

# MANAGED IT SERVICES AGREEMENT

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**Effective Date:** 8/1/2022

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**Name:** **Midwest Data of Iowa** (“MDIA”)  
Address: 410 Broad Avenue Stanton, IA 51573  
Telephone: (660) 744-5343 Fax: (660) 744-5332  
- and -

**Name:** Clarinda Community School District (the “Customer”)  
Address: 423 E. NODAWAY STREET  
CLARINDA, IA 51632  
Telephone: Fax:  
Web Site:

**MDIA Contact:** Joe Matzinger **Phone:** 660-744-5343  
**Email:** mgoins@mwdata.net

**Customer Contact:** Darin Sunderman **Phone:** (712) 542-5165  
**Email:** dasunderman@clarindacs.org

**Term:** 12 Months **Monthly Fee:** \$8,855.00

## 1 Terms and Conditions

### 1.0 Definition of Terms

The following terms, wherever used in any Agreement document, shall mean:

1. “Customer” – **The party that signed this Agreement as Customer;**
2. “MDIA” – Midwest Data of Iowa
3. “Agreement” – The Agreement as described herein between Customer and MDIA for services;
4. “Work” – The services to be completed on the face hereof and in the schedules attached hereto, subject to credit approval;
5. “Equipment” – The tools necessary to complete the Work. This includes, but is not limited to hardware and software;

### 2.0 Term of Agreement

The initial Term of the Agreement shall be for a period of 12 months commencing 8/1/2022 (effective date) and ending on 7/31/2023 (date of termination). This Agreement shall automatically be extended for successive one-year periods unless terminated, in whole or in part, by either party, upon 30 days written notice.

### 3.0 Customer Representative

Customer warrants and represents that the person to whom this Agreement is addressed has the authority to make decisions and legally bind the Customer. The Customer’s representative shall be reasonably available to make any decisions that may be required with respect to this work. Customer may appoint a substitute representative provided that such appointment is made in writing.

#### *4.0 Service Description*

The following schedules provide the details of service to be provided under the terms of the Agreement:

- 4.1 Schedule A – Pricing Schedule
- 4.2 Schedule B – Core Services Opt Out

#### *5.0 Pricing & Payment Terms*

Payable to:

Midwest Data  
410 Broad Avenue  
Stanton, IA 51573

The Customer is liable for all taxes and charges relating to the services and materials provided under this Agreement, other than income taxes on MDIA's income.

Invoices for support services will be issued monthly on the 1<sup>st</sup> prior to the month in which services are provided. Payment terms are "Due upon receipt" and are to be paid via Electronic funds transfer, unless otherwise specified.

Customer shall pay or reimburse MDIA for all applicable duties, sales, use, and goods and services taxes unless Customer furnishes appropriate evidence of exemption. Amounts overdue under invoices for the goods and services covered by this Agreement shall bear interest at the rate of 1 1/2% per month.

#### *6.0 Schedule*

MDIA shall perform the Work at the times and in the manner set out in the schedules attached to this Agreement or as otherwise may be mutually agreed upon by the Customer and MDIA from time to time. The schedules for the Work shall be subject (i) to such reasonable adjustments from time to time as determined by MDIA; (ii) such adjustments due to changes in the Work mutually agreed upon by MDIA and Customer; and (iii) delays as described in section 8.0 hereof.

#### *7.0 Expansion or Modification*

All changes to the Work by way of altering, adding to or deducting from the Work shall only be made upon the written agreement of MDIA and the Customer including, but not limited to, changes in the Agreement price, service plan, and schedule of the Work.

#### *8.0 Acceptance*

The person to whom this Agreement is addressed (hereinafter called the "Customer") accepts this Agreement and all of the terms and conditions hereof by signing it. Acceptance of this Agreement shall constitute a valid and binding contract between the Customer and MDIA for the services specified on the face hereof and in the schedules attached hereto, subject to credit approval. Terms and conditions different from, or in addition to those set forth herein, including any contained in Customer's purchase order or other written instrument shall not be binding on MDIA unless accepted by its authorized representative in writing. This Agreement constitutes the entire agreement among the parties hereto with respect to all matters herein and supersedes all prior agreements, negotiations, representations and agreements, written or oral, between the parties with respect to the subject matter herein

