

Sample Service Agreement

SERVICE AGREEMENT

THIS SERVICE AGREEMENT (this "Agreement") is entered into by and between _____ ("Provider") and Hawthorn Academy ("Client"). The effective date of this Agreement is the date this Agreement has been signed by Provider and Client (the "Effective Date"). Provider and Client may be referred to hereafter as the "Parties" or individually as "Party".

RECITALS:

A. WHEREAS, Provider is an information technology service provider that desires to provide certain information technology services to Client (the "Services");

B. WHEREAS, Client desires to contract with Provider for Provider to provide the Services to Client; and

C. WHEREAS, the Parties desire to enter into this Agreement to memorialize the understanding between the Parties regarding the terms and conditions upon which the Services will be provided by Provider.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

AGREEMENT:

1. **Recitals.** The Parties hereto agree that the Recitals set forth above are accurate and correct and the same are incorporated herein by this reference.

2. **The Services.** Provider hereby agrees to provide the Services to Client on the terms and conditions contained in this Agreement.

3. **Equipment.**

- a. In connection with the Services provided under this Agreement, Provider agrees to provide to Client equipment as requested by Client and/or as necessary to provide the Services.
- b. However, Client shall have no obligation to purchase from Provider all or any portion of the equipment that it may require.
- c. For equipment that Client purchases from Provider, Provider will bill Client no more than an amount equal to the lesser of (1) Provider's cost of the equipment plus ten percent (10%) or (2) state contract pricing (for equipment that can be purchased on state contract).
- d. Provider will provide to Client, upon Client's request, copies of source documents pertaining to equipment provided to Client, including invoices and shipping documents.

4. **Authorization to Perform Services.**

- a. Client will ensure that only its representative(s) who have authority to request Services may submit a service request ticket through Provider's Help Desk system.
- b. Client will identify for Provider the Client representative(s) authorized to request the performance of Services through channels other than Provider's Help Desk system.
- c. Client will also identify for Provider the Client representative(s) authorized to request equipment from Provider.
- d. Provider acknowledges that purchases by client are subject to approval by Client's Board of Directors in accordance with Client Board policy.
- e. For Services that are not either regularly scheduled or planned in advance, including but not limited to service requests and emergencies arising from unforeseen software or hardware failures, Provider is not required to provide a detailed quote to Client prior to performing such Services. Receipt of a service request from an authorized Client representative shall constitute authorization to perform Services necessary to diagnose the issues and propose a solution. After Provider has diagnosed the scope of Services and any equipment necessary in order to fulfill a Client service request, Provider will notify the representative(s) designated by Client and obtain verbal authorization prior to providing the Services and/or equipment necessary in order to fulfill the service request.
- f. In the event Provider becomes aware of the need to perform Services or provide equipment in connection with a situation that Provider determines is likely to result in substantial additional expense to Client if not addressed immediately, Provider will make reasonable efforts to notify the representative(s) designated by Client and obtain verbal authorization prior to providing the Services and/or equipment. Notwithstanding the foregoing, in the event Provider does not receive a timely response from Client's representative(s), Provider may perform Services and provide equipment that it reasonably determines are required to protect Client from incurring significant additional expense, and it shall not be a defense to payment for Services or equipment provided in such a situation that Provider did not receive verbal authorization after making a reasonable attempt to obtain such authorization.
- g. For Services that are planned in advance but are not regularly scheduled, ongoing maintenance and support, Provider will provide a quote to Client detailing the Services to be provided, the estimated or maximum time to be spent on those Services, the specifications of equipment to be provided, and the estimated or maximum cost. Provider will not provide such Services or equipment until it has received proper authorization from Client.
- h. Provider shall perform the Services and provide the software and licenses set forth in Exhibit A, attached hereto, without obtaining prior authorization from Client. If, in the course of providing Services described in Exhibit A, Provider becomes aware of any additional Services not clearly within the scope of Services described in Exhibit A that it believes are necessary, Provider shall obtain authorization as required by this Agreement prior to performing such Services.

