

Master Service Agreement

ARTICLE 1 - INTRODUCTION

1.1 Purpose. The purpose of this Master Services Agreement ("MSA") is to outline the terms and conditions for Sourcewell ("Sourcewell") to license or provide software products ("Software") and related technical support and professional services ("Services") to its customers, generally state, local, and education (SLED) government agencies ("Customers" or "Customer"). Sourcewell may update the Software and Services available to Customers from time to time. Sourcewell reserves the right to update this MSA from time to time in the ordinary course of business. Customer understands and agrees that the most recent version of this MSA available at the link included in Customer Agreements applies to all Software and Services provided to Customer.

1.2 Data and Security Policies. Sourcewell has implemented separate policies that include details about the way Sourcewell protects the confidentiality and security of educational data transmitted or shared with Sourcewell by its Customers as needed for Sourcewell to provide Software and Services under Customer Agreements and this MSA. These policies, which include the [Website Terms & Conditions and Privacy Statement](#) and Sourcewell's [Information Security Policy](#), are incorporated in this MSA by reference. Sourcewell reserves the right to update each policy from time to time. Sourcewell will directly notify users of any major changes to the way Sourcewell collects and handles customer information. These policies are discussed further in ARTICLE 4.

1.3 Customer Agreements. As used in this MSA, "Customer Agreement" or "Customer Agreements" means all current and future agreements in effect between Sourcewell and Customer for the purchase of Software and Services. The following agreements are provided as examples and are not all-inclusive of all Customer Agreements: Software Description Schedule; Professional Services Schedule; Statements of Work ("SOW"); Service Level Agreement ("SLA").

1.4 Acceptance of Software and/or Services. By delivering an authorized and executed Software Description Schedule, Professional Service Schedule, SOW, or a similar Customer Agreement to Sourcewell, Customer agrees to take and pay for, and Sourcewell agrees to provide, the Software and/or Services specified in each such document. Such Software and/or Services may be used only for internal purposes by Customer's authorized employees, agents, administrators, teachers, students, and parents (collectively, "Customer's End Users").

ARTICLE 2 - PAYMENT TERMS FOR FEES AND COSTS

2.1 Fees and Billing. As used in this MSA, the term "Fees" shall include all amounts Customer owes to Sourcewell for Software and Services purchased by Customer under Customer Agreements. The following terms used in Customer Agreements to describe Fees are provided as examples and are not all-inclusive of all fees or costs referenced in such agreements: Total Price, License Fee, Total Initial Term Investment, Cost Estimate, Consultant Fees, Travel Expenses, equipment or supplies needed for "Projects" described in SOWs, and other similar costs. Sourcewell will invoice Customer for Fees according to the terms in Customer Agreements.

2.2 Payment Terms. Payment for Fees is due within thirty (30) days of the date of each invoice (the "Due Date"). Any payment not received within forty-five (45) days of the Due Date will accrue interest at a rate of one and one-half percent (1.5%) per month or the highest rate allowed by applicable law, whichever is lower.

2.3 Travel Expenses. Customer agrees to pay all necessary and reasonable travel expenses incurred by Sourcewell in connection with the Software/Services, including hotel, meals, airfare (coach), and automobile expenses at the prevailing IRS mileage rate. Such expenses will be billed at actual cost. In addition, travel time will be billed at one-half of consultants' current standard hourly rate for Services included in a SOW or Professional Services Schedule. Customer may also be required to pay travel expenses incurred by third parties that provide services to Customer in connection with Software.

2.4 Billing Disputes. If Customer in good faith disputes any portion of any invoice, Customer shall submit to Sourcewell, by the Due Date, full payment of the undisputed portion of the invoice and written documentation identifying and substantiating the disputed amount. If Customer does not report a dispute within thirty (30) days following the date of the

applicable invoice, Customer shall have waived its right to dispute the invoice. Sourcewell and Customer agree to use reasonable efforts to resolve any dispute within thirty (30) days after Sourcewell receives Customer's notice and documentation. Any disputed amounts resolved in favor of Customer shall be credited to Customer's account on the next invoice following resolution of the dispute. Any disputed amounts determined to be payable to Sourcewell shall be due within ten (10) days of resolution of the dispute.

2.5 Taxes. All Fees charged by Sourcewell for Software and Services are exclusive of all regulatory fees, surcharges, taxes, and similar fees imposed on the transaction or the delivery of Software and Services by a governmental authority. Customer will be responsible for and will pay such fees, surcharges, and taxes in full unless Customer is exempt from the same.

