

October 3, 2022

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

**RE: EMS LINQ Master Subscription Agreement**

EMS LINQ, LLC agrees to the following changes to our Master Subscription Agreement between Hidalgo County Auditor's Office and EMS LINQ, LLC to read as follows:

**1. Subscription.**

1. Use of the LINQ Product.
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.

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

2. Your Data/Your Information.
  4. Business Information. 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 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.
  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.

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.

#### 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.
  - A. Precede with quote number Q-53240-1 that in no way shall payments conflict with the Texas Prompt Payment Act.
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.

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.

## 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".
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.

## 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.

## 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.
2. 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.

#### 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.
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.
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.

#### 9. General.

4. 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.
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.
6. Attorney's Fee. Removal of this section.
10. 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.

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.

If you have questions or need other information, please feel free to contact me.

Sincerely,



Mark R. Werner  
Contracts & Compliance Manager  
EMS LINQ, LLC 910.799.0121  
mwerner@linq.com