5. **Cost of Services; Alternative Billing.**

- a. The cost of the Services will be based on the actual service hours expended by Provider personnel, billed in increments of no less than ¼ hour. Exhibit B, attached hereto, sets forth the hourly rate that Provider will charge Client for the Services under this Agreement as well as good faith estimates of the cost that Client will incur for Services under this Agreement. The Parties acknowledge that Provider is not bound by the estimates set forth in Exhibit B, and the actual costs incurred may exceed such estimates.

- b. The Parties anticipate that Client may request that Provider provide Services and equipment in connection with special projects, which may include but not be limited to the purchase and set-up of multiple computers or new servers. The Parties may choose to establish alternative billing arrangement for such projects, which may include a fixed fee. In the event the parties elect to establish a fixed fee or other alternative billing arrangement for a project, the Parties acknowledge that it will be based on a quote that clearly identifies the specific Services and specifications of equipment to be provided as well as any related Services that are not included as part of the special project.

6. **Quality and Timeliness.**

- a. Provider agrees to perform the Services for the benefit of Client and be responsible for the quality and timeliness of the Services.
- b. With respect to Services where Provider is responsible for providing notice to Client representative(s) and Provider has provided such notice to the designated Client representative(s), Provider shall be held harmless for Client's failure to act on the information provided by Provider.

7. **Client Cooperation.** Client hereby agrees to provide timely responses to Provider's inquiries concerning the Services and equipment. Client acknowledges that failure to provide timely responses to Provider's inquiries may result in delays in the provision of Services and equipment. Provider will be held harmless for damages arising as a result of Client's failure to timely communicate with Provider.

8. **Payment.**

- a. Client shall pay Provider for services performed at the hourly rate shown in Exhibit B or at the cost agreed to by the Parties pursuant to an alternative billing arrangement, as applicable.
- b. Provider will submit monthly invoices to Client for the Services Provider has performed and equipment Provider has provided during the previous month.
- c. All invoices that include fees for Services billed at an hourly rate will reference the ticket number in Provider's Help Desk system pertaining to those Services, which ticket will include (1) the date and time that the Services were provided, (2) the technician providing the Services, (3) a description of the Services, (4) a designation of whether the Services were performed at the Client's facility or remotely, and (5) the name of the client representative who authorized performing Services or providing equipment. Invoices will clearly correlate equipment provided with Services related to the repair, installation or set-up of such equipment.
- d. Provider will not double bill for Services performed at an hourly rate. Specifically, in the event an Provider technician is able to and actually performs two separate Services simultaneously, Provider will not bill for both Services that were simultaneously performed.
- e. Payment is due within twenty (20) calendar days of the date the invoice is issued. Any amounts not paid when due shall accrue interest at the rate of one percent (1%) per month (12% per annum) from the due date until paid by Client.
- f. Provider reserves the right to withhold delivery of any portion of the Services until all past due invoices, if any, have been paid in full by Client.

9. **Change Orders.** Changes or alterations to the Services or equipment requested by Client,

including but not limited to Services or equipment provided as part of a special project, may obligate Client to pay additional costs to Provider. Change orders will be prepared by Provider and provided to Client and shall outline the changes to the Services and/or equipment and the corresponding changes to the cost of such Services and/or equipment. Client must agree to the changes set forth in the change order prior to Provider beginning any work under the change order. If Provider is unable to meet Client's desired completion deadline due to delays by Client or changes requested by Client, or due to causes outside the control of Provider, Client agrees to indemnify and defend Provider from any damage, liability, or harm suffered by Client with respect to Provider's inability to complete the Services or provide the equipment prior to Client's desired completion deadline.

10. **Insurance.** Provider will maintain in force throughout the term of this Agreement general liability and worker's compensation insurance in the amount of at least \$1,000,000 per occurrence/\$2,000,000 aggregate and professional liability insurance in the amount of at least \$500,000. Upon request, Provider will provide to Client a certificate of insurance naming Client as additional insured.