ARTICLE 3 – TERM; INITIAL TERM; RENEWAL TERM; TERMINATION

3.1 Term; Initial Term; Renewal Term; Termination. The "Term," "Initial Term," and any "Renewal Term" for Software and Services are specified in each Customer Agreement, as applicable. Customer or Sourcewell may terminate any Customer Agreement according to the termination provisions in such agreement or in an Event of Default pursuant to the terms in Section 3.3 below. Customer may elect to not renew any Customer Agreement pursuant to the Renewal Term provisions in such agreements.

3.2 Term of MSA. The Term of this MSA shall begin on the date when the Customer Agreement is effective. This MSA shall automatically terminate without further notice provided that: (a) no Customer Agreement remains in effect; and (b) Customer has fully paid all amounts due and owing for Software and Services.

3.3 Event of Default. Notwithstanding the provisions in Sections 3.1 and 3.2 above, either party may, but is not obligated to, terminate this MSA and any Customer Agreement in the "Event of Default," which is defined as any one of the following events: (i) either party materially breaches any of its obligations to the other party under this MSA or a Customer Agreement and fails to cure such breach to the reasonable satisfaction of the non-breaching party, subject to the non-breaching party providing thirty (30) days prior written notice to the breaching party including sufficient details to allow the breaching party to cure the alleged breach; or (ii) Customer fails to pay an invoice in accordance with the provisions in ARTICLE 2 and does not remedy the non-payment within ten (10) days of the date of written notice from Sourcewell as provided in Section 13.7.

Termination of a Customer Agreement for an Event of Default does not operate as termination of any other Customers Agreements or this MSA unless Customer or Sourcewell is in default of all such agreements and the MSA and has failed to cure such Event of Default as described in this Section 3.3. In the Event of Default by Customer and its failure to cure such default under this Section 3.3, Sourcewell has the right (but not the obligation) to suspend Customer's Software license and/or Services to Customer until the Event of Default is cured to Sourcewell's reasonable satisfaction. If Customer cures the default, Sourcewell will recommence the suspended Software license and/or Services. If Customer fails to cure the default, the parties will proceed as set forth in Section 13.2 (Dispute Resolution).

3.4 Effect of Termination. Upon termination, non-renewal, expiration, or completion of all Customer Agreements and this MSA, the following will occur:

- (a) All Software licenses will immediately terminate.
- (b) Sourcewell will immediately cease providing all Services.
- (c) All licenses granted to Customer by Sourcewell to use Sourcewell's trademarks, copyright, and other intellectual property will immediately terminate.
- (d) Payment obligations of Customer under this MSA for Fees incurred through the applicable Term will immediately become due and payable within thirty (30) days without further notice; and
- (e) Sourcewell will provide Customer with reasonable assistance for a period of fourteen (14) business days at no charge for purposes of providing advice and guidance on how Customer can extract their Customer Data (defined in Section

4.1) or transfer such data to a third party upon Customer's execution of the applicable agreements described below in Section 4.6. If Customer requires Sourcewell to extract and provide Customer's Data to Customer, Sourcewell will do so at its then-current standard hourly rate for such Services.

3.5 Survival of Obligations. The provisions in the following ARTICLES and Sections shall survive termination of this MSA: ARTICLE 2; Sections 3.3, 3.4, and 3.5; ARTICLE 4; ARTICLE 7; ARTICLE 8, ARTICLE 9; ARTICLE 10; ARTICLE 12; and ARTICLE 13.

ARTICLE 4 – CUSTOMER DATA; DATA AND SECURITY POLICIES; DATA PRACTICES

4.1 Customer Data; Ownership. For Sourcewell to provide Software and Services to Customer, Sourcewell must store, host, or have access to Customer's educational data, including without limitation, student personally identifiable information ("PII") ("Customer Data"). Sourcewell acknowledges that Customer Data is owned solely by Customer. Sourcewell will not share, sell, or disclose Customer Data to any third party without Customer's prior consent. Customer has the right to request the prompt return of any portion or all of Customer Data at any time for any reason, subject to payment for time and materials at reasonable rates by Customer to Sourcewell. Customer is responsible to back-up its Customer Data prior to Sourcewell's provision of any Services; Sourcewell is not responsible for loss or corruption of Customer's Data.

