MASTER SUBSCRIPTION AGREEMENT

This **Master Subscription Agreement** (this **"Agreement"**) is dated as of _____, 20___ and is by and between **EMS LINQ, Inc.,** a Delaware corporation (**"EMS LINQ"**), and _____ _____, a(an) _____ (**"Customer"**).

WHEREAS, Customer wishes to procure from **EMS LINQ** the software services described herein, and **EMS LINQ** wishes to provide such services to **Customer,** all on the terms and subject to the conditions set forth in this **Agreement.**

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.   Provision of Service.

1.1 EMS LINQ Responsibilities. During the Term of this Agreement, pursuant to and in accordance with the terms of this Agreement, **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. Any other services provided by **EMS LINQ,** including but not limited to any data migration services in connection with the initial set up of the Service will be subject to a fee based on **EMS LINQ's** then-current rates for consulting services and such services will be set out in a statement of work to a professional services agreement between the parties.

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. **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.

1.3 Changes. 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 any Laws. Without limiting the foregoing, either party may, at any time during the term of this Agreement, request in writing changes to the Service. The parties shall evaluate and, if agreed, implement all such requested changes in accordance with a change procedure agreed by the parties. No such requested changes shall be effective unless and until memorialized in a written change order signed by both parties.

1.4 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). Subscription Fees shall be determined on the basis of the aggregate number of Students or Schools in **Customer's** district (excluding any Schools not using the Service), or on such other basis as is set forth in the Order Form(s). The number of Schools and/or Students shall be fixed for the relevant subscription term except as otherwise provided in the Order Form(s) and except that, in the case of any stated subscription term in excess of one (1) year, such number shall be updated as of each anniversary of the date of this Agreement and at such other time(s) as may reasonably be requested by **EMS LINQ,** and the Subscription Fee appropriately adjusted. Payment obligations are non-cancelable and fees paid are non-refundable, except as expressly provided herein.

2.2 Invoices and Payment. Subscription Fees and all other fees due hereunder will be invoiced to **Customer** as provided in the applicable Order Form(s), including as to manner of sending invoices and the address (physical or email) to which invoices shall be sent. All fees due hereunder (except fees subject to good faith dispute) shall be due

and payable within ten (10) days after invoice date. All fees are quoted and payable in United States Dollars and are based on access rights acquired and not actual usage. All remittance advice and invoice inquiries can be directed as provided in the applicable Order Form. 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 law, whichever is lower, from the date such payment was due until the date paid. **Customer** shall pay **EMS LINQ's** reasonable attorney's fees and costs of collection for any unpaid Subscription Fees and other past due amounts.

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. This section applies only if **Customer** has not provided **EMS LINQ** with a tax exemption certificate authorized and honored by applicable taxing authorities that covers all transaction taxes. Subscription Fees and all other fees invoiced pursuant to this Agreement do not include in its price any transaction taxes, which may include local, state, provincial, federal taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, sales tax (referred to as "**Taxes**"). **Customer** is responsible for paying all Taxes imposed on the Subscription Fees or any other services provided under this Agreement, excluding U.S. income taxes imposed on EMS LINQ.

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 9.1 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. All right, title and interest in and to the Service, the **EMS LINQ** Materials, and the Third Party Materials are and will remain with **EMS LINQ** and the respective rights holders in Third Party Materials.

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 provide written notice of any Service Suspension to **Customer** and to provide updates regarding resumption of access to the Service following any 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. EMS LINQ shall have, and **Customer** hereby grants to **EMS LINQ**, a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Service any Feedback. **EMS LINQ** shall have no obligation to make Feedback an Improvement. **Customer** shall have no obligation to provide Feedback.

3.7 Outside End Users. All Outside End Users shall use the applicable Service only pursuant to the terms of **EMS LINQ**'s End User Terms of Service (which may be referred to as "Terms and Conditions of Use" or similar nomenclature), as from time-to-time updated by **EMS LINQ**, and which shall be presented to each potential Outside End User for acceptance in connection with the establishment of an Outside End User Account. If any potential Outside End User attempting to set up an Outside End User Account for or relating to a Student does not accept the End User Terms of Service and thereby is not able to establish an Outside End User Account, **Customer** may not be able to use the Service with respect to such potential Outside End User and the Student associated therewith, and, notwithstanding any contrary provision of this Agreement, **EMS LINQ** shall have no responsibility or liability to **Customer** with respect thereto. Use of any Third Party Applications by Outside End Users may be subject to Terms of Service or End User License Agreement(s) of the applicable third party.

