

**JOINT POWERS AGREEMENT
OF SOURCEWELL TECHNOLOGY
(F/K/A TIES)**

(Amendment, Restatement, Restructure and Reconstitution)

THIS AMENDED, RESTATED, RESTRUCTURED, AND RECONSTITUTED JOINT POWERS AGREEMENT (this "Agreement") is entered into between Sourcewell ("Sourcewell") and Metropolitan Educational Cooperative Service Unit ("Metro ECSU"), both of which are public agencies and public corporations established by Minnesota Statutes § 123A.21; and the member school districts ("Member Districts") of TIES which are identified in the attached Exhibit A (each a "Party" and collectively, the "Parties") and is effective as of the Effective Date (as defined in the TIES Reorganization Agreement).

WITNESSETH:

WHEREAS, Technology and Information Educational Services ("TIES") is a joint powers entity formed under Minnesota Statutes § 471.59 which is governed by a Joint Powers Agreement dated November 5, 1965 (the "Original Joint Powers Agreement"); and

WHEREAS, Sourcewell, TIES, and the Member Districts entered into a TIES Reorganization Agreement ("the Reorganization Agreement") on or about July 27, 2018 describing the reorganization of TIES (the "Reorganization"); and

WHEREAS, in furtherance of the Reorganization, the Parties wish to set forth their agreement with respect to the governance, authority, and other terms pursuant to which TIES will be governed by creating this amended and restated joint powers agreement of TIES which, in relevant part, restructures TIES' membership into two classes of members, vests governance and control of TIES in Sourcewell and Metro ECSU, provides for Member Districts to oversee the maintenance, management and disposition of the TIES Building Assets, provides for capital contributions and financial support, and otherwise governs the authority, structure, and governance of TIES; and

WHEREAS, effective as of the Effective Date and pursuant to the adoption of this Agreement, Sourcewell and Metro ECSU shall be admitted as the sole Governing Members of TIES and all Member Districts shall be reclassified as Limited Members of TIES, as defined herein.

NOW, THEREFORE pursuant to Minnesota Statutes § 471.59 and in consideration of the mutual promises, covenants and agreement herein contained, the Parties hereby agree as follows:

ARTICLE I

RESTRUCTURED AND RECONSTITUTED JOINT POWERS ENTITY

Section 1. Name. As of the effective date of this Agreement, and subject to terms and conditions herein contained, the joint powers entity previously known as TIES shall continue in the name "Sourcewell Technology."

Section 2. Statement of Purpose. This Agreement is made for the purpose of ensuring Sourcewell Technology's continuity and development of informational and technological products, services, programs, solutions, and support, with a primary emphasis on serving the K-12 sector.

Section 3. Powers, Manner Exercised. Sourcewell Technology shall have all powers and authority provided by law including, but not limited to the following:

- a. To sue and be sued in its name;
- b. To adopt bylaws and enter an agreement for management with a member service cooperative, as long as such bylaws and agreements are consistent with the terms of this Agreement;
- c. To approve, enter and execute contracts;
- d. To employ personnel to carry out functions and operations consistent with its purpose;
- e. To adopt operational and administrative policies and procedures;
- f. To set an annual budget based on financial contributions, revenue generated and financial support received;
- g. To approve lawful expenditures;
- h. Determine service offerings and set pricing for the same;
- i. Obtain and enforce intellectual property rights protections (e.g. copyright, trademark) to the extent allowed by law;
- j. To accept other monies from public and private sources, including grants or donations, in accordance with law;
- k. To acquire by purchase, gift, devise, lease or otherwise, any and all personal or real property necessary to achieve the purpose of the Agreement.
- l. To obtain insurance on the private market, through a local government pooled risk entity or both;
- m. To establish any administrative or advisory committee, subcommittee, task force or working group necessary to achieve the purpose of this Agreement.