4.2 Legal Compliance. Sourcewell will comply with all applicable state and federal laws and regulations pertaining to data privacy and security with respect to Customers' Data, including the Minnesota Government Data Practices Act ("MGDPA"); similar state laws applicable to Sourcewell due to its provision of Software and Services outside the State of Minnesota; the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g (34 CFR Part 99); the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6506; and, the Protection of Pupil Rights Amendment ("PPRA"), 20 U.S.C. 1232h.

4.3 Website Terms & Conditions and Privacy Statement. The Terms & Conditions and Privacy Policy explains how Sourcewell handles the information collected and stored through Customer use of Sourcewell's websites. This policy may be accessed via the hyperlink in Article 1.2 or by hard copy upon request.

4.4 MGDPA Policy. All Customer Data provided to Sourcewell in connection with Software and Services is subject to the provisions in the MGDPA, Minnesota Statutes Chapter 13. Sourcewell's Data Practices Policy, Data Inventory, and Records Retention Schedule explains how Sourcewell complies with requirements in the MGDPA, including without limitation: (a) the classification of data as public, confidential, private, and other categories; (b) the manner in which public data is available through a data request; (c) how certain classifications of data are protected; (d) the rights of subjects of government data; and (e) the Breach Notification Policy. Sourcewell's Data Practices Policy, Data Inventory, and Records Retention Schedule is available upon request.

4.5 Information Security Policy. Sourcewell's Security Policy documents the way Sourcewell protects the information on its systems, including Customer Data, for the benefit of Customers' students, teachers, and other employees. The Policy includes without limitation: (a) processes adopted by Sourcewell to access its systems; and (b) physical access to its premises. Sourcewell's Information Security Policy may be accessed via hyperlink in Article 1.2 or by hard copy upon request.

ARTICLE 5 – HOSTING SERVICES

5.1 Hosting Services. If Customer requests Sourcewell to host its Customer Data in connection with the purchase of Software, Sourcewell will do so subject to the provisions set forth below in this ARTICLE 5.

5.2 Configuration Planning. Sourcewell will determine the specifications for and configuration of the computing resources, including the number and type of web server(s), process server(s), application database server(s), and load balancer(s), based on the processing and storage needs of the Customer using commercially reasonable methods and historical data from other similarly sized Customers. This configuration planning is the basis for the System Hardware and

Additional Software and Middleware required, which may change from time to time as system requirements change. Sourcewell will continually monitor system performance and modify the configuration plan to maintain the service levels set forth in Section 5.11.

5.3 System Hardware. Sourcewell shall provide access to a digital information processing, transmission, and storage system (the "System Hardware") enabling Customer to perform operations using the Software and to make the information generated by and stored in the database(s) supported by the Software available on demand by users. System Hardware, system software, load balancer, database software, and database storage will be located in a managed data center.

5.4 Additional Software and Middleware. Sourcewell will provide Additional Software and Middleware necessary for the Software, including installation and licensing of Window OS, Microsoft SQL or Oracle server, and SSL certificate(s).

5.5 Configuration and Setup. Sourcewell will provide initial configuration including operating system installation; database installation; patching the operating system and database; installing and configuring the Software and Additional Software and Middleware; creation and configuration of Production and Training environments and databases as applicable. The Training environment will be used to test customer processes, Sourcewell-provided training, and troubleshooting. Updates or code changes are tested in a non-production environment. Prior to the Software being implemented, Sourcewell will provide final hardware configuration and application setup for setting proper Customer-specific application parameters and Customer's organization specific information. Sourcewell will be responsible for ongoing re-configuration of hardware and adjustments to application setup for additional module add-ons or changes to Customer's infrastructure that require changes to the system configuration and application setup.

5.6 Restrictions. Customer will be limited as to the following in a hosted environment: (a) audit detail will not be retained beyond ninety (90) days except as required by applicable law or regulation. Attendance and Grade Reporting Mark data will be retained for the current school year and purged prior to the start of the following year; and (b) process queue results will be stored for a maximum of five (5) days.

