

**AMENDED AND RESTATED
JOINT POWERS AGREEMENT**

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT, made as of the 6th day of June, 2007, by and between the Minnesota Counties Computer Cooperative (“MCCC”) and _____ (“Member”), to amend, restate and redefine the operation of MCCC, and the rights, benefits, obligations and liabilities of MCCC members.

WITNESSETH:

WHEREAS, MCCC and its participating members have established by agreement an organization through which the parties may jointly and cooperatively provide for the establishment, operation, and maintenance of data processing facilities and management information systems for the use and benefit of the parties; and

WHEREAS, Minnesota Statutes, Section 471.59, authorizes two or more units of government jointly or cooperatively to exercise any power common to the contracting parties or any other similar power and by agreement to provide for a joint board representing the parties to the agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and pursuant to Minnesota Statutes, Section 471.59, as amended, and any other applicable statutes, the parties hereto do hereby mutually agree, affirm and contract with each other as follows:

**Article I
Purpose**

Member and the other members of MCCC have established a cooperative mechanism whereby they may jointly exercise powers common to each participating member to:

- A. Develop and acquire or license software programs and related information systems and services of interest to MCCC members and licensees;
- B. Provide for post-installation training, maintenance, enhancement and related services for software programs and related information systems;
- C. Pursue government and related technology grants and related opportunities to acquire or improve software programs and information systems of interest to MCCC members and eligible licensees;
- D. Assess, collect, hold and disburse dues, contract payments and other member contributions authorized by the Board;
- E. Employ a full time Executive Director to administer MCCC operations and directives of the Board, and such other employees as may be necessary or desirable to administer MCCC operations;

- F. Rent, purchase or otherwise acquire and hold property and other assets necessary or reasonably desirable for the successful operation of the MCCC;
- G. Organize and conduct annual regional and MCCC conferences, User Group training sessions, workshops and other meetings of members and licensees; and
- H. Engage in such other similar or related services and programs as determined by the Board as are incident to and proper or reasonable to carry out the foregoing.

It is further the intent of the members to establish procedures whereby additional qualifying members may be added to Agreement, and to establish a mechanism whereby additional and/or alternative programs and services may be developed for the benefit of MCCC members and eligible software licensees.

Article II Name

The name of this joint powers entity shall be the MINNESOTA COUNTIES COMPUTER COOPERATIVE, hereinafter sometimes referred to as the "MCCC".

Article III Membership

Membership in the MCCC shall be open to any governmental unit or other political subdivision of the State of Minnesota as contemplated by M.S. 471.59 Subdivision 1. The Board may impose such conditions on membership, and may create or modify different classes, levels or types of membership within the MCCC with differing member rights, privileges or obligations as it deems appropriate to protect the interest of the MCCC and to provide for the benefit of its members; and in compliance with such conditions as are required by this Agreement, then-current Bylaws as amended ("Bylaws"), or by applicable statutes, rules or regulations for joint powers organizations. During the term of membership, Member shall be entitled to use MCCC software and related services for all software in use by any User Group that Member belongs to and has paid all applicable User Group fees or other associated charges relating to such Software.

All Members agree that they will not sell, license, distribute, or otherwise transfer the Cooperative's source or object code or system or user documentation or any derivatives thereof without the permission of the Board and that all copies of such Cooperative source code, object code or system or user documentation or any derivatives will be maintained in confidence; will not be disclosed or distributed to third parties without the Cooperative's prior written consent and that all such Cooperative or third party licensor property (including copies thereof) will be removed from such Member's computer system and returned to the Cooperative or destroyed promptly following such Member's termination or withdrawal of Cooperative membership. In the event that any Member or Licensee is authorized to and modifies the source code, such Member or Licensee shall indemnify, defend and hold the Cooperative harmless for any claims resulting from such modifications or any unauthorized disclosure or use of such source code.

Article IV
Board of Directors; MCCC Executive Committee

There is hereby created a Board of Directors of the MCCC, herein referred to as the “Board”, which shall be empowered to oversee and administer the MCCC, in the manner provided in the Bylaws. The Board shall be fully empowered to oversee and direct all the affairs of the MCCC and to do all things necessary or convenient for the furtherance of the purposes of the MCCC, including but not limited to: expending and receiving funds; entering into contracts, leases, and other agreements and obligations; employing personnel either as employees or by contract, including consultants, such as technology advisors, attorneys, accountants or others. Member and each other MCCC member shall elect its Board representative as provided in the Bylaws, who shall serve for an indefinite term until such representative dies, resigns, retires from employment with, or is otherwise removed or replaced by the ultimate governing body of such member.

At all times between meetings of the Board, and in a manner consistent with this Agreement, the Bylaws, and all applicable laws, the MCCC Executive Committee, as established and defined in the Bylaws, shall have the full authority and direction of the Board to oversee and manage the business of the MCCC, except as may be limited or otherwise modified from time to time by Board resolution, and/or except for matters of long range policy or any proposed amendment of this Agreement or the Bylaws, which shall be the exclusive province of the full Board. The MCCC Executive Committee shall be comprised of the officers and regional representatives designated in the Bylaws, and will be subject at all time to the direction and control of the Board.