3.8 Third-Party Applications. EMS LINQ or third parties may make available third-party products or services, including, for example, Third Party Applications, through or in connection with the Service. Any acquisition or use by **Customer** of such products or services, and any exchange of data between **Customer** and any third-party provider, product or service is solely between **Customer** and the applicable third party provider. **EMS LINQ** does not warrant or support Third Party Applications or other third-party products or services, whether or not they are included in the Service or the Service Software, designated by **EMS LINQ** as "certified", "approved", "preferred", "recommended" or otherwise. If **Customer** chooses to use a Third Party Application with or in connection with the Service, **Customer** grants **EMS LINQ** permission to allow the Third Party Application and its provider to access **Customer Data** as required for the interoperation of that Third Party Application with the Service. **EMS LINQ** is not responsible for any

disclosure, modification or deletion of **Customer Data** resulting from access by such Third Party Application or its provider. The Service Software and the Service may contain features designed to interoperate with Third Party Applications. To use such features, **Customer** may be required to obtain access to such Third Party Applications from their providers and may be required to grant **EMS LINQ** access to **Customer** account(s) on such Third Party Applications. **EMS LINQ** cannot guarantee the continued availability of such service features, and may cease providing them without entitling **Customer** to any refund, credit or other compensation, if, for example and without limitation, the provider of a Third Party Application ceases to make the Third Party Application available for interoperation with the corresponding service features in a manner acceptable to **EMS LINQ.**

4. Confidentiality.

4.1 From time to time during the Term, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information that is marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) rightfully known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

5. Customer Data.

5.1 Protection and Security. EMS LINQ will employ security measures that are materially in accordance with industry standards and that are designed to protect the security and integrity of **Customer Data** and protect against threats, hazards or unauthorized access thereto.

5.2 Unauthorized Disclosure. If either party believes that there has been a Security Breach, such party must promptly notify the other party, unless legally prohibited from doing so, within forty-eight (48) hours or any shorter period as may be required by Law. Each party will reasonably assist the other party in mitigating and/or remediating any potential damage and shall bear the costs of such remediation or mitigation to the extent the breach or security incident was caused by it. **EMS LINQ** maintains a data breach plan and, upon a Security Breach, **EMS LINQ** will implement the procedures required under the data breach plan.

5.3 System Administrator; Authorized Parties and Access. **Customer** shall designate one or more system administrators who shall be responsible for managing Authorized Party access, including creating accounts for Authorized Parties or deleting Authorized Parties, and otherwise administering **Customer's** use of the Service. The system administrator shall ensure that multiple Authorized Parties do not share Access Credentials. **Customer** is responsible and liable for: (a) Authorized Parties' use of the Service, including without limitation unauthorized conduct of Authorized Parties and any conduct of Authorized Parties that would violate the acceptable use provisions of Section 3.3 or any other requirements of this Agreement applicable to **Customer;** (b) maintaining the security of all Access Credentials and the security of its information systems used to access the Service; and (c) any use of the Service through **Customer's** account, whether authorized or unauthorized.

5.4 Customer Data for Non-Active Students. At lease 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   Representations.   Each party represents that it has the authority to enter into this Agreement and represents that it has validly entered into this Agreement.

6.2   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.

6.3   Warranty Remedies. In the event of a breach of any warranty of **EMS LINQ** set forth in Section 6.2, (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,** but **Customer's** failure to notify **EMS LINQ** within such thirty (30) day period shall not affect **Customer's** right to receive the remedy in Section 6.2 unless **EMS LINQ** is unable or materially impaired in its ability to, correct the deficiency due to **Customer's** failure to provide timely notice. Notice of breach of any warranty by **EMS LINQ** shall be made in writing to **EMS LINQ** in accordance with the Notice provisions of this Agreement. 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 9.2.

6.4   DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE 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. **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.

