiliates in accordance with the Documentation and not for the benefit of any third parties. **Customer** is responsible for all use of the Service and compliance with this Agreement, the Documentation and the Order Form(s) by all Authorized Parties. **Customer** is solely responsible for the accuracy, quality, and legality of all **Customer** Data, the means by which **Customer** acquired the **Customer Data**, and **Customer's** use of the **Customer Data** with the Service.

1.3 Service Exclusions. No hardware or software shall be provided by **EMS LINQ** to **Customer** unless expressly specified herein or in an Order Form.

2. Fees.

2.1 Fees. **Customer** shall pay Subscription Fees and all other fees as set forth in the Order Form(s). Payment obligations are non-cancellable and fees paid are non-refundable, except as expressly provided herein. **In no event shall Customer pay for services not rendered.**

2.2 Invoices and Payment. Subscription Fees and all other fees due will be invoiced to **Customer** in accordance with **EMS LINQ's** standard billing practices. In the event of any good faith dispute with regard to all or part of an invoice, the undisputed portion shall be paid as set out above. Upon resolution of the disputed portion, any amounts owed by **Customer** to **EMS LINQ** shall be paid by **Customer** and any amounts owed by **EMS LINQ** to **Customer** shall be credited off **EMS LINQ's** next invoice.

2.3 Overdue Charges. Any payment not received from **Customer** by the due date (except with respect to charges then under reasonable and good faith dispute) may, at **EMS LINQ's** discretion, accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by **governing Texas** law, whichever is lower, from the date such payment was due until the date paid.

2.4 Non-Payment and Suspension of Service. If **Customer's** account is more than twenty (20) days past due (except with respect to charges subject to a reasonable and good faith dispute), in addition to any other rights or remedies it may have under this Agreement or by law, **EMS LINQ** reserves the right to suspend all or any part of the Service upon five (5) days written notice, without liability to **Customer**, until such amounts are paid in full. Such notice shall clearly and prominently state that the Service is at risk of suspension and shall not solely take the form of an invoice with an overdue notice.

2.5 Taxes. **Customer** shall provided **EMS LINQ** with a tax exemption certificate authorized and honored by applicable taxing authorities that covers all transaction taxes.

2.6 Subsequent Years. For each annual renewal period following the initial period that is bounded by the Start Date and End Date set forth in the applicable Order Form, as described in Section 8.1 below, the Subscription Fee shall be an amount equal to the Subscription fee for the immediately preceding period uplifted by three percent (3.0%).

3. Proprietary Rights.

3.1 Ownership of and Reservation of Rights to Intellectual Property. EMS LINQ and its licensors own all right, title and interest in and to the Service, Documentation, and other EMS LINQ IP Rights. Subject to the limited rights expressly granted hereunder, EMS LINQ reserves all rights, title and interest in and to the Service, and Documentation, including all related IP Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any IP Rights in or relating to the Service, EMS LINQ Materials, or Third Party Materials, whether expressly, by implication, estoppel or otherwise.

3.2 Grant of Rights. Subject to and conditioned upon Customer's compliance with all terms and conditions of this Agreement, EMS LINQ hereby grants Customer, for itself and Customer's affiliates and Authorized Parties for whom Customer enables access to the Service, a non-exclusive, non-transferable right to use the Service and Documentation, solely for the internal business purposes of Customer and its affiliates and solely during the Term, in accordance with the terms and conditions herein and within the scope of use defined in the relevant Order Form(s).

