

**SWWC SERVICE COOPERATIVE
MEMBERSHIP AGREEMENT
2021-22**

THIS AGREEMENT, is executed this 1st day of February, 2021, (the "Execution Date") by and between SWWC Service Cooperative (hereinafter referred to as "SWWC"), and **Lewiston-Altura Public School District**, No. 0857, located at Lewiston, Minnesota (hereinafter referred to as the "Member"). The provisions contained herein, along with the addenda and attachments thereto, shall constitute the entire agreement and understanding between the parties.

RECITALS

- A. Pursuant to Minnesota Statute § 123A.21, SWWC was formed to perform planning on a regional basis and to assist in meeting the specific needs of clients in participating school districts, cities, counties, and other governmental agencies that could be better provided by a service cooperative than individually by the members themselves. Minnesota Statute § 123A.21 authorizes SWWC to provide those programs and services which are determined to be priority needs of the particular region pursuant to Minn. Stat. § 123A.21, subd. 7, and to assist in meeting special needs which may arise from the fundamental constraints of SWWC's members.
- B. Membership in SWWC is not compulsory. Members may subscribe to SWWC programs and services available to all members by payment of a one-time membership fee. At its sole option the member may further subscribe to programs and services beyond those offered to all members ("Additional Services"). Individual members shall collectively share in the costs incurred in providing the Additional Services to which they subscribe.
- C. The parties hereto desire to establish a relationship in which SWWC will provide programs and services to the Member and in which the Member will remit payment for such programs and services specified herein.
- D. SWWC and the Member seek to assure a thorough understanding of the obligations assumed by each.

AGREEMENT

1. **Dues and Fees.**
 - a. **Membership Dues.** The SWWC Board of Directors has determined membership fees ("Annual Membership Dues") as follows:
 - **Full Membership:** Open to public school districts, cities, counties, and other governmental agencies as defined in Minnesota Statute (M.S. 471.59) and are within the SWWC region. A **one-time fee of \$25** will be assessed.
 - **Associate Membership:** Open to (a) nonpublic schools, partnership agencies, or nonprofit organizations within the SWWC region, and to (b) schools – public and nonpublic, cities, counties, partnership agencies, nonprofit organizations, and other governmental agencies outside the SWWC region. A **one-time fee of \$50** will be assessed.
 - b. **Additional Services Fees.** The Additional Service addenda attached hereto reflect each Additional Service subscribed to by the Member. The cost of such Additional Services may be determined by apportioning the approximate cost of each program and service among the members participating in the Additional Service, or may alternatively be determined by a flat fee schedule ("Additional Services Fees"). The attached Additional Service addenda shall state the manner in which the cost of such Additional Service subscribed to shall be calculated during the Term of this Agreement.
2. **Payment.** Unless modified by any addenda attached hereto, all payments due SWWC by Member shall be paid on or before August 15.
3. **Calculation of Student Enrollment.** If the attached addenda state that the Additional Service Fees are to be assessed on a per student basis, the student enrollment numbers used shall be those identified by the Minnesota Automated Reporting Student System (MARSS) as of the October 1 Fall Enrollment from the second prior fiscal year (19-20). The number of students calculated shall be those enrolled in pre-kindergarten through 12th grade education.
4. **Indemnification by Member.** The Member shall indemnify and hold SWWC harmless from any and all loss, damage, liability, cost or expense (including reasonable attorneys' fees and expenses) which SWWC may incur or suffer as a result of any claim of any kind whatsoever arising out of:
 - a. any act or omission by Member or any of Member's agents or employees which violates this Agreement;
 - b. any claim for breach of warranty based upon any warranty or representation given or purportedly given by Member, Member's agents or employees which is different from or in addition to written warranties and representations given by SWWC, as amended by from time to time;

- c. third party claim for personal injury, damage, economic loss or other damage, caused by or arising out of the use, creation or production of any products proximately caused by or resulting from the negligence of Member, or the Member's agents or employees;
- d. any claim for breach of warranty based upon a defect caused by any act or omission by the Member, or the Member's employees or agents; or
- e. any claim or demand arising from the employment for engagement by Member of any person or entity.