7.   Indemnification.

7.1   Indemnification by Customer. Customer shall defend, indemnify and hold **EMS LINQ** harmless against any loss, damage or costs (including reasonable attorneys' fees) ("**Losses**") in connection with any third-party claim, demand, suit, action, or proceeding (a "**Claim**") brought against **EMS LINQ** alleging that the **Customer Data,** or any use of the **Customer Data** in accordance with this Agreement, infringes any third party's IP Rights; provided, however, that **EMS LINQ:** (a) promptly gives written notice of the Claim to **Customer;** (b) gives **Customer** sole control of the defense and settlement of the Claim (provided that **Customer** may not settle any Claim unless it releases **EMS LINQ** of all liability); and (c) provides to **Customer,** at **Customer** cost, all reasonable assistance. **Customer** shall not be required to indemnify **EMS LINQ** to the extent that the alleged infringement arises from use of the **Customer Data** in a manner contrary to the authorization provided to **EMS LINQ** in this Agreement.

7.2   Indemnification by EMS LINQ. EMS LINQ shall defend, indemnify and hold **Customer** harmless against any Losses in connection with any Claim brought against **Customer** alleging that the use of the Service as contemplated

hereunder infringes any third party's IP Rights; provided, however, that **Customer**: (a) promptly gives written notice of the Claim to **EMS LINQ**; (b) gives **EMS LINQ** sole control of the defense and settlement of the Claim (provided that **EMS LINQ** may not settle any Claim unless it releases **Customer** of all liability); and (c) provides to **EMS LINQ**, at **EMS LINQ's** cost, all reasonable cooperation. **EMS LINQ** shall not be required to indemnify **Customer** if and to the extent that the alleged infringement arises from: (w) modification of the Service by **Customer** or its Authorized Parties in conflict with **Customer's** obligations under this Agreement or as a result of any prohibited activity as provided herein; (x) use of the Service in a manner not consistent with the Documentation; (y) use of the Service in combination with any other product or service not provided by **EMS LINQ**; or (z) use of the Service in a manner not otherwise contemplated by this Agreement. If **Customer** is enjoined from using the Service or **EMS LINQ** reasonably believes it will be enjoined, **EMS LINQ** shall have the right, at its sole option, either to obtain for **Customer** the right to continue use of the Service or to replace or modify the Service so that it is not infringing. If **EMS LINQ** reasonably determines that neither of the foregoing options is available on a commercially reasonable basis, then use of the Service may be terminated at either party's option and **EMS LINQ**'s sole liability shall be to refund any prepaid fees for the Service that were to be provided after the effective date of termination.

8. Limitations of Liability.

8.1 LIMITATIONS OF LIABILITY. To the maximum extent permitted by the law 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).

8.2 EXCLUSION OF CERTAIN DAMAGES. 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.

9. Term and Termination.

9.1 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 9.1.

9.2 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. Upon any termination by **Customer** pursuant to this section, **EMS LINQ** shall refund **Customer** any prepaid fees for the affected Service that were to be provided by **EMS LINQ** after the effective date of termination.

9.3 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 (except as permitted under Section 9.4) 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.

9.4 Availability of Customer Data. Upon written request by **Customer** made prior to expiration or termination of this Agreement, **EMS LINQ** will, for a period of up to sixty (60) days after such request is received by **EMS LINQ**, make **Customer** Data available to **Customer** for data export in agreed upon flat file format. After such sixty (60) day period, **EMS LINQ** will have no obligation to maintain or provide any **Customer** Data and shall thereafter, unless legally prohibited, delete all **Customer Data** by deletion of **Customer's** Tenant; provided, however, that **EMS LINQ** will not be required to remove copies of the **Customer Data** from its backup media and servers until such time as the backup copies are scheduled to be deleted. The foregoing deletion obligation will be subject to any retention obligations imposed on **EMS LINQ** by Law.