3.3 Restrictions. Customer shall not, and shall not permit any other person to, access or use the Service or the EMS LINQ Materials except as expressly permitted by this Agreement and, in the case of Third Party Materials, any applicable third-party license agreement. Without limiting the generality of the foregoing, Customer shall not (i) use the Service in violation of Laws; (ii) send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights, in connection with the Service; (iii) knowingly send or store Malicious Code in connection with the Service; (iv) interfere with or disrupt performance of the Service or the data contained therein; (v) attempt to gain access to the Service or its related systems or networks in a manner not in accordance with the Documentation; (vi) modify or copy the Service or Documentation or create any derivative works based on the Service or Documentation, or copy any features, functions, integrations, interfaces or graphics of the Service or Documentation; (vii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Service or Documentation available to any third party, other than to Authorized Parties as permitted herein; (viii) reverse engineer or decompile any portion of the Service or Documentation, including but not limited to, any Service Software, or otherwise attempt to derive or gain access to the source code of the Service Software, except to the extent required by Law; or (ix) access the Service or Documentation in order to build any commercially available product or service.

3.4 Suspension. Notwithstanding anything to the contrary in this Agreement, EMS LINQ may temporarily suspend Customer's and any Authorized Party's access to any portion or all of the Service if: (i) EMS LINQ reasonably determines that (A) there is a threat or attack on the Service; (B) Customer's or any Authorized Party's use of the Service disrupts or poses a security risk to the services provided by EMS LINQ (including the Service) or to any other Customer or vendor of EMS LINQ; (C) Customer, or any Authorized Party, is using the Service for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) EMS LINQ's provision of the Service to Customer or any Authorized Party is prohibited by applicable law; (ii) any vendor of EMS LINQ has suspended or terminated EMS LINQ's access to or use of any third-party services or products required to enable Customer to access the Service; or (iii) in accordance with Section 2.4 (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). EMS LINQ shall use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. EMS LINQ will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized Party may incur as a result of a Service Suspension.

3.5 Ownership and Use of Customer Data. As between EMS LINQ and Customer, if and to the extent Customer is the owner of Customer Data, Customer is and will remain the owner of the Customer Data. Customer hereby grants to EMS LINQ a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable (except as part of an assignment of this Agreement), non-sublicensable right and license to use, copy, transmit, modify and display the Customer Data for and in connection with the following uses and purposes: in connection with Customer's use of the Service; to facilitate EMS LINQ's performance and provision of the Service (including the ongoing improvement and further development of the Service and the Service Software); and as is necessary or useful to enforce this Agreement and exercise EMS LINQ's rights and perform its duties and obligations hereunder.

3.6 Feedback.

systems used to access the Service; and (c) any use of the Service through **Customer's** account, whether authorized or unauthorized. **Customer** shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service through login credentials of Authorized Parties, and shall notify **EMS LINQ** promptly of any such unauthorized access or use.

5.4 Customer Data for Non-Active Students. At least annually upon the commencement of a school year, or upon **EMS LINQ's** reasonable request, **Customer** shall provide **EMS LINQ** with a complete and accurate list of actively enrolled Students ("**Active Students**"). Notwithstanding any contrary provision of this Agreement, **EMS LINQ** shall have no obligation to maintain or provide any **Customer Data** for any Student that is not an Active Student and may, unless legally prohibited, delete all **Customer Data** relating to any Student who is not an Active Student. The foregoing deletion provision will be subject to any retention obligations imposed on **EMS LINQ** by Law.

5.5 Data Backup. In connection with the Service, **EMS LINQ's** systems are programmed to perform periodic routine data backups as set out in the *EMS LINQ Backup Policy*, as from time-to-time updated by **EMS LINQ**. In the event of any loss, destruction, damage or corruption of **Customer Data** caused by **EMS LINQ's** systems or the Service, **EMS LINQ** will, as its sole obligation and liability and as **Customer's** sole remedy, use commercially reasonable efforts to restore the **Customer Data** from **EMS LINQ's** them most current backup copy of such **Customer Data** in accordance with the then current backup policy.

6. Representations, Warranties and Disclaimers.

6.1 Warranties. Each party warrants that, in connection with its performance of this Agreement, it shall comply with all Laws applicable to it, including as are related to data privacy and the transmission of technical or personal data. **EMS LINQ** warrants that during the Term (i) the Service will perform materially in accordance with the Documentation; (ii) the functionality of the Service will not be materially decreased; and (iii) to its knowledge, the Service does not contain Malicious Code.