Care and control of Sourcewell Technology is vested in a Joint Board of Directors as provided in Article I, Section 4. All actions of the Board shall be by majority vote of Board of Directors, except for any addition of a Governing Member which requires a unanimous vote of the Joint Board and approval by the governing bodies of Sourcewell and Metro ECSU. In exercising the foregoing powers, the Board of Directors does not have authority to bind Sourcewell or Metro ECSU to financial obligations in amounts that exceed in total the amount of such member's Contributions and Voluntary Allocations to Sourcewell Technology unless such obligations are expressly approved by the governing body of Sourcewell or Metro ECSU, respectively.

Section 4. Governance, Officers and Management. A Joint Board of Directors (“Joint Board”) is hereby established to exercise all powers enumerated in Article I, Section 3. The Joint Board shall consist of eleven directors, including ten voting directors who must also be duly elected officials, and one ex officio, non-voting director as follows:

- a. Eight (8) voting members who are individuals concurrently serving as members of the Sourcewell Board of Directors; however, to the extent that the Sourcewell Board of Directors has fewer than eight (8) members, the Sourcewell Board of Directors may appoint non-directors to such positions on the Joint Board;
- b. Two (2) voting members appointed by Metro ECSU; and
- c. The Executive Director of Metro ECSU, as an ex officio non-voting director.

Officers of Sourcewell Technology may be established and appointed as provided for in the bylaws. Management of Sourcewell Technology shall be as provided for in the bylaws and any management agreement(s).

ARTICLE II

MEMBERSHIP

Section 1. Governing Members. Sourcewell and Metro ECSU are governing members of Sourcewell Technology (the “Governing Members”) and shall have the rights and authority described in this Agreement.

Section 2. Limited Members. The Member Districts are limited members of Sourcewell Technology (the “Limited Members”) and shall have only the rights and authority described in Article IV of this Agreement.

ARTICLE III

GOVERNING MEMBERS

Section 1. Financial Contributions. Sourcewell is solely responsible for making all financial contributions necessary for the operation of Sourcewell Technology (“Contributions”). Metro ECSU shall have no financial obligation or responsibilities related to the operation of Sourcewell Technology.

Section 2. Defense and Indemnification. Sourcewell shall defend, indemnify and hold harmless Metro ECSU, its current and former members of its governing body, administrators, employees, volunteers or agents, individually and collectively, from all liability, loss, damage, claims, causes of action, and expenses (including attorneys’ fees), which arise out of in any way or are related to the activities, operation or decisions of Sourcewell Technology, including, but not limited to, intentional, willful or negligent acts or omissions of Sourcewell, Sourcewell Technology or their employees, agents, volunteers, subcontractors or anyone employed directly or indirectly by Sourcewell or Sourcewell Technology; but excluding intentional, willful or grossly negligent acts or omissions of Metro ECSU, its current and former members of its governing body, administrators, employees, volunteers or agents. Further, Sourcewell represents and warrants that

to the best of its knowledge, there are not any claims, charges, lawsuits or actions of any kind against TIES that have not been fully resolved as of the Effective Date of this Agreement.

It is the intent of the Parties that Sourcewell Technology is a “single governmental unit” within the meaning of Minnesota Statutes §471.59, subd. 1(a) and (b), and nothing in this Agreement shall constitute a waiver of the statutory limits on liability, as set forth in Minnesota Statutes §466.04, or a waiver of any available immunities or defenses.

Section 3. Liability. Sourcewell Technology shall be considered a single governmental unit and its liability is limited as provided by Minnesota Statutes, § 471.59, subdivision 1(a) and Minnesota Statutes, § 466.04. Subject to Sourcewell’s duty to defend and indemnify Metro ECSU as provided in the preceding Section 2 of this Article, neither Sourcewell nor Metro ECSU agree, or shall be deemed, to be liable for each other’s independent acts or omissions outside the scope of the authority and responsibilities described in this Agreement. Sourcewell and Metro ECSU agree to hold each other harmless for the independent acts of each of their own current and former governing body members, officers, employees, volunteers or agents. For purposes of determining total liability, if any, the parties intend that Sourcewell Technology is a single governmental unit within the meaning of Minnesota Statutes, § 471.59, subdivision 1a (b). If extended insurance coverage is obtained, such procurement constitutes a waiver of governmental liability limits only as provided by Minnesota Statutes, § 471.59, subdivision 1a (c).

