

## EMS LINQ STANDARD TERMS AND CONDITIONS

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

### 1. Provision of Service.

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

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

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

### 2. Fees.

**2.1 Fees.** **Customer** shall pay Subscription Fees and all other fees as set forth in the Order Form(s). Payment obligations are non-cancellable and fees paid are non-refundable, except as expressly provided herein.

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

**2.3 Overdue Charges.** Any payment not received from **Customer** by the due date (except with respect to charges then under reasonable and good faith dispute) may, at **EMS LINQ's** discretion, accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by 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.** **Customer** shall pay all Taxes imposed on the Subscription Fees or any other services provided under this Agreement, excluding U.S. income taxes imposed on **EMS LINQ**, unless **Customer** has provided **EMS LINQ** with a tax exemption certificate authorized and honored by applicable taxing authorities that covers all transaction taxes.

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

### 3. Proprietary Rights.

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

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

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

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

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

**3.6 Feedback.** 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.

**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. 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.

## 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 Authorized Parties and Access.** 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. **Customer** shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service through login credentials of Authorized Parties, and shall notify **EMS LINQ** promptly of any such unauthorized access or use.

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

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

## 6. Representations, Warranties and Disclaimers.

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

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

**6.3 DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY 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. Limitations of Liability.

**7.1 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).

**7.2 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.

## 8. Term and Termination.

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

**8.2 Termination.** Either party may terminate this Agreement (i) upon ninety (90) days prior written notice to the other party of a material breach of this Agreement by the other party if such breach remains uncured at the expiration of such notice period; or (ii) immediately in the event the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In the event the Agreement is terminated, all Order Forms are simultaneously terminated.

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

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

## 9. General Provisions.

**9.1 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this Agreement.

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

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

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

**9.6 Governing Law; Waiver of Jury Trial.** This Agreement shall be governed exclusively by the internal laws of the State of 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.

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

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

## 10. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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