

## ***IT Consulting Services Agreement***

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This Consulting Services Agreement (hereinafter “Agreement”) made effective this \_\_\_ day of May 2024 entered into by and between Ed Midwest, L.L.C. (hereinafter “Ed Midwest”) having offices located at 9383 Jane Cir N, Lake Elmo, MN 55042 and Lewiston Altura School District located at 100 County Road 25, Lewiston, Minnesota 55952 (hereinafter “Client”). This Agreement, together with the attached Statement of Work (hereinafter ‘SOW’) contains all the terms and conditions in which Ed Midwest may perform IT consulting services for Client and supersedes any additional or contradictory terms and conditions referenced in any Clients purchase order or other writing. There are no other agreements of any kind or nature in writing or oral by or between Client and Ed Midwest.

### **1. STATEMENT OF WORK**

Each consulting project performed under this Agreement will be memorialized in writing in an SOW. Each SOW constitutes a separate contract that will be effective upon execution by an authorized representative of Ed Midwest and Client. Should there be any conflict between this Agreement and a SOW, this Agreement will take precedence.

### **2. CHANGE ORDERS**

This Agreement or any SOW can only be modified by a written amendment signed by each party’s authorized representative and embodied in a Change Order. Ed Midwest will promptly communicate any material changes in the project or its timing to client. If Client requests changes during performance of a SOW, Ed Midwest will provide Client with a Change Order proposal addressing any increase or change in the nature, cost or timing of the Services. The Change Order shall only become effective once signed by an authorized representative of each party.

### **3. PAYMENT**

Ed Midwest shall prepare an Invoice for Services rendered and preapproved Expenses every month for the Services identified in the applicable SOW (“Services”). Invoices are due on receipt unless otherwise agreed to in writing. Ed Midwest is not obligated to continue to provide Services if Client fails to make timely payments of undisputed invoices.

### **4. COMMUNICATION AND OTHER RESPONSIBILITIES**

Client shall appoint a person or persons who shall be responsible for interfacing with Ed Midwest. Those so designated shall be available as a resource in person and or by telephone to respond to make decisions on behalf of Client, to answer questions, provide records or other requested materials or otherwise assist Ed Midwest in undertaking its tasks. Client shall make available applicable and necessary access to electronic records, server, networks, email, phone and other necessary systems books, records, test files, and provide space available for Ed Midwest to work. Client represents and warrants that it has the legal authority to allow/grant full access to Ed

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Midwest to any records or systems necessary to perform a task required in an SOW. Client shall comply with all applicable laws, codes, regulations and ordinances regarding worker and workplace safety. If applicable Client shall allow Ed Midwest to connect to Client's wireless network and use land line telephones. Client shall make Ed Midwest aware of any onsite safety or health risks. Ed Midwest shall likewise comply with all applicable laws relating to the provision of Services and while on site shall observe any of Client's safety, security and confidentiality policies provided in advance to Ed Midwest.

### **5. PROJECT DELAYS & FORCE MAJEURE**

Ed Midwest is not responsible for any project or other delays caused by the Client, a third party's failure to timely cooperate or make agreed to resources available, Internet connectivity issues or power system outages. Neither party is responsible for delays caused by Act(s) of God, war, Pandemic, insurrection, terrorism, flood, labor shortage or other causes outside the reasonable control of that party.

### **6. CONFIDENTIAL INFORMATION**

During the performance of Services under this Agreement, it may be necessary for one party to disclose to the other certain information considered proprietary or confidential by the disclosing party. Each party agrees that such information will be provided subject to the following terms and conditions:

"Confidential Information" denotes any and all technical and business information disclosed in any manner or form including, but not limited to, business strategies, methodologies, trade secrets, pricing, software programs, service or product offerings, relationships with third parties, client lists and information regarding clients, vendors, pricing, employees and affiliates not generally known to the public that the receiving party knows or should reasonably know is confidential in nature.

The Parties each respectively agree to a mutual non-disclosure of any information that is identified as being confidential or that the disclosing party reasonably believes to be confidential. The Parties also agree to reasonably secure and protect the other party's Confidential Information and to take appropriate action, including but not limited to instruction or agreement with its employees, contractors or other agents who are permitted to maintain the confidential status of such information.

