



LINQ CONNECT SERVICES AGREEMENT

This LINQ Connect Services Agreement (the "Agreement") is made on August 1, 2024 (the "Effective Date") by and between EMS LINQ, LLC ("LINQ"), and CITY OF KINGSPORT FOR ITS KINGSPORT CITY SCHOOLS ("Merchant" or "School District") with the address shown below.

The parties have caused their duly authorized representatives to execute this Agreement as of the dates set forth below.

MERCHANT: CITY OF KINGSPORT FOR ITS KINGSPORT CITY SCHOOLS EMS LINQ, LLC

Signature: _____

Signature: Mark Fredericks

Name: _____

Name: Mark Fredericks

Title: _____

Title: Controller

Date: _____

Date: _____

Address: 400 CLINCHFIELD ST., STE 200

Address: 2801 Via Fortuna, Suite 400

KINGSPORT, TN 37660

Austin, TX 78746

Email: jwalker@k12k.com (Jennifer Walker - contact)

Email: accountmanagement@linq.com

(Note: The School District/Merchant must complete and sign pages 1, 6, 7, and 8 of this Agreement.)

1. Definitions. The terms not defined in this Section will have the meanings set forth in this Agreement.
 - a. "End User" means any person who uses any of the Services to establish an account, make a payment or receive information via the Services, including parents, guardians, Merchant staff (including administrators, faculty, agents, and staff), and any others who are authorized to access an account.
 - b. "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.
 - c. "LINQ Connect" means the websites, mobile applications, or online services, including www.LINQConnect.com, provided by LINQ and its affiliates that enable payments to be made to a student's school account or accounts, or to Merchant, for fees, purchases, etc., using a credit card, debit card, electronic check or other payment method. LINQ Connect will have access to appropriate debit, credit and public access networks (the "Networks"), third-party processors (the "Processor"), and bank or banks (the "Settlement Bank"), each of which will be selected by LINQ.
 - d. "LINQ Pay" means the terminal hardware, virtual terminal, APIs, payment gateway, and swipe card terminal that may be utilized by Merchant to facilitate in-person payments. LINQ Pay will have access to appropriate Networks, Processor and Settlement Bank, each of which will be selected by LINQ.
 - e. "Services" means, collectively, LINQ Connect, LINQ Pay and any other services provided by LINQ to Merchant hereunder.

2. Provision of Services.
 - a. Access. LINQ will provide Merchant with access to the Services during the Term. LINQ will provide to Merchant the necessary passwords, security protocols and policies, network links or connections, and access protocols to allow Merchant and its Ends Users to access the Services. Merchant will be solely