5. **Term; Automatic Renewal.** Unless modified by addenda attached hereto, SWWC's obligations pursuant to this Agreement and any attached addenda shall commence on July 1, 2021 (the "Effective Date") and shall continue for a period of twelve (12) months (the "Initial Term"). This Agreement and all addenda attached hereto shall thereafter automatically and continuously renew from year to year (each, an "Extended Term") unless the Member delivers (a) written notice to SWWC of the Member's intent to withdraw from all SWWC services ("Notice of Intent to Withdraw"), or (b) written notice of the Member's intent to reduce its participation in any previously subscribed-to Additional Services ("Notice of Intent to Reduce Additional Services") by March 1 preceding the first day of the next Extended Term as set forth in Subsections 5(a) and 5(b) below (the "Notice Deadline").

a. **Notice of Intent to Withdraw.** The Member may deliver to SWWC a written Notice of Intent to Withdraw from membership and all Additional Services by the Notice Deadline. If not delivered, this Agreement shall renew for the next Extended Term and the Member shall be obligated to pay all dues and fees for the next Extended Term. The Member acknowledges and agrees that failure to provide such Notice of Intent to Withdraw on or before the Notice Deadline shall cause the Term of this Membership Agreement and, notwithstanding the receipt of a timely Notice of Intent to Reduce Additional Services from the Member, the Term of all addenda attached hereto to automatically renew for the next Extended Term. The Member further acknowledges and agrees that the Member may not subscribe to any Additional Service unless membership in SWWC is maintained and continued for the full term of any Additional Service. The Member acknowledges and agrees that if the Member subscribes to any Additional Services that extend over a term of greater than twelve (12) months (referred to herein as an "Obligated Term"), the Member shall be prohibited from withdrawing from membership in SWWC or from such subscribed Additional Service until the Obligated Term of the Additional Service has expired.

b. **Notice of Intent to Reduce Additional Services.** The Member may deliver to SWWC a written Notice of Intent to Reduce Additional Services by the Notice Deadline. If not so delivered, the Additional Services shall not be reduced, and the Member shall be obligated to pay all fees for subscribed Additional Services for the next Extended Term. Additionally, a timely Notice of Intent to Reduce Additional Services shall be effective only for those services expiring in the twelve (12) month period following the Notice Deadline and shall not have the effect of reducing the Term of any Additional Services to which the Member has subscribed; each Additional Service to which the Member has subscribed will not be subject to reduction or termination until the expiration date of the current Term of such Additional Service.

6. **Termination.** Notwithstanding any provision in this Agreement to the contrary, this Agreement may be terminated prior to the expiration of the Initial Term or any Extended Term pursuant to any of the following provisions:

a. **Breach of Agreement.** Either party may terminate this Agreement by delivery of written notice to the other party if the other party breaches any of the terms and conditions of this Agreement; provided, however, if the breach is curable such notice shall not be effective unless and until such breach remains uncured for a period of thirty (30) days after delivery of such notice. If the breach is nonpayment by the Member of monies due to SWWC the cure period shall be ten (10) days, not thirty (30) days.

b. **Effect of Termination.** Except as specifically set forth herein, no withdrawal or termination of this Agreement by the Member, whether before or after the Effective Date hereof, and whether voluntary or involuntary, shall relieve the Member of its obligation to pay the full amount due hereunder, including any amounts due pursuant to any attached addenda, nor shall such withdrawal or termination, whether before or after the Effective Date hereof, result in or entitle the Member to the return of any monies previously paid to SWWC for any services subscribed to whether or not such services have been provided or delivered. A breach of this Agreement by SWWC shall entitle the Member to reimbursement of a prorated share of any Additional Service that would remain unused if 1/12 of the service fee were used by SWWC during each month of each Term hereof.

7. General Provisions.

a. **Notices.** Any notice required or permitted to be given under this Agreement shall be deemed to have been duly delivered: (i) when received if delivered by hand; (ii) the same day if delivered by facsimile sent no later than 4:00 pm (receiver's time) on a business day; (iii) the next business day if sent by facsimile on a non-business day

or after 4:00 pm (receiver's time) on a business day; (iv) one (1) business day after placement with a reputable overnight carrier for next morning delivery; or (v) four (4) business days after depositing if placed in the U.S. mails for delivery by registered or certified mail, return receipt requested, postage prepaid and addressed to the appropriate party at the address set forth on the first page of this Agreement. If either party changes its address or facsimile number, such party shall give written notice to the other party of such different address or facsimile number in the manner set forth above.