5.7 Software Updates. Sourcewell will provide support for the Software through installation of Sourcewell-provided modifications, including remedial patches, hotfixes, or security remediations addressing reported performance or functionality problems, and "Upgrades," including new releases or versions of the Software and Middleware issued by any vendor, as part of its software maintenance offering, typically indicated by a change in the numeric identifier in the version number of the Software. Sourcewell will maintain and support no more than two (2) versions of any Software at one time. Sourcewell will install patches and Upgrades in accordance with the Release Management provisions included in Section 5.15 in a commercially reasonable timeframe following its release of patches, hotfixes, or Upgrades of the Software, or Sourcewell's receipt of the patch or Upgrade from Additional and Middleware software vendor(s). Sourcewell is responsible for procuring and administering vendor-provided maintenance for any Middleware software supplied by Sourcewell under this MSA.

5.8 Backup. Sourcewell shall create and maintain a backup plan whereby Customer Data is backed up to a managed data center with replication to geo-redundant locations. Backups are created at the end of each business day (EOD). An electronic backup is a backup of Customer Data for the purpose of off-site archival.

5.9 Disaster Recovery. Sourcewell shall maintain Data Protection capability to protect the Customer's Data in a physically separate Disaster Recovery location and provide a 48hour RTO (Recovery Time Objective) and a 24-hour RPO (Recovery Point Objective).

5.10 Excluded Services. All technological assets managed by Customer.

5.11 Availability of Hosting Services; Service Level Credits. Subject to the terms and conditions of this MSA, Sourcewell shall use reasonable efforts to provide Hosting Services a 99.9% uptime throughout the term of this Hosting Agreement. "Uptime" excludes downtime for Scheduled Downtime as defined in Section 5.12 and downtime during a Force Majeure event as defined in Section 13.1. Sourcewell will provide Customer with Service Level Credits pursuant to Section 5.13 for Hosting Services in the table; provided, however, that the Service Level Credits provided by Sourcewell will not exceed 50% of the monthly cost allocated to Hosting Services. Sourcewell makes no representation or warranty that Hosting Services will be always available; temporary disruptions shall not constitute a breach of this Agreement. NOTWITHSTANDING

ANYTHING TO THE CONTRARY HEREIN, THE RELIEF SET FORTH IN SECTION 5.11 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE FAILURE OR NON-PERFORMANCE OF THE HOSTED SERVICES.

Actual Uptime	Experienced Unplanned Downtime per Month	Service Level Credit Available up to 50% limit
<99.9%-99.5%	Between 44 minutes and 3.6 hours	10%
<99.5%-99%	Between 3.6 hours and 7.2 hours	25%
<99%-90%	Between 7.2 hours and 72 hours	50%
<90%	Greater than 72 hours	100%

Reference: Section 4.15 (Industry Standards, High Availability)

5.12 Scheduled Downtime. Sourcewell will perform service maintenance outside 8 a.m. to 5 p.m. Central Daylight Time (CDT) after providing Customer 72 hours prior notice ("Scheduled Downtime").

5.13 Service Level Credits. To receive a Service Level Credit, Customer must first report any outage to Sourcewell and, within fifteen (15) days of the event, submit a request for credit in writing to support@sourcewell-mn.gov. Customer must include the ticket number from the open ticket with such request.

There shall be no Service Level Credits for outages: (a) caused directly or indirectly by Customer's acts or omissions; (b) caused by the failure of equipment or systems provided by Customer or a third party not under Sourcewell's direction or control; (c) caused by a Force Majeure event as defined in Section 13.1; (d) during Scheduled Downtime as defined in Section 5.12; (e) occurring with respect to a Customer request or order for a change in the Service; or (f) occurring while Customer is in breach of this MSA or a Customer Agreement.

5.14 Remote Hosting. Customer will not be provided direct administrative access (remote desktop access) to any server within the Sourcewell hosting environment. Any optional application interfaces requested by Customer will be accomplished and/or loaded by Sourcewell for an additional fee.

5.15 Release Management. For some Production, Test, and Training Environments, Sourcewell will follow "Release Management Procedures" in completing changes in certain product release levels in current use and in implementing application patches and Upgrades (collective "Change Events"). In such cases, these Release Management Procedures will provide for the following:

- (a) Advance notification to Customer of the Change Event, its nature, and expected timetable.
- (b) Written notice of application changes and modifications to screens or code.
- (c) Pre-testing of changes in Sourcewell or Customer non- Production environments; and
- (d) Implementation of the Change Event for Customer within sixty (60) days of Sourcewell's notification to Customer per subsection (a) above.