The following is not Confidential Information: i) information that is or becomes publicly available through no wrongful act of the receiving party; ii) information that was lawfully obtained by the receiving party from a third party without any obligation to maintain the Confidential Information as proprietary or confidential; iii) was previously known by the receiving party without any obligation to keep it confidential; and/or iv) was independently developed by the receiving party without reference to or reliance on the Confidential Information.

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Confidential Information will be used only as necessary for performance of the receiving party's obligations under this Agreement or to obtain advice from legal or financial consultants or if compelled by law. Neither party will make more copies of the Confidential Information than is necessary. No license to either party's Confidential Information is either granted or implied by the disclosure of Confidential Information.

Within ten (10) business days of a request by the disclosing party, the receiving party will return or destroy, at discloser's option, all property including, but not limited to, documents, records, tapes and any other media as well as all copies thereof in its possession or under its control that contains Confidential Information of the disclosing party. Notwithstanding, the receiving party may retain for archival purposes one electronic copy of the Confidential Information in its back-up systems or servers in accordance with any applicable records retention policy at the time of any such request for the return of the Confidential Information or which may otherwise be required to be retained for purposes of complying with any legal, regulatory or fiduciary obligation.

This mutual non-disclosure agreement of the Parties shall survive termination of this Agreement and a violation of this paragraph shall be a material violation of the Agreement. The Parties' obligations to maintain the privacy and security of Confidential Information under this section are subject to Minnesota Statutes Chapter 13, which shall prevail in the case of any inconsistency.

The parties acknowledge that Confidential Information is valuable and that irreparable damage may result to the disclosing party if the receiving party improperly discloses Confidential Information. The parties agree that legal proceedings at law or in equity including seeking injunctive relief as may be appropriate in the event of a breach hereof. The obligations set forth in this paragraph shall continue for a period of two (2) years from completion of the last SOW.

### **7. LIMITED WARRANTY/DISCLAIMER OF WARRANTIES**

Each party hereby represents and warrants: (a) that it has full power and authority to enter into this Agreement and in performing its obligations herein it is not in conflict with any other understanding, whether oral or written, to which it is a party or by which it may be bound. Ed Midwest represents and warrants that it has the requisite experience and education to competently perform the Services, that all such Services will be performed in a thorough and professional manner in conformance with all applicable professional standards utilized by IT professionals. ED MIDWEST MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED AND SPECIFICALLY DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SATISFACTORY QUALITY AND TAKES NO RESPONSIBILITY FOR THE LOSS OF OR ACCESS TO DATA. CLIENT IS ADVISED TO IMPLEMENT ITS OWN VIGOROUS PROTECTIONS AGAINST A BREACH OF PERSONAL DATA, DATA PRIVACY LAWS, CYBER ATTACKS INCLUDING TECHNICAL PROTECTIONS AND INSURANCE. ED MIDWEST IS NOT RESPONSBLE FOR THESE RISKS OR LOSSES RELATED THERETO

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AND CLIENT SPECIFICALLY UNDERSTANDS AND WAIVES CLAIMS RELATED THERETO.

### **8. INSURANCE/INDEMNITY**

Client shall indemnify, defend, and hold harmless Ed Midwest, its officers, directors, employees and insurers from and against any and all losses, costs, liabilities, damages, and/or expenses (including, without limitation, reasonable attorneys' fees) in connection with any claim, suit, action, judgment, or other proceeding brought against Ed Midwest by a third party to the extent based on or arising from (i) physical injury or property damage occasioned by the Client's negligence or willful misconduct, or (ii) any breach of a material obligation contained in this Agreement; or (iii) act or omission by Client that infringes any patent, copyright, trademark, trade secret or other intellectual property interest of any third party; or stemming from a data breach or intentional hacking incident.

During the term of this Agreement, Ed Midwest shall obtain and maintain Commercial General Liability Insurance in an amount no less than One Million Dollars (\$1,000,000.00) per occurrence.

### **9. LIMITATION OF LIABILITY**

NEITHER PARTY, NOR ANY OF ITS AFFILIATES, WILL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, LOST PROFITS, BUSINESS INTERRUPTIONS, LOSS OF BUSINESS INFORMATION OR CONSEQUENTIAL DAMAGES, LOSS OF USE OR LOST DATA, OF ANY KIND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE.