11. **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Utah.

12. **Mediation.** In the event of a dispute arising under this Agreement, the Parties shall first submit the dispute to mediation in Davis County, Utah (the "Mediation"). The Mediation proceedings may be initiated by either Party by sending written notice of the dispute and desire to mediate to the other Party. The mediator shall be an attorney licensed in the State of Utah with at least five (5) years of mediation experience and in good standing with the Utah State Bar (the "Mediator"). The Mediator shall be agreed upon in advance by the Parties and each Party hereby agrees to pay one half (½) of any and all costs and fees of the Mediator associated with the Mediation. The Parties agree to pay their own respective attorneys' fees with respect to the Mediation. The Mediation shall be held at a location in Davis County, Utah that is mutually agreeable to the Parties within thirty (30) days of the date the other Party receives notice, as described above.

13. **Arbitration.** In the event that Mediation is unsuccessful in resolving any dispute between the Parties or in the event that the other Party fails to respond to the notice to mediate, the Parties shall settle any remaining dispute by arbitration (the "Arbitration") under the Commercial Rules of the American Arbitration Association (the "AAA"). The Arbitration shall be completed by an AAA approved arbitrator and be held at a location in Davis County, Utah that is mutually agreeable to the Parties. The Arbitration shall be held before a single arbitrator, selected in accordance with the Commercial Rules of the AAA (the "Arbitrator"). The Arbitrator's award shall be final and shall be enforceable in any court of competent jurisdiction. The Arbitrator shall award the prevailing party its costs of the Arbitration including, but not limited to, the reasonable attorneys' fees, costs, and expenses of the prevailing Party. If a Party refuses to comply with the rendered award, and the other Party enters an application for judicial enforcement thereof, the refusing Party shall bear all of the costs and expenses incurred in connection with such application (including but not limited to, reasonable attorneys' fees, costs, and expenses of the complying Party). Nothing in this paragraph shall prevent either Party from resorting to judicial process if injunctive or other equitable relief from a court is necessary to prevent serious and irreparable injury to a Party or to others.

14. **Attorneys' Fees.** In the event any action is instituted by a Party (including the Arbitration as defined above) to enforce any of the terms and provisions contained in this Agreement, the prevailing Party in such action including pertaining to any appeal, shall be entitled to receive from the other Party reasonable attorneys' fees, costs, and expenses incurred in enforcing this Agreement.

15. **Term.** The initial term of this Agreement shall be for a period of three (3) years from the

Effective Date. The Agreement may be renewed for up to two (2) additional one (1) year terms at Client's option.

16. **Termination.** Client may terminate this Agreement prior to the end of the initial term or any subsequent renewal term specified herein in the event that Provider fails to remedy a material breach of the Agreement within thirty (30) days after receipt of written notice of such breach from Client. In the event Client terminates this Agreement prior to the full completion of the initial term or any renewal term, within five (5) business days of such termination, Client shall pay Provider for all the Services Provider has performed up to the date of termination (the "Termination Date"). The Termination Date shall be the date that is thirty (30) days after Provider receives written notice from Client regarding a material breach of the Agreement that Provider fails to cure.

17. **Performance.** Each Party shall use commercially reasonable efforts to fulfill its respective obligations hereunder, but each Party shall in no event be responsible for any failure or delay in performance due to any catastrophe, act of God or government authority, civil strife, or any other cause beyond the control of such Party. In no event shall Provider's liability exceed the sum of the payments received by Provider from Client under this Agreement.

18. **Time is of the Essence.** Time is of the essence with respect to all aspects of this Agreement and all of the Exhibits referred to herein.

19. **Further Assurances.** Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder and to carry out the intent of the Parties hereto.

20. **Modification or Amendments.** No amendment, change, or modification of this Agreement shall be valid unless in writing signed by both Parties hereto.