5.16 Provision of Customer Data. Customer shall be solely responsible for providing, updating, uploading, and maintaining its Customer Data stored on the hosting site and any files, pages, data, works, information, and/or materials on, within, displayed, linked, or transmitted to, from, or through the Hosting Site, including trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, e-mail or other messages, metatags, domain names, and text. Customer Data shall also include any registered domain names provided by Customer or registered on behalf of Customer in connection with the Hosting Services.

ARTICLE 6 – SERVICE LEVEL AGREEMENT; MULTICHANNEL SOFTWARE AND TECHNICAL SUPPORT SERVICES; CUSTOMER EXPERIENCE CENTER

6.1 Service Level Agreement. As part of Customers' purchase of Software and/or Services under a Customer Agreement, Sourcewell provides Customers with multichannel support. Details regarding Customer Support Requests, Tickets, and Priorities, and Response Times are included in a separate Service Level Agreement ("SLA") provided to Customers. The terms and conditions of the SLA are included by reference in this MSA.

6.2 Customer Experience Center. The Sourcewell Customer Experience Center ("CEC") is the central point of contact for all support including software related issues and questions, services requests, SOWs, training requests, network issues, and troubleshooting. The CEC staff is available by telephone at 1-877-772-9355, Monday-Friday from 7 a.m. to 4:30 p.m. Central Time. In addition, Customers may send an email to support@sourcewell-mn.gov or submit a Support Request through Sourcewell's support portal (<http://www.tiescloud.net/support>).

ARTICLE 7 - INTELLECTUAL PROPERTY; OWNERSHIP AND PROTECTION OF SOFTWARE

7.1 Intellectual Property. Neither this MSA nor any Customer Agreements for Software or Services transfers ownership of any Sourcewell intellectual property, including patents, trademarks, trade secrets, know-how, copyrights, software, and domain names from Sourcewell to Customer, whose rights to such intellectual property are limited to those expressly granted in any such agreements. All right, title, and interest in and to such intellectual property remains solely with Sourcewell. Sourcewell intellectual property includes any business methodology created or developed by Sourcewell, e.g., training methods, service support methods, etc.

7.2 Title and Ownership of Software. Customer understands and agrees that all Software, including all source code, object code, user interface (UI), user experience (UX), algorithms, modifications, development frameworks, system designs, system logic flow, and processing techniques and procedures; system user or similar documentation; copies and derivatives of any of the foregoing; and all copyright, patent, trademark, trade secret, and other proprietary rights in any of the foregoing, are and shall remain the sole and exclusive confidential property of Sourcewell subject to any separate licensing agreement between Sourcewell and a third party.

7.3 Protection of Software. Customer shall not and shall not allow any third party to: (a) adapt, modify, change, maintain, translate, decompile, disassemble, reconstruct, or reverse engineer any Software or portion thereof; (b) identify or discover any source code of any Software; (c) distribute, sell, or sublicense copies of any Software or portion thereof; or (d) incorporate any portion of any Software into or with any other products or create any derivative works of any Software.

7.4 Unauthorized Access. Customer shall implement and maintain reasonable policies, procedures, and technology to prevent unauthorized access to the Software, including without limitation, permitting only authorized Customer End Users to access computer systems and applications; maintenance of a password system; notification procedure in the event of an unauthorized access; firewall and anti-virus software; and security patches. Customer understands and agrees that it is responsible for any unauthorized access of the Software caused by the negligence or alleged negligence of its employees, contractors, and agents. In the event of an actual or suspected security breach involving unauthorized access of the Software, Customer shall provide Sourcewell with written notice within forty-eight (48) hours of the actual or suspected event and include a summary of the events. Customer shall cooperate with Sourcewell to minimize any potential adverse impact on Sourcewell and its other Customers.

ARTICLE 8 – SOURCEWELL REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

8.1 Sourcewell Authority and Performance. Sourcewell represents and warrants that: (a) it has the legal right and authority to enter and perform its obligations under this MSA and all Customer Agreements, and (b) the performance of its obligations and delivery of Software and Services to Customer will not violate any applicable federal or state laws or regulations or cause a breach of any agreements with any third parties.

8.2 Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8.1 AND ANY EXPRESS WRITTEN WARRANTIES STATED IN ANY CUSTOMER AGREEMENTS, ALL SOFTWARE AND SERVICES ARE PROVIDED ON AN “AS IS” BASIS, AND CUSTOMER’S USE OF SOFTWARE AND SERVICES IS AT ITS OWN RISK. SOURCEWELL DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY THAT FAILS OF ITS ESSENTIAL PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. SOURCEWELL DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE; THAT THEY WILL MEET ALL CUSTOMERS’ REQUIREMENTS; THAT THE RESULTS WILL BE EFFECTIVE, ACCURATE OR RELIABLE; OR THAT THE QUALITY WILL MEET CUSTOMERS’ EXPECTATIONS.

