

## ADDENDUM TO LINQ CONNECT SERVICES AGREEMENT

This Addendum (herein "Addendum") amends the LINQ Connect Services Agreement entered into between the parties on November 20, 2024, as well as all attachments, exhibits, any physical or virtual documents or writings, referenced therein (all of which are herein "Agreement") between EMS LINQ, LLC, a Delaware limited liability company principally located in Austin, Texas its affiliates and subsidiaries (herein "Vendor") and City of Kingsport, Tennessee on behalf of its Kingsport City Schools (herein "City"). In consideration of using Vendor's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

- 1. Precedence.** Notwithstanding any other provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control.
- 2. Indemnity, Limitation of Liability and Disclaimer of Warranty.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring City to indemnify or hold harmless Vendor or any other person or entity and any limitation of liability in favor of Vendor is enforceable only to the extent permitted by Tennessee law, provided City's monetary limits of liability under any such provision is limited to the monetary limits of liability as provided for in the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.* No provision of this Agreement shall act or be deemed a waiver by City of any immunity, including its rights or privileges or of any provision of the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.*
- 3. No Liability for Users or Third Parties.** Except as provided in the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.* City is not responsible for users of the Services, their acts or data, or any acts or data of a third party.
- 4. Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 *et seq.*, are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, City must, upon proper request, release public documents and records as defined by T.C.A. §10-7-503 *et seq.*, including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Vendor or provide Vendor with notice or the time to obtain a protective order. City does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 4 serves to meet such burden and authorization of disclosure.
- 5. Term.** City or Vendor may terminate the Agreement and use of the service at any time for any reason. However, termination shall not take effect until 30 days after written notice is delivered by the party terminating the agreement to the other party. Notices to the City shall be sent to:

Director of Schools  
Kingsport City Schools  
400 Clinchfield Street  
Kingsport, TN 37660

With a copy to:

Office of the City Attorney  
City of Kingsport  
415 Broad Street  
Kingsport, Tennessee 37660

6. **Accessibility.** Vendor warrants that to the extent applicable its services conform to the accessibility guidelines, including, but not limited to, supporting assistive software or devices such as large-print interfaces, text-to-speech output, refreshable braille displays, voice-activated input, and alternate keyboard or pointer interfaces, established by the World Wide Web Consortium's Web Content Accessibility Guidelines 2.1 (WCAG 2.1), and the accessibility guidelines established by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and implementing regulations set forth in 36 C.F.R. Part 1194. Vendor shall provide City a current completed Voluntary Product Accessibility Template (VPAT) to detail compliance with the federal Section 508 standards. Vendor shall promptly respond to and resolve any complaint regarding accessibility of its products or services. Failure to comply with these requirements shall constitute a material breach of the Agreement.

7. **Student Data.**

- a. **Definition of Data.** Data means any information relating to an identified or identifiable natural person where such data is End User data (as defined in the Agreement) or is processed by Vendor as a processor on behalf of City. Data shall include, but is not limited to, student data, metadata, and End User content. Data shall exclude End User data related to payment cards and End User banking information.
- b. **De-Identification.** Vendor may use de-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Vendor agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt re-identification.
- c. **Marketing and Advertising.** Vendor will not use any Data to advertise or market to students or their parents. Advertising or Marketing may be directed to the City only if student information is properly de-identified. Data may not be used for any purpose other than the specific purpose(s) outlined in this Agreement.
- d. **Modification of Terms of Service.** Vendor will provide reasonable notice in the event it changes how Data is collected, used, or shared under the terms of this Agreement.
- e. **Data Collection.** Vendor will only collect Data necessary to fulfill its duties as outlined in this Agreement.
- f. **Data Use.** Vendor will use Data only for the purpose of fulfilling its duties and providing Services under this Agreement, and for improving Services under this Agreement.
- g. **Data Mining.** Vendor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning of End User content for the purpose of advertising or marketing to students or their parents is prohibited.
- h. **Data Sharing.** Data cannot be shared with any additional parties without prior written consent of the User except as otherwise set forth in the Agreement and/or as required by law. If Vendor relies on or uses one or more subcontractors to perform work necessary to fulfill services under this Agreement, any such persons and/or entities shall have appropriate written contractual terms to protect and maintain data security and confidentiality.
- i. **Data Transfer or Destruction.** Vendor will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the Vendor may have transferred Data, is destroyed or transferred to the City under the direction of the City when the Data is no longer needed for their specified purpose, at the written request of the City.
- j. **Rights and License in and to Data.** Parties agree that all rights, including all intellectual property rights, of Data shall remain the exclusive property of the City, and Vendor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Vendor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data.
- k. **Access.** Any Data held by Vendor will be made available to the City upon request by the City.
- l. **Security Controls.** Vendor will store and process Data in accordance with industry accepted practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include reasonably prompt notification of the City in the event of a security or privacy incident, as well as industry accepted practices for responding to a Data breach. Vendor agrees to share its incident response plan upon request.