Ed Midwest's total aggregate liability pursuant to this Agreement to Client is capped at and may not exceed the amount paid by Client to Ed Midwest in the six months preceding the date the claim arose.

### **10. TERMINATION**

Either party may terminate this Agreement following written notice and a reasonable opportunity to cure with Reasonable Cause. Reasonable Cause includes, but is not limited to, a material breach of the contract, or a failure to pay undisputed invoices for services rendered within thirty (30) days of receipt. Upon termination, Ed Midwest shall be paid all fees earned and expenses paid to the point of termination which are not disputed in good faith.

### **11. INDEPENDENT CONTRACTOR**

Ed Midwest represents warrants and agrees that it is an independent contractor having its own established place of business, holds a federal employer tax number, offers services to third parties and meets all requirements necessary to be classified, for all governmental purposes, as an independent contractor and not as an agent and/or employee of Client. Client will have no responsibility to provide fringe benefits or to withhold taxes normally withheld from an

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employee's pay on behalf of Ed Midwest's employees or agents. Client represents that Client shall not hold out Ed Midwest as being an employee of Client.

### **12. TAXES**

Fees and expenses under this Agreement are exclusive of all taxes including state and local use, sales, property and similar taxes. Client agrees to pay any such applicable taxes except those based on the net income of Ed Midwest.

### **13. ASSIGNMENT**

Neither party may assign its rights and/or obligations under this Agreement without the other party's prior written consent.

### **14. WAIVER**

Either party's failure to insist on the strict performance of any term of this Agreement or failure to take advantage of any of its rights hereunder will not operate to excuse performance or waive any such right at any future time.

### **15. SEVERABILITY**

If any provision of this Agreement or any SOW is deemed invalid or unenforceable, the remaining provisions will not be affected. In such event, the invalid or unenforceable provision will be replaced by a mutually acceptable provision that comes closest to the original intent of the parties.

### **16. GOVERNING LAW**

The Laws of the State of Minnesota will govern this Agreement. Each party agrees that any action that it brings will be exclusively venued in Minneapolis, Minnesota Circuit Court or appropriate federal court for the Western District of Wisconsin.

### **17. SURVIVAL**

The following provisions will survive termination of this Agreement for any reason: Payment, Confidentiality, and Indemnification and Limitation of Liability.

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## 18. COUNTERPARTS

This Agreement may be executed in counterpart originals, and the counterpart originals together shall constitute the original of this Agreement. Facsimile or PDF copy signatures shall be treated as original signatures for this purpose.

ED MIDWEST, L.L.C.

CLIENT

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### **STATEMENT OF WORK**

Ed Midwest LLC will be responsible for general consulting on the following technologies:

- Technology purchasing, planning, and contact with vendors
- Planning and implementing of network and systems administration
- Planning and maintenance of directory services
- Planning and maintenance of Office 365 and Google G-Suite
- Copy machine lease and purchasing consulting
- Planning and changes of the district Mitel or Shoretel VOIP phone system
- Planning and maintenance of the district IP security camera systems
- Troubleshooting of district IP cameras, not recording server or software
- Planning of district 1:1 program including JAMF servers
- Setup and updates to staff and student workstations, laptops, and mobile devices
- General Classroom technology support to teachers
- General Classroom technology support to students
- Updating of the R-School today Website, not including building out a new R-School website

This contract is for a term of 5 years commencing on July 1st, 2024, and ending on Jun 30<sup>th</sup>, 2029. This contract can be cancelled by Lewiston Altura School District or Ed Midwest LLC by providing 60 days written notice.

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Ed Midwest LLC will provide a minimum of 1150 onsite hours per school year. Work can be completed anytime day or night. Work will primarily be performed between the hours of 6:30am and 4pm. If additional hours are needed no additional charges will incur.

Ed Midwest LLC will invoice the Lewiston Altura School District monthly according to the scheduled amounts below. No additional travel or per diem expenses will be charged to the district.

	2024-25	2025-26	2026-27	2027-28	2028-29
July	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
August	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
September	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
October	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
November	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
December	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
January	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
February	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
March	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
April	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
May	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
June	\$ 5,250.00	\$ 5,400.00	\$ 5,550.00	\$ 5,715.00	\$ 5,855.00
	\$ 63,000.00	\$ 64,800.00	\$ 66,600.00	\$ 68,580.00	\$ 70,260.00