Section 4. Insurance. Sourcewell Technology (f/k/a TIES) shall maintain insurance coverage to cover potential claims arising out of the operations of Sourcewell Technology with coverage minimums equal to or greater than the TIES policies in place on July 1, 2018 for at least the following types of insurance: general liability, professional liability, property, employee dishonesty, automobile, network security and privacy, and workers’ compensation. Sourcewell shall also maintain insurance coverage of the same type and minimum coverages as Sourcewell Technology to meet its defense and indemnification obligations to Metro ECSU as set forth in Article III, Section 2 of this Agreement. Insurance maintained by Sourcewell Technology shall be primary to and non-contributory with Sourcewell and Metro ECSU insurance; next, insurance maintained by Sourcewell shall be primary to and non-contributory with Metro ECSU’s insurance. Sourcewell Technology’s insurance must name Sourcewell and Metro ECSU as additional insureds and must provide a certificate of insurance with evidence of such status. Sourcewell’s insurance must name Metro ECSU as an additional insured and must provide a certificate of insurance with evidence of such status.

Section 5. Termination and Dissolution. This Agreement shall be terminated and Sourcewell Technologies dissolved by majority vote of the Joint Board.

Section 6. Distribution of Assets and Liabilities Upon Dissolution. Pursuant to Minnesota Statutes, § 471.59, subd. 5, upon termination and dissolution of Sourcewell Technology, all property, assets, surplus funds or liabilities of Sourcewell Technology shall be distributed between the Governing Members in proportion to their Contributions made, if any, as described in Article II I, Section 1. For purposes of clarity, the Limited Member Districts shall not receive any distribution of property, assets, surplus funds, or liabilities of Sourcewell Technology upon termination and dissolution of Sourcewell Technology, other than Member Districts’ rights to the TIES Building Assets as set forth in Sections 1.5.5 and 1.5.6 of the Reorganization Agreement.

Section 7. Withdrawal. Either Governing Member may withdraw from this Agreement by action of its governing body, provided that withdrawal shall be effective one hundred and eighty (180) calendar days from receipt of written notice of withdrawal, unless withdrawal is due to a material breach of this Agreement by the non-withdrawing Governing Member, in which case the withdrawal shall be effective thirty (30) days from receipt of written notice. Upon withdrawal, Metro ECSU shall have no financial obligations or responsibilities to Sourcewell or Sourcewell Technology.

ARTICLE IV

LIMITED MEMBERS; LIMITED MEMBERS BOARD AND BUILDING COMMITTEE

Section 1. Limited Members' Oversight of TIES Building Assets; Approval Rights. Sourcewell Technology is the record owner (under its prior legal name, TIES) of certain land, buildings, and other improvements located at 1667 Snelling Avenue North, Saint Paul, Minnesota 55108, and legally described on Exhibit E of the Reorganization Agreement (the "TIES Building"). The TIES Building, together with certain fixtures and furniture located therein or thereon as described in Exhibit E of the Reorganization Agreement shall collectively be referred to as the "TIES Building Assets." Except as otherwise set forth in this Article IV, Section 1, the authority of the Limited Members with respect to Sourcewell Technology shall extend only to the oversight of the maintenance, operation, management, and sale and/or disposition of the TIES Building Assets. Subject to any Approval Rights (as hereinafter defined) and subject to the Member Districts' obligations under the Reorganization Agreement with respect to payment of the TIES Building Operating Costs and Extraordinary Expenses, the Limited Members delegate all of their authority under this Section 1 to the Building Committee (as defined in Section 2 below). The Limited Members Board and the Joint Board shall have reasonable approval rights with respect to the following actions by the Building Committee (collectively, the "Approval Rights"), which actions shall not be effective until such approval has been received: (i) the sale or disposition of the TIES Building Assets (including the disposition of any sale, insurance or condemnation proceeds), and (ii) any additional financing or refinancing secured by the TIES Building or any of the TIES Building Assets (each of the foregoing, an "Approval Event"). The Limited Members Board and Joint Board shall not unreasonably withhold their approval of any recommendation from the Building Committee with respect to an Approval Event provided that the terms of such Approval Event are commercially reasonable.