21. **No Assignment Without Prior Written Consent.** The Parties hereto may not assign their respective rights or delegate their respective obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed by either Party. In any event, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties.

22. **Waiver.** Any waiver by either Party, whether express or implied, of any provision of this Agreement, any waiver of default, or any course of dealing hereunder, shall not affect such Party's right to thereafter enforce such provision or to exercise any right or remedy in the event of any other default or breach whether or not similar.

23. **Partial Invalidity.** Wherever possible, each provision in this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall be construed and enforced as if such invalid, illegal, or unenforceable provision or provisions had never been contained herein unless the deletion of such provision or provisions would result in such a material change as to cause completion of the transaction contemplated hereby to be unreasonable.

24. **Captions.** Captions are used herein for reference only and shall in no way be deemed to define, limit, explain, or modify any provision hereof.

25. **Construction.** All Parties to this Agreement and their counsel have reviewed and have had the opportunity to revise this Agreement, and the normal rule of construction to the effect that any ambiguities in this Agreement are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

26. **Successors and Assigns.** All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and assigns.

27. **No Joint Venture.** It is not the intent of Provider or Client to, and said Parties do not, by execution of this Agreement, become partners, equity participants, or joint venturers of each other.

28. **Notice.** If either Party is required or permitted to send the other Party any notice, such notice shall be in writing and sent to the other Party at its address listed below by certified mail, postage prepaid, return receipt requested or by email at the corresponding email address listed below. Notices sent by certified mail shall be considered received by the other Party on the date that is three (3) calendar days after such notice is deposited with the U.S. Postal Service. Notices sent via email shall be considered received by the other Party on the date that is one (1) business day after the emailed notice is sent to the other Party:

To Provider: Hawthorn Academy
Dr. Floyd Stensrud
1437 West 11400 South
South Jordan, Utah 84095

To Client: _____

Any Party hereto may change its address for the purpose of receiving notices, demands, and other communications as herein provided by a written notice given in the manner aforesaid to the other Parties hereto.

29. **Separate Counterparts.** This Agreement may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts shall together constitute and be one and the same instrument.

30. **Copy with same Effect as Original.** A copy of this Agreement signed by the parties, whether in electronic or hard copy form shall have the same effect as an original.

31. **Authority of Signers.** The persons executing this Agreement on behalf of Provider and Client warrant his or her authority to do so and to bind Provider and Client, respectively.

32. **Entire Agreement.** This Agreement represents the entire agreement between Provider with respect to the performance of the Services to be provided by Provider to Client and this Agreement supersedes any prior agreements, letters of intent, or understandings (whether written or oral) between the Parties.

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date as defined above.

PROVIDER:

By _____

Name: _____

Title: _____

Date: _____

CLIENT:

Hawthorn Academy

By _____

Name: _____

Title: _____

Date: _____

Exhibit A to Service Agreement

Exhibit A is subject to the terms and conditions contained in the Service Agreement between the parties and is made a part thereof. Any term not otherwise defined herein shall have the meaning specified in the Service Agreement. In the event of any conflict or inconsistency between the terms of this Exhibit A and the terms of this Service Agreement, the terms of the Service Agreement shall govern and prevail.

Scope of Work /Deliverables

Provider shall provide Services as follows:

The Service Agreement and this Exhibit A are for the maintenance and support of the IT needs of the Client. This Exhibit A is divided into three types of support and products. The first is: maintenance and support of the core network. This is performed on a semi-monthly basis. The second is: management and physical maintenance of property and equipment. This is monitored and maintained on an ongoing basis. When applicable, this service is also performed yearly. The third is: core network products. This is performed as required to maintain the subscription or renew to the SSL certificate(s).

Maintenance and support of the core network:

Maintaining Client's computer network is required to keep the network running properly. This area of maintenance and support is identified and managed by Provider. This work is performed monthly. This support of the core network is essential to the health of the network.