6.2 Warranty Remedies. In the event of a breach of any warranty of **EMS LINQ** set forth in Section 6.1, (a) **EMS LINQ** shall correct the non-conforming Service at no additional charge to **Customer**, or (b) in the event **EMS LINQ** is unable to correct such deficiencies after good-faith efforts, **EMS LINQ** shall refund **Customer** amounts paid that are attributable to the defective Service from the date **EMS LINQ** received such notice through the date of remedy, if any. **Customer** must promptly, but in any event within thirty (30) days after the first date the deficiency is identified by **Customer**, report deficiencies in writing to **EMS LINQ**. The remedies set forth in this subsection shall be **Customer's** sole remedy and **EMS LINQ's** sole liability for breach of these warranties, except as expressly provided in clause (i) of Section 8.2.

6.3 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY **GOVERNING TEXAS LAW**, **EMS LINQ** MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICE AND/OR RELATED DOCUMENTATION. **TO THE EXTENT ALLOWED BY TEXAS GOVERNING LAWS**, **EMS LINQ** MAKES NO WARRANTY OF ANY KIND THAT THE SERVICE, OR ANY PRODUCTS OR RESULTS THEREOF, WILL MEET **CUSTOMER'S** OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICE, OR BE SECURE, ACCURATE, COMPLETE, ERROR-FREE, OR UNINTERRUPTED. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO **CUSTOMER** IN CONNECTION WITH THE PROVISION OF THE SERVICE. **Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.**

7. Limitations of Liability.

7.1 LIMITATIONS OF LIABILITY. To the maximum extent permitted by the **governing laws of the state of Texas** and except with respect to (i) A party's gross negligence, willful misconduct and/or fraud or (ii) **Customer's** payment obligations, in no event shall either party's (Or **EMS LINQ'S** affiliates' or third party licensors') aggregate liability arising out of or related to this agreement, under any legal or equitable theory and whether in contract, tort or otherwise, exceed the fees actually paid or payable by **Customer** under this agreement during the immediately preceding twelve (12) month period for the service from which the claim arose (or, for a claim arising before the first anniversary of the effective date, the amount paid or payable for the first twelve (12) month period).

7.2 EXCLUSION OF CERTAIN DAMAGES. **To the extent permitted by the governing laws of the state of Texas**, in no event will either party be liable under or in connection with this agreement under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, and otherwise, for any: (i) Consequential, incidental, indirect, exemplary, special, enhanced, or punitive damages; (ii) Increased costs, diminution in value or lost business, production, revenues, profits;(iii) Loss of

goodwill or reputation; (iv) Use, inability to use, loss interruption, delay or recovery of any data, or breach of data or system, security; OR (v) Cost of replacement goods or services, in each case regardless of whether the party was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable. Neither party shall be liable to the other for any act (or failure to act) by or of any outside end user. **Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.**

8. Term and Termination.

8.1 Term of Agreement. The Term of this Agreement commences on the **Effective Date** and continues until the stated term in all Order Forms has expired (subject to the renewal provision that follows below) or has otherwise been terminated in accordance herewith. Subscriptions to the Service commence on the date, and are for a period, as set forth in the applicable Order Form. Notwithstanding anything in this Agreement (including any Order Form), the stated term in each Order Form will automatically renew for successive one-year periods at the pricing described in Section 2.6 above unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current stated term. The "Term" of this Agreement means the initial term bounded by the Start Date and End Date detailed in the applicable Order Form plus each renewal period as described above in this Section 8.1.