8.3 Disclaimer of Actions Caused by or Under the Control of Third Parties. SOURCEWELL DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM SOURCEWELL’S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS, OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER’S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH SOURCEWELL WILL USE PROMPT AND COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, SOURCEWELL CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, SOURCEWELL DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS WHICH ARE CAUSED BY SUCH THIRD PARTIES.

ARTICLE 9 - CUSTOMER REPRESENTATIONS AND WARRANTIES

9.1 Authority and Performance. Customer represents and warrants that: (a) it has the legal authority to enter into and perform its obligations under this MSA and all Customer Agreements; (b) the performance of its obligations and use of any Software and Services by Customer and Customer’s End Users will not violate any laws or regulations or unreasonably interfere with other Sourcewell Customers’ use of Sourcewell Software or Services; and (c) Customer shall use best efforts to ensure that it and all Customer End Users fully comply with Customer’s obligations under this MSA, all Customer Agreements, state and federal data privacy and security laws applicable to Customer, and applicable terms in Sourcewell Data and Security Policies.

9.2 Breach of Warranties. In the event of Customer’s breach of any representations or warranties described in Section 9.1, in addition to its termination rights under Section 3.4 and to any other remedies available at law or in equity, Sourcewell has the right to suspend any related Software license and/or Services if deemed reasonably necessary by Sourcewell to prevent any harm to Sourcewell, its operations, and other Customers. Once cured to Sourcewell’s reasonable satisfaction, Sourcewell will promptly recommence the suspended Software license and/or the suspended Services. Without prejudice to Sourcewell’s right to take remedial action, Sourcewell will provide prompt notice to Customer of any breach and an opportunity to cure the breach.

9.3 Compliance with Laws. Customer shall ensure that it and all Customer End Users use the Software and Services only for lawful purposes and in accordance with this MSA and all Customer Agreements. Customer shall ensure that it and Customer End Users always comply in all material respects with all applicable laws and regulations relating to use of the Software and Services under this MSA. Customer acknowledges that Sourcewell exercises no control over the content of the information passing through Customer’s sites and that, in the event Customer and its End Users use Sourcewell’s internet services, it is Customer’s sole responsibility to ensure that the information it and Customer End Users transmit and receive complies with applicable laws and regulations.

ARTICLE 10 – LEGAL RESPONSIBILITY

Customer and Sourcewell will each be responsible for their own acts and behavior and the results thereof. Sourcewell’s liability is governed by the State of Minnesota’s Tort Liability Act, Minn. Stat. Chapter 466, and other applicable laws.

ARTICLE 11 - INSURANCE

11.1 Sourcewell Minimum Levels. Sourcewell agrees to keep in full force and effect during the Term of this MSA: (a) comprehensive general liability insurance in an amount not less than \$1 million per occurrence for bodily injury and property damage; (b) professional errors and omissions insurance in an amount not less than \$2 million per occurrence; (c) cyber liability insurance in an amount not less than \$2 million per occurrence; and (d) workers' compensation insurance in an amount not less than that required by applicable law. Sourcewell agrees that it will ensure and be solely responsible for ensuring that its contractors and subcontractors maintain insurance coverage at levels no less than those required by applicable law and customary in the industry.

11.2 Customer Minimum Levels. Customer agrees to keep in full force and effect during the term of this MSA: (a) comprehensive general liability insurance in an amount not less than \$1 million per occurrence/\$2 million aggregate for bodily injury and property damage; (b) cyber liability insurance in an amount not less than \$1 million per occurrence; and (c) workers compensation insurance in an amount not less than that required by applicable law. Customer agrees that it will ensure and be solely responsible for ensuring that its agents, including contractors and subcontractors, maintain insurance coverage at levels no less than those required by applicable law and customary in the industry.