- responsible for any unauthorized access to, or use of, the Services, and will notify LINQ promptly of any such unauthorized use known to Merchant.
- b. License. Subject to the terms and conditions of this Agreement, LINQ grants to Merchant a non-exclusive, non-sublicensable, non-transferable license during the Term to: (1) access and use Services; and (2) grant End Users the right to access and use the Services. Merchant is responsible for ensuring that End Users comply with the terms hereof.
 - c. Payment Methods. The Services will facilitate (at LINQ's option) some or all of the following: the acceptance of debit cards, credit cards and stored value cards, electronic transactions, the use of such forms of electronic funds transfer as LINQ may elect, including electronic transfers from Merchant's bank, the use of electronic checks, and the transfer of funds received from the Settlement Bank to Merchant's designated bank account.
 - d. Payment Processor. The provision of the Services to Merchant hereunder is subject to Merchant's acceptance of the Payment Processor Sub-Merchant Agreement provided to Merchant by LINQ, and Merchant agrees to abide by the terms set forth therein. LINQ reserves the right to change the Payment Processor, or add additional Payment Processors at any time, with or without prior notice to Merchant. Merchant agrees to be bound by the terms applicable to the new Payment Processor's services.
3. Payment Fees and Merchant Funds.
- a. Calculation of Payment Fees. The Services will calculate and add to the original sale transaction amount a processing-fee, service-fee, site-fee, or convenience-fee (collectively "Payment Fees"). Payment Fees will be charged as set forth in Exhibit A, attached hereto and incorporated herein by reference, which indicates a fee schedule that is paid by either the End User, Merchant, or divided between the End User and Merchant. The entire amount of the Payment Fees will be retained by LINQ as remuneration for providing the Services.
 - b. Routing and Control of Funds. LINQ shall act on Merchant's behalf with the Processor and the applicable Settlement Bank. Once an End User has made an online payment to Merchant, Merchant has sole discretion over the application and use of those funds, including providing refunds or returns. LINQ is not responsible for any funds, or Merchant's use of funds, after the End User submits a payment using the Services.
 - c. Chargebacks and Returns. If LINQ is assessed a chargeback or return from the Processor or Settlement Bank for any reason permitted under applicable law, Merchant agrees that LINQ may update any student account(s) associated with the chargeback or return and debit Merchant's designated bank account for the amount of the chargeback or return. Both parties agree that LINQ is not required to dispute a chargeback or return but may do so in its sole discretion. For clarity, applicable laws governing chargebacks and returns include, but are not limited to, the Fair Credit Billing Act (FCBA) of 1974, the Truth in Lending Act, and the Electronic Fund Transfer Act.
 - d. Processing Authorization Form. A completed Merchant ACH Processing Authorization Form (attached hereto as Exhibit B and incorporated herein by reference) is required for processing payments hereunder.
 - e. Taxes. If Merchant is a tax-exempt organization, then this provision does not apply. All fees owed by Merchant in connection with this Agreement are exclusive of, and Merchant will pay, all sales, use, excise and other taxes and applicable export and import fees, customs duties and similar charges that may be levied upon Merchant in connection with this Agreement, except for employment taxes for LINQ employees and taxes based on LINQ's net income. LINQ has no obligation to pay Merchant's taxes under any circumstances. If LINQ is compelled to pay taxes on Merchant's behalf, Merchant agrees to indemnify, defend and hold LINQ harmless for any and all such payments.
4. Relationship.
- a. LINQ and Merchant. LINQ and Merchant 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.
 - b. LINQ and End Users. End Users may supply data, including confidential data and personally identifiable information ("PII"), to utilize the Services, and may be able to retrieve PII associated with their account via desktop or mobile devices. PII submitted by End Users, whether via letter, voice, fax, email, chat, SMS, social media, mobile application, or browser, will be processed in accordance with LINQ's Terms of Service and Privacy Policy, available at www.linq.com.
 - c. Communication with End Users. Merchant hereby grants LINQ permission to use directory information to communicate with End Users and potential users to notify them of the Services, to communicate updates (such as features, functionality, availability, etc.), to respond to support requests, and to conduct normal

business. Communications may include any medium, including but not limited to email, text messages/SMS, in-app notifications, social media, and postal mail as deemed appropriate in LINQ's sole discretion. In all cases, LINQ's practices will conform to its then-current Privacy Policy.

5. Term and Termination.

- a. Term. The term of this Agreement shall begin on the Effective Date and shall continue in force for an initial term of twelve (12) months (the "Initial Term"). Unless either party notifies the other party of its intention to terminate this Agreement at least sixty (60) days prior to the end of the Initial Term or any Renewal Term, this Agreement will be automatically extended for a period of twelve (12) months (a "Renewal Term") on the same terms as stated herein. The Initial Term and any Renewal Terms shall be collectively referred to as the "Term".
- b. Termination for Cause. Either Party may terminate this Agreement for cause in the event of a material breach by the other party, which breach is not cured within thirty (30) days after written notice of such breach is provided to the other party.
- c. Termination by LINQ. LINQ may terminate this Agreement at any time upon written notice to Merchant in the event the provision of the Services hereunder is determined by LINQ in its sole discretion to violate any statute, regulation, rule, order or operating procedure enacted or promulgated by a governmental or judicial authority of competent jurisdiction, NACHA (or any similar industry organization with authority over the services), or in the event that any statute, regulation, rule, order or operating procedure is enacted or promulgated which effectively reduces or eliminates the fees charged by LINQ.

6. Indemnification. To the extent permitted by applicable law, each party agrees to indemnify, hold harmless and defend the other party, its shareholders, directors, officers, employees and agents from and against any third-party action, cause, claim, damage, debt, demand or liability, including reasonable costs and attorney's fees, arising out of or relating to such party's: (1) material breach of this Agreement; (2) violation of applicable federal, state and/or local law; and (3) gross negligence or willful misconduct in connection with its obligations under this Agreement. The indemnifying party's obligations are expressly conditioned upon each of the following: (x) the indemnified party will promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (y) the indemnifying party will have sole control of the defense or settlement of any claim or suit; and (z) the indemnified party will cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

7. Access to Records. During the Term, LINQ shall maintain all preparatory books, records, documents, accounting ledgers, and similar materials related to Merchant transactions processed under this Agreement. Merchant transaction data is made available to Merchant for up to two (2) years online, and up to two (2) more subsequent years by mail.