1. Provider will manage the health of the network through monthly management support, which includes but is not limited to:
 - a. Ongoing management of data & records: Files, digital media, document management systems, software licensing, contractual information and historical data in accordance with Client's applicable retention schedule.
 - b. Ongoing management of network connectivity (Internet connection, firewall, network switches (Layer2/Layer3), and remote/VPN access).
 - c. Name resolution and IP management (two tiers of DNS; Internal and external DHCP and static).
 - d. Ongoing Management of servers and services (Virtual servers, DNS, DOMAIN, WEB, VPN, MAIL, PRINT, FILE, & BACKUP).
 - Servers may include: 2 x Virtualized Domain Controllers with Active Directory, DNS, DHCP, 1 x Virtualized Exchange server, 1 x VMware vCenter Server managing ESXi infrastructure, 1 x VMware Backup Appliance (for backup management).
 - e. Management and deployment of Microsoft Certified and Apple Certified updates and other system-wide patches and updates. (VMware, Windows Server 2003/2008/2012, Vista, 7, Exchange 2003/2007/2010/2012 & OS X, server services, Windows, anti-virus, and user applications).
 - f. Maintenance and Security of web and FTP sites.

- g. Maintenance of user and network resources (usernames & passwords, logon scripts, network shares, and printers).
 - h. Email management (users, addresses, global address books, SPAM control, Webmail access).
 - i. Management of user applications.
 - j. System-wide backups (data backups of core services and user files, also includes regular data audit).
 - k. Security risk removal (viruses, Malware, Spyware, and network security scans internal/external).
 - l. Documentation of systems and services (configurations, changes, designs, and implementations).
 - m. Access to online HelpDesk to input work orders and track service, and receive priority service for work orders.
 - n. 24x7x365 systems monitoring and access to 24x7x365 tech support.
 - o. External security scans and vulnerability assessments.
2. Provider will follow industry best practices to maintain and protect personally identifiable student data and to prevent data breaches. Provider will implement a cyber security framework as defined in R277-487 or any successor legal requirement, as it may be amended from time to time. In addition, Provider will function as the Client's IT Security Manager and perform the responsibilities of the Client's IT Security Manager as outlined in the Client's Data Governance Plan, including the following:
- a. Overseeing IT security at the Client's school(s);
 - b. Helping the Client to comply with IT security laws applicable to the Client, including but not limited to R277-487 as it may be amended;
 - c. Providing training and support to Client's employees on IT security matters;
 - d. Investigating complaints of alleged violations of the Client's IT security policies, procedures, or plans;
 - e. Investigating alleged security breaches of the Client's IT systems;
 - f. Conducting data privacy and security auditing; and
 - g. Reporting periodically to the Client's Board of Directors on the security of the Client's IT systems.

Management and physical maintenance of property and equipment:

Provider will perform management and physical maintenance of property and equipment (Computers, servers, equipment, etc.). Maintaining the computer network requires scheduled service to keep the network running properly. To ensure there is minimal downtime, Provider monitors core network equipment on an on-going basis. If there is a problem, it is addressed as needed. If no problem is found, Provider will schedule and perform this type of work on an annual basis, generally during the summer school break. This area of maintenance and support is identified and managed by Provider. This will include, but is not limited to:

1. Yearly cleaning of communications room including: taking core server and switches down, using specialized tools to clean the inside and outside of the machinery, then bringing this part of the network back up.

2. Inspection of all equipment in the network for physical damage.
3. Performing any warranty work as required on equipment that has been provided by Provider.

Core network products:

There are four main subscription services and certificates that Provider will maintain and deliver. This area of maintenance and support is identified and managed by Provider. These are billed as required to maintain the subscription or renew the certificate. They are:

1. Annual SSL Certificate Renewal. (There can be multiple SSL Certificates).
2. Provider -hosted offsite email gateway annual subscription.
3. Annual Provider DNS Filter annual subscription.
4. Firewall annual Subscription.

*note: This is a basic list to support the core network. This list may vary depending on the needs and products offered by the Client.