8.2 Termination. Either party may terminate this Agreement (i) upon ninety (90) days prior written notice to the other party of a material breach of this Agreement by the other party if such breach remains uncured at the expiration of such notice period; or (ii) immediately in the event the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In the event the Agreement is terminated, all Order Forms are simultaneously terminated. **Customer may terminate this Agreement for convenience during the Initial Term or any Renewal Term by providing the other Party thirty (30) day written notice. In the event that, during any term hereof, the Customer's governing body does not appropriate sufficient funds to meet Customer's obligations under this Agreement, Customer may terminate this Agreement upon sixty (60) days written notice to other Party. Customer agree, however, to use best efforts to secure funds necessary for the continued performance of this Agreement. This provision shall be a continuing right to terminate this Agreement at the expiration of each budget period pursuant to the provisions of Texas Local Government Code Ann.**

8.3 Effect of Termination. Upon any termination of this Agreement, **Customer** and its Authorized Parties shall, as of the date of such termination, immediately cease to access and use the applicable Service and **EMS LINQ Confidential Information**. Termination for any reason shall not relieve **Customer** of the obligation to pay any undisputed fees accrued or due and payable to **EMS LINQ** prior to the effective date of termination and termination for any reason other than for uncured material breach by **EMS LINQ** shall not relieve **Customer** of the obligation to pay all future amounts due under all Order Forms.

8.4 Surviving Provisions. The following provisions of this Agreement shall not survive and will have no further force or effect following any termination or expiration of this Agreement: (i) clause (i) of the first sentence of Section 1.1; (ii) Section 3.2; and (iii) any Order Form(s). All other provisions of this Agreement shall survive any termination or expiration of this Agreement.

9. General Provisions.

9.1 Relationship of the Parties. The parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this Agreement. **LINQ represents and maintains that LINQ is an Independent Contractor and is not an employee of the County, or any agency thereof, and represents and warrants that LINQ does not desire or request any fringe benefits provided to employees of the County, and/or any agency of the County. LINQ agrees to be responsible for any federal income tax, withholding, or social security tax liability that might arise from payments received hereunder. LINQ will incur no financial obligation on behalf of the County without prior written approval from the County. LINQ will be responsible for all personal and professional expenses.**

9.3 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

9.4 Force Majeure. In no event shall party be liable to the other party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

9.5 Assignment. **Customer** may not assign any of its rights or delegate any of its obligations under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of **EMS LINQ**, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

9.6 Governing Law; Waiver of Jury Trial. This Agreement shall be governed exclusively by the internal laws of the State of **Texas**. Venue for any legal action relating to this Agreement will be in **Hidalgo County, Texas** for any state court actions and the Eastern District of

Texas for Federal court actions.

9.7 Publicity. Except as set forth herein, **EMS LINQ** shall not use **Customer's** name, logos or trademarks, without the prior written consent of **Customer**, in any written press releases, advertisements and/or marketing materials.

9.8 Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties with respect to the subject matter hereof. In the event of a conflict, the provisions of an Order Form shall take precedence over provisions of the body of this Agreement and over any other Exhibit or Attachment. This Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both of the parties (or accepted by click-wrap agreement). If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. Notwithstanding any language to the contrary therein, no terms or conditions stated in a **Customer** purchase order or in any other **Customer** order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. This Agreement may be executed in counterparts, which taken together shall form one binding legal instrument. All agreements and signatures to said agreements must be in non-electronic, written form.

10. Definitions.

"Access Credentials" means any username, identification number, password, license or security key, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Service.

"Agreement" means the applicable Order Form and these Standard Terms and Conditions (including the SLA, any exhibits or attachments hereto).

"Authorized Parties" means **Customer's** or an authorized affiliate's employees, contractors, and third party providers authorized to access **Customer's** account and/or to receive **Customer Data** by **Customer** (i) in writing, (ii) through the Service's security designation, or (iii) by system integration or other data exchange process.

"Customer Data" means the electronic data or information submitted by **Customer**, Authorized Parties or Outside End Users to the Service.

"Documentation" means **EMS LINQ's** electronic manuals and other explanatory documentation relating to the Service, which may be updated by **EMS LINQ** from time to time and includes any Improvements thereto. The Documentation may be embedded in the Service products.