Section 2. Limited Members Board; Building Committee. There shall be a Limited Members Board with the authority expressly provided by this Agreement. Each Limited Member shall be entitled to select two representatives to serve on the Limited Members Board, whom may be the chairperson of the Limited Member's school board and its superintendent of schools serving *ex officio*, or any other two representatives appointed by the school board of the Limited Member. For clarity, it is intended that the composition of the Limited Members Board be substantially the same as the composition of the joint board described in the Original Joint Powers Agreement. In addition, there shall be a Building Committee composed of the nine (9) representatives serving on the TIES Executive Committee as of the Effective Date. Thereafter, the Building Committee shall consist, insofar as is possible, of nine (9) representatives which include an approximately equal

number of superintendents of Limited Member districts and representatives who are not superintendents, not more than one of whom shall be from the same Limited Member district. The Limited Members Board and Building Committee shall exist for the sole and limited purpose of representing the Limited Members in their oversight of the TIES Building Assets as described in Article IV, Section 1, including without limitation, negotiating and considering offers and counteroffers, executing necessary documents and all actions necessary and sufficient to effect a sale of the TIES Building (subject to reasonable Approval Rights of the Limited Members Board and Joint Board described in Article IV, Section 1), and otherwise consistent with the terms of this Agreement, to retire the debt owed with respect to the TIES Building. Until such time as the TIES Building is sold (or the debt retired), the Building Committee shall have the authority to retain the facility management services of Sourcewell Technology staff as required to oversee the TIES Building, as described under Article IV, Section 1. As consideration for such services, TIES and the Governing Members shall be permitted to occupy the TIES Building free of any rent or any other similar payment or fee until the TIES Building is sold, subject to maximum reasonable notice under the circumstances.

Section 3. Withdrawal of Limited Members. Within a reasonable period of time, but not to exceed 120 days, following the closing of the sale or transfer of the TIES Building Assets, or full satisfaction of all debt due on the TIES Building pursuant to the financing documents described under Article IV, Section 1, whichever occurs earliest: (1) the Limited Members shall automatically without notice to the Governing Members withdraw and cease to be members of Sourcewell Technology in any capacity, (2) the Limited Members Board and Limited Members Building Committee shall be deemed immediately disbanded, and (3) the Limited Members shall cease to be Parties to this Agreement and shall have no further rights thereunder.

ARTICLE V

GENERAL PROVISIONS

Section 1. Entire Agreement. Except as otherwise expressly provided herein, this Agreement amends, restates, restructures, reconstitutes and supersedes any prior governance documents of TIES, including without limitation all prior joint powers memoranda, bylaws, and membership agreements among the Parties.

Section 2. Amendment. This Agreement may be amended, restated, or modified in writing duly adopted by the Governing Members; provided that any amendments to Article IV must also be approved by the Limited Members.

Section 3. Assignment. Governing Members may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the other Governing Member and approval by the governing bodies of the Governing Members.

Section 4. Audits. Sourcewell Technology's books, records, documents and accounting procedures and practices relevant to this Agreement are subject to examination by the state auditor or legislative auditor, as appropriate, for a minimum of six years from the end of this Agreement.

Section 5. Signature Locations. The signature locations for TIES, Sourcewell and Metro ECSU follow, subject to approval and ratification by their governing bodies. The signature location for each Member District is found on the separate signature page for each Member District in the form of the template attached to this Agreement, which will serve as each such Member District's signature of this Agreement and the Reorganization Agreement, subject to approval and ratification by each such Member District's governing board.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.