Definitions

Core Network: A core network, or network core, is the central part of a network that provides various services to customers who are connected by the access network. As part of the service, Provider supports this part of the network. Provider also monitors this network and addresses problems in real time.

Data: Distinct pieces of information usually formatted in a special way. Data refers to the documents and files that a user saves to their computer or to a network location. Provider has a backup scheme for data. This means all important documents can be accessed even in the event of a problem.

Network Connectivity: The physical (wired or wireless) connection of a computer network or an individual device to a network, such as the Internet or a LAN. Provider monitors both the network connectivity of the core network (central part of the network), and the network connectivity of individual PC, Mac, or tablets.

Name Resolution and IP Management: is a means of planning, tracking, and managing the Internet Protocol address space used in a network. It is important to plan and control this aspect of the network. A computer network can become very complex. Provider manages this for Client.

Servers: is a computer or software program. A server will run a program or provide a specific kind of service to another computer called a client. Provider supports servers as part of the maintenance and support Provider offers.

Server Updates: is a service provided by Provider that provides updates for the Microsoft Windows operating system and its installed components.

System Wide Patches: A patch is a piece of software designed to fix problems with, or update a computer program or its supporting data. This includes fixing security vulnerabilities and other bugs, and improving the usability or performance. Provider monitors and installs these patches. Though meant to fix problems, poorly designed patches can sometimes introduce new problems. Provider tests and verifies patches to avoid this and potential downtime.

User-Names: are an identification used by a person with access to a computer, network, or online service. Provider keeps these up to date. Each employee is given a new and unique username.

Logon Script: is a file that runs automatically every time the user logs on. It can be used to configure a users working environment at every logon, and it allows an administrator to control a users environment without managing all aspects of it. Provider manages this for Client.

Network Shares: are shared resources or a device or piece of information on a computer that can be remotely accessed from another computer. These are sometimes called network drives. Provider sets this up and maintains this for Client.

System wide Backups: are a copy of a file or directory on a separate storage device; this is made in case the original was accidentally damaged or erased. Provider has a comprehensive backup plan. Provider offers both image level and file level backup. This gives Provider the ability to recover from any type of data loss.

Viruses/ Spyware/ Malware: Software that is designed to harm a network or PC. This can either cause a machine to loose data or can gather information and send it back to the creator of the software. Protection against this type of malicious software is import to have in place. Provider maintain this protection for Client.

SSL Certificate: SSL (Secure Sockets Layer) is a standard security technology for establishing an encrypted link between a server and a client—typically a web server (website) and a browser; or a mail server and a mail client. A SSL Certificate allows this connection to be established. All browsers have the capability to interact with secured web servers using the SSL protocol. However, the browser and the server need what is called an SSL Certificate to be able to establish a secure connection. Provider establishes and renews this certificate for Client.

DNS Filter: Internet filtering refers to blocking undesirable content on the Internet. It helps Client filter and deny access to any unwanted material. The person who sets up the filter provides a system to block certain data. It may include advertising, a virus, sexual content, file transfer, or other offensive material. When a user makes a request for a Web page that has been blocked, the Internet filter keeps the request from being completed. It either blocks it completely or redirects it to another location. Provider sets up and maintains and monitors this for Client.

Firewall: A system designed to prevent unauthorized access to or from a private network. A firewall is considered a first line of defense in protecting private information. Provider sets up and maintains the firewall. This is important to the security of the network.

Strategic Consulting: Consulting services offered by Provider. This includes Consulting for the current and future IT needs of the school, consulting for new curriculum, and management and governance consulting. Provider offers this to Client at the flat hourly rate provided in the Agreement.

Exhibit B to Service Agreement
Estimated of Costs Under Service Agreement

	Rate	Estimated Monthly Amt. Yr. 1	Estimated Monthly Amt. Yr. 2	Estimated Monthly Amt. Yr. 3
Maintenance and Services [list specific services]				
Core Network Products [list specific products]				