"EMS LINQ Materials" means the Service Software, Documentation and **EMS LINQ** information technology infrastructure, and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software, and other technologies and inventions, that are provided or used by **EMS LINQ** or any subcontractor of **EMS LINQ** in connection with the Service or otherwise comprise or relate to the Service or the **EMS LINQ** information technology infrastructure.

"Feedback" means comments, suggestions, enhancement requests (including new features or functionality), recommendations or other feedback provided by **Customer**, its employees or contractors, and Authorized Parties relating to the operation or functionality of the Service, however transmitted to **EMS LINQ** and regardless of the form in which transmitted.

"Improvements" means all improvements, updates, new features, enhancements, error corrections, bug fixes, release notes, upgrades and changes to the Service and Documentation, as developed by **EMS LINQ** and made generally available for production use without a separate charge to **Customers**.

"IP Rights" means any and all common law, statutory and other intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.

"Law" means any local, state, national and/or foreign law, treaty, and/or regulation applicable to a respective party.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other code, files, scripts, agents or programs intended to do harm.

"Order Form" means one or more a separate ordering documents or online order forms generated by **EMS LINQ** and under which **Customer** subscribes to the Service that has been executed by the parties or otherwise accepted by the parties (including by click-wrap agreement). No terms or conditions set forth in any purchase order or other document generated by **Customer** and in conflict with these Standard Terms and Conditions shall form a part of the Order Form or otherwise be binding upon **EMS LINQ**.

"Outside End User" means any Student, parent or guardian of a Student, or any other outside third party acting for or in connection with a Student, who accesses any Service by means of an Outside End User Account.

"Outside End User Account" means an account set up with **EMS LINQ** by an Outside End User to access and use any Service designed to accommodate Outside End User access and use, including but not limited to **K12PaymentCenter**.

"School" means any school or other educational institution, whether private, charter, public or otherwise.

"Security Breach" means (i) any actual or reasonably suspected unauthorized use of, loss of access to or disclosure of, **Customer Data**; provided that an incidental disclosure of **Customer Data** to an Authorized Party or **EMS LINQ**, or incidental access to **Customer Data** by an Authorized Party or **EMS LINQ**, where no reasonable suspicion exists that such disclosure or access is fraudulent, criminal or malicious in nature, shall not be considered a "Security Breach" for purposes of this definition, unless such incidental disclosure or incidental access triggers a notification obligation under any Law and (ii) any security breach (or substantially similar term) as defined by Law.

"Security Policy" means the *EMS LINQ Information Security Policy and Procedures Manual*, as from time-to-time updated by **EMS LINQ**.

"Service" means **EMS LINQ's** software-as-a-service applications as described in the Documentation and subscribed to under an Order Form, which may include (without limitation) any one or more of **LINQ, Meals Plus, K12PaymentCenter, ISITE**, and various application programming interfaces, and which includes Improvements thereto.

"Service Software" means the EMS LINQ software applications and any third-party software, and all new versions, updates, revisions, improvements and modifications thereof, that **EMS LINQ** provides remote access to and use of as part of the Service.

"SLA" means the *EMS LINQ Production Support and Service Level Availability Policy*, a copy of which is available at https://www.linq.com/Downloads/EMS_LINQ_ServiceLevelAvailability.pdf, as from time-to-time updated by **EMS LINQ**.

"Student" means actual or prospective student enrolled at any School comprising or a part of **Customer** and its Affiliates. The Order Form defines how the Student count is calculated for Subscription Fee purposes.

"Subscription Fee" means all amounts invoiced and payable by **Customer** for the Service.

"Third Party Application" means a web-based, mobile, offline or other software application functionality that is provided by any party other than **EMS LINQ** and that interoperates with the Service Software or any portion of the Service Software, including, for example, an application that is developed by or for **Customer**, or any similar application.

"Third Party Materials" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Service that are not proprietary to **EMS LINQ**.