8. Compliance with Laws, Rules, and Regulations. Services performed by LINQ pursuant to this Agreement shall be performed in accordance with all applicable federal, state, and city laws and any rules or regulations promulgated thereunder. In addition, LINQ has established and implemented policies and practices pursuant to applicable security rules and regulations relating to the security and safeguarding of payment data, including the Payment Card Industry Data Security Standards (PCI-DSS), as outlined more fully in its Terms of Service and Privacy Policy, available at www.linq.com.

9. Governing Law and Venue. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Texas, without giving effect to any conflicts of laws principles. Merchant hereby expressly consents to exclusive personal jurisdiction and venue in the state and federal courts for the county in which LINQ's principal place of business is located for any lawsuit arising from or relating to this Agreement. In the event of any dispute, the prevailing party will be entitled to collect from the other the fees and costs of litigation, including but not limited to attorneys' fees and expenses.

10. Amendment or Modification. LINQ reserves the right to modify the Services or change or add to the terms of this Agreement or any exhibit or attachment hereto at any time with electronic notice to Merchant or notice by such other means as LINQ may select, in a manner and at such time as LINQ deems reasonable. Such changes may be to any of the terms hereof, including but not limited to Payment Fees. If Merchant does not terminate this Agreement by providing written notice to LINQ within thirty (30) days following notification of any such change, then Merchant shall be deemed to have accepted the change. This Agreement may also be amended by written agreement between the parties hereto.

11. Ownership Rights. LINQ reserves all title and interest in and to the Services and any and all Intellectual Property Rights related thereto, including but not limited to any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Merchant or any other party relating to the Services. The LINQ and LINQ Connect names and logos are registered trademarks of EMS LINQ, LLC, and no right or license is granted to use them without LINQ's express written permission.
12. DISCLAIMER OF WARRANTIES. EXCEPT AS PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED TO MERCHANT STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE SERVICES 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.
13. Limitation on All Damages. EXCEPT WITH RESPECT TO A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR MERCHANT'S PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORTS, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE, THE LESSOR OF THE TOTAL AMOUNT PAYABLE TO LINQ UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR GIVING RISE TO THE LIABILITY OR TWENTY FIVE THOUSAND DOLLARS (\$25,000).
14. Disclaimer of Consequential Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR REVENUE OR FOR ANY INDIRECT, SPECIAL, COVER, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING UNDER THIS AGREEMENT AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, MERCHANT'S PAYMENT OBLIGATIONS HEREUNDER, OR TO THE EXTENT PROHIBITED BY APPLICABLE LAW. THE LIMITATIONS SET FORTH IN THIS SECTION 14 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH CLAIMS ARE BROUGHT (CONTRACT, TORT, INCLUDING NEGLIGENCE OR OTHERWISE).
15. GENERAL PROVISIONS.
 - a. Survivability. Sections 3(a), 3(e), 6, 7, 9 and 11 through 15 will survive termination or expiration of this Agreement.
 - b. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
 - c. 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.
 - d. Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, denial of service attacks, fire, earthquake, flood, pandemic, health crisis, civil unrest, acts of terror, service disruptions involving hardware, software or power systems not within such party's reasonable control, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.
 - e. Notices. Each party must deliver all notices or other communications required or permitted under this Agreement in writing by (1) a nationally recognized express mail service or (2) email. Notice by express mail service will be effective upon receipt or refusal of delivery. Notice by email will be effective when sent even if the sender receives a machine-generated message that delivery has failed, provided that the sender sends a tangible copy of the notice by express mail service with ten business days of sending the email message. Notice shall be delivered as set forth on the first page of this Agreement.
 - f. Professional Advice. All Services and other information provided by LINQ to Merchant in the normal course of business should be considered for informational purposes only and is not to be taken as professional legal advice.