ARTICLE 12 - LIMITATION OF LIABILITY; DISCLAIMER OF CONSEQUENTIAL DAMAGES; STATUTE OF LIMITATIONS

12.1 Limitation of Liability. EXCEPT AS REQUIRED BY LAW, SOURCEWELL WILL NOT BE LIABLE TO CUSTOMER FOR DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY RELATED TO ANY SOFTWARE OR SERVICES. NOTWITHSTANDING THE FOREGOING, IF SOURCEWELL IS FOUND TO BE LIABLE TO CUSTOMER FOR ANY SOFTWARE OR SERVICES, SOURCEWELL'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER FOR THE SOFTWARE OR SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

12.2 Disclaimer of Consequential Damages. IN NO EVENT WILL SOURCEWELL BE LIABLE TO CUSTOMER FOR ANY TYPE OF INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF CUSTOMER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE.

12.3 Statute of Limitations. ANY ACTION RELATED TO THIS MSA OR OTHER AGREEMENT MUST BE BROUGHT BY CUSTOMER WITHIN TWO (2) YEARS FROM THE DATE SUCH ACTION COULD HAVE BEEN BROUGHT DESPITE ANY LONGER PERIOD PROVIDED BY STATUTE. CUSTOMER UNDERSTANDS AND AGREES THAT ANY SUCH LONGER PERIOD IS WAIVED UNDER THIS MSA.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 Force Majeure. Neither party will be liable for any failure or delay in its performance under this MSA or any Customer Agreement due to any cause beyond its reasonable control, including, but not limited to, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, pandemic, governmental act or failure of the Internet (each a "Force Majeure Event"), provided that the delayed party: (a) gives the other party prompt notice of such cause; and (b) uses its reasonable efforts to promptly correct such failure or delay.

13.2 Dispute Resolution. The parties will attempt to resolve any dispute between them in person or telephonic meetings in a mutually convenient manner between representatives of each party with proper authority. If this is unsuccessful, the parties will complete unbinding mediation in good faith. Each party shall pay its own attorneys' fees; the mediator's fees will be shared equally. All discussions during meetings and mediation shall be confidential under Rule 408. If mediation is unsuccessful, either party may file a lawsuit after expiration of a 20-day cooling off period, subject to Section 13.3.

- 13.3 Governing Law; Jurisdiction. This MSA and all Customer Agreements will be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota without regard to conflict of law rules. Any lawsuit shall be in the venue of Ramsey County, Minnesota.
- 13.4 Severability. If any provision of this MSA or Customer Agreement is deemed unenforceable by a court of competent jurisdiction, the remaining provisions in such agreement shall remain in full force and effect.
- 13.5 No Waiver. Sourcewell's failure to exercise any rights under this MSA or any Customer Agreement will not constitute a waiver of any such rights or of a subsequent breach, default, or right. Any waiver must be in writing and signed by an authorized representative of Sourcewell.
- 13.6 Assignment; Successors/Assigns. Customer may not assign its rights or delegate its duties under this MSA or any Customer Agreement without Sourcewell's prior written consent, which shall not be unreasonably withheld. Any attempted assignment or delegation without such consent will be void. Sourcewell may assign its obligations under this MSA or Customer Agreement. Sourcewell will promptly provide Customer with written notice of any such assignment. Sourcewell also may delegate the performance of certain Services to qualified third parties. Notwithstanding the previous provisions, the terms and conditions of this MSA and Customer Agreements shall be fully binding on any successors and/or assignees of Customer authorized by Sourcewell.
- 13.7 Notice. Notices and other communications by either party under this MSA or Customer Agreements may be delivered by hand, deposited with an overnight courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party. Notice will be deemed to have been given as of the date it is delivered, mailed, or sent, whichever is earlier. Notice may be provided via email and is deemed to have been given upon confirmation of receipt by the other party.
- 13.8 Relationship of Parties. Sourcewell and Customer are independent contractors and neither this MSA nor any Customer Agreement establishes a partnership, joint venture, employment, franchise, or agency between them. Neither Sourcewell nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- 13.9 Entire Agreement; Amendments. This MSA and any Customer Agreements between the parties constitute the entire agreement between them with respect to the subject matter set forth therein and supersedes all prior agreements with respect to the subject matter. The MSA or Customer Agreement may be amended or changed only by mutual written agreement signed by authorized representatives of the parties.
- 13.10 Conflicting Terms. In the event of a conflict between terms in this MSA and any Customer Agreement, the documents shall control in the following order: the Customer Agreement, including the Service Level Agreement, this MSA.
- 13.12 Articles and Section Headings. The article and section headings in this MSA are for reference purposes only and shall not affect the meaning or interpretation of this MSA.