## 9.0 *Work on Customer's Premises*

Customer shall take all necessary precautions to prevent the occurrence of any injury or damage to MDIA or its subcontractor's personnel or property during the progress of the Work on Customer's or other's premises and, except to the extent that any such injury or damage is solely and directly due to MDIA's negligence, shall indemnify and hold MDIA, its officers, directors, employees, agents and subcontractor's (past, present and future) harmless against all claims, demands, damages, losses, liability, judgments, costs and expenses of any kind or nature which MDIA, its officers, directors, employees, agents and subAgreementors (past, present and future) may suffer or incur as a result of or arising out of any act or omission of the Customer, its agents, employees, subAgreementors or owner of the premises or any person for whom such persons are responsible in law.

## 10.0 *Access to Facilities*

The Customer shall take all necessary actions and steps as may be required for MDIA or its subAgreementors to have full access to all necessary facilities and equipment in order to properly and efficiently perform the Work hereunder.

## 11.0 *Limitation of Liability*

**MDIA shall not be held liable for any costs, loss, or damages due to delays of any kind in the furnishing of material or labor, nor any costs, loss, or damages that are not directly and exclusively due to an act or omission of MDIA including, without limiting the generality of the foregoing, costs, loss, or damages arising out of the design, installation, manufacture, operation or failure of the Equipment, the system of which the Equipment is a part, or its controls.**

**No action, regardless of form or basis, arising out of this agreement may be brought by either party more than 30 days after the work was performed. This is an Agreement for services and not goods. MDIA disclaims all warranties, either express or implied, including but not limited to implied warranties that the services provided pursuant to this agreement will be fit for the customer's particular purpose. In no event shall MDIA or its suppliers be liable for any damages whatsoever beyond the amount actually paid by the customer to MDIA with respect to the services provided pursuant to this Agreement during the then current Term, excluding the cost of all materials, software and equipment.**

**In no event shall MDIA or its suppliers be liable for any indirect damages whatsoever (including without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary or punitive loss) arising out of the use of, or inability to use, the services provided by MDIA pursuant to this agreement, even if MDIA has been advised of the possibility of such damages.**

## 12.0 *Indemnification*

The Customer shall indemnify and hold harmless MDIA, its directors, officers, Agreementors, agents and employees from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of MDIA's performance of the Work which are attributable to a lack of, or defect in title, or license to, any property or software which is the subject of Work that is performed.

## 13.0 *Non-Disclosure of Proprietary Information of Customer Reliance*

- 13.1 MDIA acknowledges that certain information of the Customer's ("Proprietary Information") may be confidential and proprietary to Customer. Provided that MDIA has been given notice of the confidential nature of the information, MDIA agrees to use reasonable care (the same being not less than that employed to protect MDIA's own

- proprietary information) to safeguard the Proprietary Information and prevent the unauthorized use or disclosure thereof;
- 13.2 MDIA shall disclose or give access to Proprietary Information only to such MDIA's employees, agents or Agreementors ("MDIA Personnel") having a need-to-know in connection with MDIA's engagement and for use in connection therewith. MDIA will advise MDIA Personnel having access to Proprietary Information of the confidential and proprietary nature thereof;
- 13.3 Any copies or reproductions of the Proprietary Information shall bear the copyright or proprietary notices contained in the original;
- 13.4 MDIA shall, upon termination of the Agreement, or upon demand, whichever is earliest, return any and all Proprietary Information, including any copies or reproductions thereof in its possession or control;
- 13.5 MDIA shall promptly advise Customer in writing if it learns of any unauthorized use or disclosure of Proprietary Information by any MDIA Personnel or former MDIA personnel.
- 13.6 MDIA has no obligation or restriction with respect to Confidential Information which has come into the public domain prior to or after the disclosure through no wrongful act of MDIA, has been lawfully received from a third party without restrictions or breach of this agreement, has been or is published without violation of this agreement, is independently developed in good faith by MDIA, with the burden of proof being on MDIA, is approved for release or use by written authorization of the disclosing Party, or is not properly designated or confirmed as Confidential Information.