9.5 Transition Period before Final Termination. Upon termination of the Agreement, **EMS LINQ** shall, if so requested by **Customer**, continue to provide the Service (except where **EMS LINQ** is enjoined) pursuant to the terms of this Agreement for a transitional period of up to three (3) months (the "**Transition Period**"). Access to the Service during the Transition Period will be subject to such fees as are negotiated and agreed by the parties; provided, however, that if the parties are unable to agree upon such fees, access will be subject to fees based upon the annual fees for the twelve (12) month period immediately preceding the termination date plus an additional twenty percent (20%). During the Transition Period, **EMS LINQ** will provide cooperation and assistance as **Customer** may reasonably request to support an orderly transition to another provider of similar software, services, or to **Customer**'s internal operations. Such cooperation and assistance will be limited to consulting regarding the Service and will be subject to a fee based on **EMS LINQ's** then-current rates for consulting services and such services will be set out in a statement of work to a professional services agreement between the parties. Notwithstanding the foregoing, in the event of termination of this Agreement by **EMS LINQ** for breach by **Customer**, **EMS LINQ** may withhold access to the Service during the Transition Period and condition further performance upon payment of undisputed fees then owed and prepayment of fees for further services.

9.6 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.

10. General Provisions.

10.1 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.

10.2 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing; or (iii) the first business day after sending by overnight delivery via FedEx or other nationally-recognized overnight courier service. Notices shall be addressed in accordance with the table below. Each party may modify its recipient of notices by providing notice pursuant to this Agreement.

If to **EMS LINQ**:	If to **Customer**:
2528 Independence Boulevard, Suite 200 Wilmington, North Carolina 28412 Attn: _____	_____ _____ Attn: _____

10.3 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.

10.4 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.

10.5 Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, 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.

10.6 Governing Law; Waiver of Jury Trial. This Agreement shall be governed exclusively by the internal laws of the State of North Carolina, without regard to its conflicts of laws rules. Venue for any legal action relating to this Agreement will be in New Hanover County, North Carolina for any state court actions and the Eastern District of North Carolina for Federal court actions. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

10.7 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. Notwithstanding the foregoing, **EMS LINQ** may use **Customer's** name and logo in lists of **Customers** and on its website, including, but not limited to, **EMS LINQ's** community portal; however, such usage shall not be classified as an advertisement but only identification as an entity who receives the Service from **EMS LINQ.**

10.8 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.

10.9 Debarment. EMS LINQ acknowledges, by contract signature that, at the date of contract execution, **EMS LINQ** is not under suspension or debarment by any federal agency or any individual state government.

11.   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.

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control by either party. For purposes of the preceding sentence, "control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Subscription Agreement, including the SLA, any exhibits or attachments hereto, and any Order Form.

"Authorized Parties" means **Customer's** or an authorized Affiliate's Employees and third party providers authorized to access **Customer's** Tenants 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" means the **Customer** named in the preamble to this Agreement and any Affiliates of that **Customer** that have entered into an Order Form. In the case of a **Customer** that is a school district or other agency or entity having oversight of or responsibility for more than one School, each School that delivers or enters into any Order Form under this Agreement shall be considered a **Customer** for all purposes hereunder.

"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.

"Employee" means actual or prospective employees, consultants, contingent workers, independent contractors, and retirees of **Customer** and its Affiliates.

"EMS LINQ" means **EMS LINQ, Inc.,** a Delaware corporation.

"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 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, treaties, and/or regulations 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 pursuant to this Agreement 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 the terms and conditions of this Agreement 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 K-12 Payment Center.

"Personal Data" means any information that is related to an identified or identifiable individual and has been provided by **Customer** or its Affiliates as **Customer** Data within the Service.

"Production" means the **Customer**'s or an Authorized Party's use of or **EMS LINQ's** written verification of the availability of the Service to provide such administrative, data processing and/or generation, or other functionality as is consistent with the Documentation.

"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.

"Tenant" means a unique instance of the Service, with a separate set of **Customer** Data held by **EMS LINQ** in a logically separated database (i.e., a database segregated through password-controlled access).

"Tenant Base Name" is a naming convention that will be used in all of the tenant URLs provided by **EMS LINQ**, as specified in **Customer's** initial Order Form subscribing to the Service, and which shall remain constant throughout the Term.

"Term" has the meaning set forth in Section 9.1.

"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**.

Signature Page Follows

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed under seal by its duly authorized officer, effective as of the date first above written.

EMS LINQ: **EMS LINQ, INC.**

By: _____

Name: _____

Title:_____

CUSTOMER: _____

By: _____

Name: _____

Title:_____