Master Subscription Agreement

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 INC. ("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. 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.

   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. LINQ will respond to phone calls from Support Contacts, identified by You, pursuant to the terms, which are attached in Exhibit B (the "**Support Services**"). 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. <u>Restrictions</u>. 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. <u>Third Parties</u>. 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. <u>Third-Party Software</u>. 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 Third-Party 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. <u>Third-Party Modules</u>. 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 Third-Party 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. LINQ shall be free to use, disclose, reproduce, license or otherwise distribute and exploit the Feedback in its discretion, without restriction or obligation of any kind or nature. Feedback, even if designated as confidential by You, shall not create any obligation of confidentiality for LINQ, unless LINQ expressly agrees so in writing.

    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. You agree to allow LINQ and 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 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.

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, 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.

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 Section 3.3, 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 Section 3.3, and (b) LINQ will remain fully liable to You for the acts, errors and omissions of any subcontractor it appoints to process the Data.

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.Linqk12.com/application/files/9715/8999/3875/LINQ_PrivacyPolicy_May_2020.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. 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.

2. <u>Additional Licenses</u>. 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. <u>Renewal</u>. 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. <u>Overdue Charges</u>. Overdue amounts are subject to interest at a rate of one percent (1.0%) per month, or the maximum rate permitted by law, 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. <u>Taxes</u>. Unless otherwise provided, fees specified in quotes or Order Forms, do not include any Taxes, and You are responsible for payment and reimbursement of all Taxes associated with its purchases hereunder.

5. **Term and Termination**.

1. <u>Term</u>. 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, 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. <u>Termination by You or LINQ</u>. 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.

3. <u>Effect of Termination</u>. 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. <u>Surviving Provisions</u>. 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. <u>Confidentiality</u>. 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 equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, 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.

2. <u>Destruction</u>. 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. <u>LINQ Warranties</u>. 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 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. <u>Your Warranties</u>. 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. <u>Disclaimer of Warranties.</u> 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 PURPOSEOR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE 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. <u>Limitation on All Damages</u>. EXCEPT FOR A BREACH OF SECTIONS 1.4, 1.5, 1.6 or 6.1, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARRISING 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. <u>Disclaimer of Consequential Damages</u>. EXCEPT FOR A BREACH OF SECTIONS 1.4, 1.5, 1.6 or 6.1, IN NO VENT 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 ANDWHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

3. <u>Scope of Limitations on Liability.</u> THE LIMITATIONS SET FORTH IN THIS SECTION 8 SHALL APPLY NOT WITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND REGARDLESS OFTHE LEGAL OR EQUITABLE THEORY ON WHICH CLAIMS ARE BROUGHT (CONTRACT, TORT, INCLUDING NEGLIGENCE OR OTHERWISE).

9. **General**.

1. <u>Publicity</u>. LINQ may include Your name, logos and trademarks in LINQ's customer presentations, website, brochures and other marketing materials and display areas at LINQ's events to represent that You are a LINQ customer.

2. <u>Assignment</u>. 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. <u>Relationship of the Parties</u>. 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.

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

5. <u>Choice of Law and Jurisdiction</u>. This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina 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 Wilmington, North Carolina 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, and (ii) waive, and agree not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper.

6. <u>Attorney's Fees</u>. In any action related to this Agreement, if any party is successful in obtaining some or all of the relief it is seeking or in defending against the action, the other party shall pay, on demand, the prevailing party's reasonable attorneys' fees and reasonable costs.

7. <u>Manner of Giving Notice</u>. 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. <u>Force Majeure</u>. 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. <u>Entire Agreement</u>. 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 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.

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 fully-executed 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. <u>Service</u>. 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. <u>Software Releases</u>. 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. <u>Third Party Analytics Tools</u>. 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. <u>Development</u>. 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. <u>Handling of Your Data Post Termination</u>. 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.

Exhibit B

Service Level Specifications

LINQ's required response times and resolution will vary based on the severity of the problem faced by You and the time of day in which Your problem occurs. LINQ's hours of operation are Monday through Friday 6:00 AM to 6:00 PM Central Standard Time. LINQ's Service Level Assurances can be found here:

https://www.Linqk12.com/application/files/2515/6289/3484/LINQ_ServiceLevelAssurances.pdf