#### 14.0 *MDIA's right to stop Work or terminate the Agreement*

- 14.1 If the Customer should be adjudged bankrupt, or makes a general assignment for the benefit of its creditors because of its insolvency or if a receiver is appointed because of its insolvency, MDIA may, without prejudice to any other right or remedy it may have, by giving the Customer or receiver or trustee in bankruptcy written notice, terminate this Agreement.
- 14.2 If payment is not received within 30 days of the due date shown on the invoice or otherwise provided for by this agreement, MDIA may, without prejudice to any other right or remedy it may have, by giving the Customer written notice, suspend work or terminate this Agreement, in its sole discretion.
- 14.3 If the Work should be stopped or otherwise delayed for a period of thirty (30) days or more under an order of any court, or other public authority, and providing that such order was not issued as the result of any act or fault by MDIA or of anyone directly or indirectly employed by it, MDIA may, without prejudice to any other right or remedy it may have, by giving the Customer written notice, terminate this Agreement.
- 14.4 In addition, MDIA may notify the Customer in writing that the Customer is in default of its Agreemental obligations (other than for payment) hereunder. Such written notice shall advise the Customer that if such default is not corrected within five (5) working days from receipt of the written notice MDIA may, without prejudice to any other right or remedy it may have, stop work and/or terminate this Agreement.
- 14.5 If MDIA terminates this Agreement under the conditions set out above, it shall be entitled to be paid for all Work performed and any costs, losses or damages MDIA may suffer or incur as a result of or arising from the termination of this Agreement.

#### 15.0 *Early termination of Contract by Customer*

**The customer shall be responsible for advising MDIA, in writing, of any non-performance of the scope of Work specified in this Agreement. Any complaints must be made within 30 days of the work being performed. If MDIA fails to remedy such non-performance within 30 days, Customer shall have the right to terminate this Agreement.**

If Customer terminates this Agreement in any manner other than outlined in the above paragraph prior to the end of the Agreement Term, Customer shall owe, and pay concurrently with said termination to, MDIA all charges and other amounts for services rendered or goods supplied prior to the termination; plus an early termination fee equal to the Monthly Fee stated herein times the number of months remaining on the Term of this Agreement. For purposes of this paragraph, non-payment by Customer will be considered a de-facto termination of this Agreement by Customer.

In anticipation of the payment of the Monthly Fee over the Term of this Agreement, MDIA has expended resources, the costs and values of which MDIA has priced into the Monthly Fee for recovery over the full Term of this Agreement.

#### 16.0 *Compliance with Applicable Laws*

- 16.1 *The Customer shall comply with all applicable laws, ordinances, rules, regulations, codes and orders of all authorities having jurisdiction which are, or become, in force during the performance of Work, including those relating to the preservation of public health, and to construction safety.*
- 16.2 *MDIA shall not be responsible for verifying any specifications or drawings provided by or on behalf of the Customer or owner of the premises where the Work is to be performed.*

#### 17.0 *Rights, Claims, and Arbitration*

All disputes arising out of, or in connection with, this Agreement, or in respect of any defined legal relationship associated therewith or derived therefrom, shall be settled through best attempts of the parties to negotiate in good faith.

Should the parties fail to settle any dispute through good-faith negotiations, and the parties engage in litigation, the only venue for such litigation is Montgomery County, Iowa.

Should litigation occur due to a dispute of this Agreement, the predominantly prevailing party in such litigation shall be entitled to an award of reasonable attorney fees against the non-predominantly prevailing party.

#### 18.0 *Interpretation of Contract*

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa.

#### 19.0 *Notices*

Notices shall be addressed to Customer and MDIA at the addresses set out in this Agreement.

All notices shall be in writing and actually delivered, unless MDIA or Customer has acknowledged receipt of the notice.

#### 20.0 *Non-Solicitation Agreement*

Unless otherwise mutually agreed to by both parties in writing, each party agrees not to either directly, indirectly, or through a third party with whom they have contact, solicit for employment any personnel of the other party's organization during the Term of an MDIA Managed IT Services Agreement, an MDIA monthly quote or any other MDIA service agreement, and for a period of eighteen (18) consecutive months thereafter the end of this Agreement or last service visit, whichever occurs last. Remedy for violation of the terms of this section of the agreement may include, but are not limited to, the following: direct and indirect damage due to lost revenue, hiring and training of replacement employee(s), related attorney fees and court costs. MDIA reserves the right to waive

this section of this Agreement at any time upon acceptance of both parties in writing.