- b. **Amendment.** The express terms of this Agreement, including all addenda hereto, shall control and supersede any course of performance and/or customary practice inconsistent with such terms. Any agreement between the parties hereafter made shall not change or modify this Agreement unless in writing and signed by the party against whom enforcement of such change or modification is sought.
- c. **Entire Agreement.** This Agreement, together with any addenda referenced herein, constitutes the entire Agreement between the parties and supersedes any and all prior and contemporaneous oral or written understandings between the parties relating to the subject matter hereof.
- d. **Modification and Waiver.** No purported amendment, modification or waiver of any provision hereof shall be binding unless set forth in a writing signed by both parties (in the case of amendments and modifications) or by the party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof.
- e. **Assignment.** The Member shall not assign, transfer or sell all or any part of its rights or obligations hereunder, by operation of law or otherwise, without the prior written consent of SWWC.
- f. **Severability and Interpretation.** In the event that a provision of this Agreement is held invalid by a court of competent jurisdiction, the remaining provisions shall nonetheless be enforced in accordance with their terms. Further, in the event that any provision is held to be overbroad as written, such provision shall be deemed amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and shall be enforced as amended.
- g. **LIMITATION OF REMEDY.** SWWC SHALL HAVE NO LIABILITY TO ANY PERSON FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE.

IN WITNESS WHEREOF, the parties have executed this Agreement in the manner appropriate to each to be effective the day and year entered on the first page hereof.

By signing below, the parties agree to be bound by the terms and conditions set out in the membership agreement, along with the addenda, which are effective on the date of the last signature (the "Effective Date"). The parties consent and agree that this Agreement may be electronically signed. The parties agree the electronic signatures appearing on this Agreement are the same as hand-written signatures for purposes of validity, enforceability, and admissibility.

SC MEMBER

SWWC SERVICE COOPERATIVE

BY:

Authorized Signature

BY:

Authorized Signature

ADDENDUM N
TO MEMBERSHIP AGREEMENT
STARRS ONLINE ACADEMY
2021-22

Lewiston-Altura Public School District

This Addendum to the Membership Agreement supplements the Membership Agreement made by the parties and by their acceptance of the terms thereof the parties have agreed to the following additional terms, covenants and responsibilities:

1. The Member has chosen to subscribe to STARRS Online Academy Services (the "Services"). The Services may include the following: Access to supplemental online learning school. Students enrolled in the STARRS online academy will have access to a variety of content courses and elective offerings. The estimated cost per credit is \$375.00.
2. **Term.** SWWC shall provide the Services to the Member from July 1 through June 30 during the Initial Term of the Membership Agreement and shall continue to provide such services from July 1 through June 30 during each Extended Term of the Membership Agreement until such time as the Member provides SWWC with written notice of its intent to withdraw from or reduce such Services pursuant to the terms of the Membership Agreement.
3. **Payment.** In exchange for SWWC's agreement to provide the Services, the Member acknowledges and agrees that it shall remit payment for the "TOTAL ADDENDUM PRICE" set forth below. Notwithstanding any provision to the contrary in the Membership Agreement, the Member shall remit payment to SWWC in four installments, one of each which is due on or before August 15, November 15, February 15, and July 15 during the Initial and any Extended Term of the Membership Agreement. The Member further agrees to pay a late payment charge at the rate of one and one half (1 1/2) percent per month, or at the maximum late payment charge permitted by applicable law, whichever is less, on any unpaid amount for each calendar month (or fraction thereof) that such payment is late.
4. SWWC agrees to provide all necessary personnel (contingent upon availability) and instructional materials required to fulfill its obligations under this Addendum without causing the Member to incur costs or charges in excess of the TOTAL ADDENDUM PRICE set forth below. Districts must provide the student access to a laptop, desktop or chrome book and ensure the student has access to high-speed internet. SWWC further agrees to pay all transportation expenses for required service personnel without additional cost or charge to the Member.
5. The dates and times for the furnishing of the Services and materials at issue in this Addendum shall be arranged in advance by mutual agreement between the parties.
6. In consideration for such services, the Member agrees to pay to SWWC the TOTAL ADDENDUM PRICE as set forth below:

TOTAL ADDENDUM PRICE	<u>\$6,000.00</u>
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7. **Capitalized Terms.** Unless otherwise defined in this Addendum, all capitalized terms shall have the same meaning ascribed to such terms in the Membership Agreement.