- g. **Headings.** The bolded headings contained in the Agreement are for convenience of reference only, shall not be deemed to be a part of the Agreement and shall not be referred to in connection with the construction or interpretation of the Agreement.
- h. **Entire Agreement.** This Agreement and any schedules 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 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 a Merchant purchase order, the terms of this Agreement shall prevail, unless expressly stated otherwise. Notwithstanding any language to the contrary therein, 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 Merchant and LINQ. All rights not expressly granted to Merchant are reserved by LINQ and its licensors.

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EXHIBIT A
PAYMENT FEES

The following Services will be provisioned and the Payment Fees specified below will be charged on each payment transaction in accordance with the Agreement:

Check

Meal Payments

Meal Payments will be paid by the following party: (choose one)

End User/Parent/Guardian/Family – All Payment Fees will be paid as a Convenience Fee by End User.

School District/Merchant Fee– All Payment Fees will be paid by Merchant.

Shared Fee between School District/Merchant and End User. Payment Fees will be divided between the End User and Merchant. Merchant will pay _____ % and \$_____ per transaction of the Payment Fees listed below.

Online Meal Payments (includes one-time, scheduled, and recurring payments)

Method	Payment Fee	Maximum transaction ¹
Card Payments	3.95% with a minimum fee of \$2.85	\$2,500
ACH payments	\$1.85	\$2,500

Check

School Store, Student Activity Fees, Ticketing, and Invoices Payments

This option allows for the payment of any school-related fees, tickets, donations, field trips, class fees, technology fees, etc. This option includes in-person payments by card reader or virtual terminal. The Payment Fees will be paid by the following party: (choose one)

End User/Parent/Guardian/Family – All Payment Fees will be paid as a Convenience Fee by End User.

School District/Merchant Fee– All Payment Fees will be paid by Merchant.

Shared Fee between School District/Merchant and End User. Payment Fees will be divided between the End User and Merchant. Merchant will pay _____ % and \$_____ per transaction of the Payment Fees listed below.

Method	Payment Fee	Maximum transaction
Card Payments	3.95% with a minimum fee of \$2.85	\$2,500
ACH payments	\$1.85	\$2,500

Check

In-Person Card Payments (Card reader option)

This option allows for in-person payments using a card reader. All transactions are charged 3.95% to the Merchant/School District.

¹ If a higher limit is needed, please contact LINQ Customer Support to request a limit increase. It can take up to 2-5 days to authorize this change.

EXHIBIT B

MERCHANT ACH PROCESSING AUTHORIZATION FORM

This Exhibit B must be completed regardless of how Payment Fees are collected as defined in Exhibit A, since it allows LINQ to interact with the School District/Merchant's bank account(s).

The undersigned whose name appears in the signature space below hereby authorizes and grants LINQ authorization to credit or debit the following bank account(s) during the term of this authorization for cash receipts, adjustments, chargebacks, returns, rejects, processor fees, damaged, lost, or stolen equipment provided by LINQ to Merchant, communication expenses and or other miscellaneous fees and expenses from the operation of an Electronic Data Capture Device (ATM/POS/EBT/Currency/Stored Value/eCheck or other items of value). These credits and debits will be facilitated by use of the Automated Clearing House (ACH). Point of Service (POS) transactions are settled by LINQ where the payment amount is directly settled into Merchant's business checking account (DDA) by the Visa and MasterCard Member bank. This authorization is valid from the effective date hereof until such time as this authorization is terminated in writing by the undersigned and shall remain effective after termination with respect to amounts owed by Merchant to LINQ on the date of termination. The person whose name appears below hereby indemnifies the named financial institution harmless of any and all such claims made or asserted by either party hereto. This authorization may be assigned by LINQ to a third party.

The undersigned hereby represents and warrants the following signature(s) have been authorized to execute and deliver bank drafts from the following bank account.

Agreed to on this _____.

Financial Institution

Financial Institution Name: _____

District Approval

Authorized Signature on above Bank Account

Second Authorized Signature, if applicable

(Please complete one form for each depository account associated with your account. In most cases there is a separate account for nutrition payments and school fee payments.)

EXHIBIT C

SUBMERCHANT AGREEMENT ACKNOWLEDGEMENT

The undersigned whose name appears in the signature space below acknowledges receipt of the Submerchant Agreement which is incorporated by reference. A copy of the Submerchant Agreement can be found at <https://bit.ly/sma431217>

MERCHANT: _____

By:

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

CITY RECORDER