The rest of this page is intentionally left blank.

21.0 *Acceptance*

**AGREED BY:**

**Customer Name**

1. Name (please  
print): \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ACCEPTED BY:**

**Midwest Data**

1. Name (please  
print): \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Schedule A - Pricing Schedule

As usage of some items on this pricing schedule may vary month to month, MDIA may adjust the Customer's billing to reflect these changes. Below is an itemized billing estimate as of the start of this agreement.

QTY	Description	UNIT Price	Total Price
102	Onsite IT Support (4 Days/Week, 6 Hours)	\$65.00	\$6,630.00
7	Managed Backup & Recovery-Workstation Level	\$30.00	\$210.00
2	Managed Backup & Recovery-Server Level	\$140.00	\$280.00
133	Hosted PBX-Managed PBX VIP On Prem	\$12.00	\$1,596.00
1	Hosted PBX-FMTC SIP Trunk	\$100.00	\$100.00
1	Hosted PBX-FMTC E911	\$14.00	\$14.00
1	Hosted PBX-FMTC Fax	\$25.00	\$25.00

**Total Monthly Recurring Services: \$8,855.00**

**Subtotal One Time Charges: \$0.00**

**One Time Charges Tax: \$0.00**

**Shipping: \$0.00**

**Total One Time Charges: \$0.00**

### INSTALL:

**Installation and configuration charges will be billed at a time and material basis. There will be a non-recurring fee billed at \$120/hr configuration; \$50/hr travel plus expenses.**

Cloud Backup and Recovery - Server Level

Cloud backup and recovery - server level is based on entire server images stored both locally and replicated to a MDC data center facility. Retention settings can be customized. This service includes daily notifications and proactive problem resolution. File/folder restoration as well as full image restoration is possible with this service. Cloud Backup & Recovery pricing may fluctuate as vendor software pricing changes or as quantities change.

Cloud Backup and Recovery - Workstation Level

Cloud backup and Recovery - Workstation level is based on entire workstation images stored both locally and replicated to a MDC data center facility. Retention settings can be customized. This service includes daily notifications and proactive problem resolution. File/folder restoration as well as full image restoration is possible with this service. Cloud Backup & Recovery pricing may fluctuate as vendor software pricing changes or as quantities change.



Please contact me if I can be of further assistance.

## **Schedule B – Core Services Opt-Out**

\_\_\_\_\_ Managed Firewall provided by Midwest Data of Iowa

A *firewall* is a network security device that monitors incoming and outgoing network traffic and decides whether to allow or block specific traffic based on a *defined* set of security rules. Managed Firewall is a managed security service which provides firewall configuration, administration, monitoring, report generation, support, installation, and the use of a firewall system consisting of firewall equipment and related software.

\_\_\_\_\_ Cloud Backup & Recovery provided by Midwest Data of Iowa

Cloud Backup & Recovery is a service in which the data on servers or workstations is backed up and stored on a remote system. Businesses opt to back up to the cloud to keep files and data readily available in the event of a system failure, data loss, outage, or natural disaster.

\_\_\_\_\_ Workstation Management provided by Midwest Data of Iowa

Workstation Management provides remote support for workstation issues and includes services such as anti-virus solutions, patch management, device encryption, remote monitoring and system optimization.

### **1. Acknowledgement of Information (Initial on line)**

- a. \_\_\_\_\_ I have been advised that specific technology services for my business have been made by Midwest

Data of Iowa, and that opting out of the service is potentially hazardous to the security of my data and the potential of data loss, which under certain circumstances, will be total and irrecoverable.

- b. \_\_\_\_\_ I understand that any potential repairs after such loss, cannot replace any potential data lost, and will be handled and billed as a separate project, outside of the terms of any existing Managed Service Agreement.

2. **Release of Liability** (Initial on line.)

- a. \_\_\_\_\_ By signing this form, I, and my company, are releasing Midwest Data of Iowa, and its directors, shareholders, officers, agents, and employees, from all liability arising out of a security breach and/or loss of information, data, equipment, and time, whether permanent or temporary, due to the decision to opt out of the service(s) outlined above.

**I have read and understand the Acknowledgement of Information and Release of Liability.**