8. **Name and Logo.** City does not consent to the use of its name or logo in any advertising or promotional material

or distributions or other commercial use by Vendor other than in connection with any events promoted through or for which tickets are sold through Vendor's services. Additionally, City does not waive any and all moral right to the use of the name submitted to Vendor.

9. **Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.
10. **City's Refusal to Arbitrate, Selection of Jurisdiction, Waiver of Jury Trial, Venue, Service of Process.** Pursuant to the Constitution and Laws of the State of Tennessee, City is a sovereign entity subject only to those courts with jurisdiction over City. Therefore, any reference to the resolution of disputes through arbitration is expressly stricken from the Agreement and City expressly refuses to arbitrate any dispute. If a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state courts in Kingsport, Tennessee or the Federal court for the Eastern District of Tennessee, Northeastern Division. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. Mandatory and exclusive venue and jurisdiction for any disputes shall be in the state court located in Kingsport, Tennessee or the Federal court for the Eastern District of Tennessee. Service of process on City shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and City does not agree to any other service of process procedure.
11. **Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual provisions for the payment of attorney's fees. In the event of litigation between City and Vendor each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure.
12. **Non-appropriation.** Vendor acknowledges that City is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event Client fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to City, such termination shall not be a breach of this Agreement, and any unused payment made to Vendor shall be returned to City. Furthermore, this provision shall extend to any and all obligations imposed upon City to reimburse Vendor for any reimbursements, refunds, chargebacks, penalties, fees, or other financial obligations which exceed the funds tendered to Vendor, FPPs, or Payment Processing Partners in relation to any event.
13. **No Taxes.** As a tax-exempt entity, City shall not be responsible for sales or use taxes incurred for products or services. City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request.
14. **Compliance with Tenn. Code Ann. § 49-1-221(c).** Pursuant to the requirements of Tenn. Code Ann. § 49-1-221(c) Provider shall: (a) Verify that the digital or online materials do not violate Tenn. Code Ann. § 39-17-902; (b) Filter, block, or otherwise prevent access to pornography or obscenity through one's use of the digital or online materials; (c) Verify, in writing, that the Provider's technology prevents a user from sending, receiving, viewing, or downloading materials that are harmful to minors, as defined in Tenn. Code Ann. § 39-17-901; and (d) Remove, within one (1) business day, upon the Customer's request, access to digital or online materials for ages or audiences for which the contracting LEA or state agency has determined the material to be age – or audience – inappropriate unless the deadline for removal is extended upon mutual agreement of the parties.
15. **Amendment.** Unilateral modification or amendment of the Agreement by Vendor is prohibited and any provision permitting such by Vendor is not applicable to City. Any amendment or modification of the Agreement or this Addendum is binding only if it is in writing and properly executed by the signatures of authorized representatives of the parties hereto, including attestation by City's city recorder and approved as to form by City's city attorney.

- 16. Survival.** This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.
- 17. No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.
- 18. Counterparts.** This Addendum may be executed in one or more counterparts by City and Vendor. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.
- 19. Effective Date.** This Addendum shall be effective immediately after the Agreement is effective.

EMS LINQ, LLC

City of Kingsport, Tennessee on behalf of its  
Kingsport City Schools

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Paul W. Montgomery, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
Title

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Approved as to form:

\_\_\_\_\_  
Rodney B. Rowlett, III, City Attorney