Article V
User Groups

The Board shall be empowered to create, manage, modify, or terminate MCCC user groups, to be comprised of members and other licensed end users of similar software programs and other information systems (“User Groups”). As may be permitted from time to time by the Board, User Groups may elect and replace User Group officers; create and administer annual User Group budgets; and prepare recommendations for User Group software or information systems acquisitions, enhancements or related services of interest to that User Group’s participants. Operation of each User Group is subject at all times to compliance with the then-current form of User Group Rules and Regulations for that User Group, which may be modified from time to time by the Executive Committee, and given immediate or delayed effect, as specified therein.

Article VI
Bylaws and Operating Policies and Procedures

The Board shall adopt, and shall have the sole power and authority to amend or replace the Bylaws, which shall provide for the operation and administration of the MCCC. The Board may also adopt and modify User Group Rules and Regulations, Operating Policies and Procedures, or other policies or agreements that may be created or utilized from time to time to direct and document the specific activities of the MCCC, consistent with this Agreement and the Bylaws.

Article VII
Financial Matters/Limitation of Liability

MCCC shall have a calendar fiscal year beginning January 1 and ending each December 31. On or before June 1 of each year, the MCCC Executive Committee shall prepare and circulate to each member a proposed annual budget for the following calendar fiscal year, comprised of budgeted operating costs, other expenses, capital costs and other revenues and expense categories, which budget will be subject to review, adjustment and/or approval for the next year by the full Board on or before each June 30. During each fiscal year, the approved MCCC budget and individual line items therein may be adjusted by the Executive Committee in order to reflect actual costs incurred; changes in estimated expenses, costs or revenues; or reallocation of budgeted costs and expenses, with any such adjustments promptly reported to all members. Each User Group shall be responsible for determining and providing amounts to MCCC's Executive Director by June 30 of each fiscal year, which will be invoiced to participating User Group members for the following year's participation and other shared fees and expenses and as otherwise provided in the Bylaws.

Member agrees to promptly pay its proportional share of all MCCC expenses, as well as such member's User Group fees or other contributions upon receipt of and in the manner designated in MCCC invoices. All software licenses and similar agreements will include comparable provisions for User Group members who are not eligible for membership as defined in Article III above. Any member whose invoices are not paid at the time of any Board vote will be temporarily ineligible to vote until such invoice(s) and any interest or other expenses are paid. Minnesota Statutes Chapter 118A shall govern all depositories and investments of MCCC funds.

The Board may, at its discretion and from time to time, determine that an assessment is necessary to insure the financial integrity of the MCCC, to operate and maintain the MCCC or to carry out other purposes of the MCCC pursuant to this Agreement. Such assessments shall be in a form, manner and amount as determined by the Board, and shall be payable by members in the manner specified by the Board, provided that any proposed member assessment exceeding \$50,000 will not be binding on any member unless and until such assessment has also been ratified by the applicable County Board of Commissioners or other ultimate governing body of a majority of MCCC members.

To the extent contemplated by Minnesota Statutes Section 471.59, Subd. 1a, Member shall not be liable for the acts or omissions of any other MCCC member or participating MCCC governmental units, in the absence of a written agreement by such governmental unit to be responsible for the acts or omissions of another participating governmental unit.

Article VIII
Withdrawal of Member

Member or any other MCCC members may only withdraw from this Agreement, or any MCCC User Group created pursuant to Article V, except as provided in this Article VIII. To withdraw from a User Group and/or the MCCC, the withdrawing member must first give at least ninety (90) days prior written notice of its intent to do so to the MCCC's Executive Director, to be delivered by certified or registered mail or national overnight courier service, with such

withdrawal to become effective as of the first day of the calendar quarter following the quarter in which such notice was given and the 90 day notice period expires.

Any member that withdraws shall remain jointly and severally liable for its full share of all fees, costs, expenses, debts, obligations and liabilities which were incurred by or on its behalf during the term of its membership, including, without limitation, any such amounts attributable to such member's participation in any User Group for then-current or pending software or other information system deliverable, service obligation, updates, enhancements or other participatory projects or other work then in progress through the expiration or conclusion of each such User Group program as approved by the User Group prior to the member's delivery of the termination notice specified in the prior paragraph. Financial liability of a member who desires to withdraw and payment arrangements for all such liabilities will be determined by the Board, who shall calculate and offer a present value discount if such liabilities are paid as a lump sum by the withdrawing member on or prior to the effective date of termination.

The withdrawal of a member shall not affect the continuance of the MCCC or any User Group by the remaining members and other participants. A member that ceases to qualify for participation in the MCCC or terminated participation, shall have no right or claim to the assets, reserves or other holdings of the MCCC. The withdrawing member may be entitled to a share of the assets of the MCCC only if deemed appropriate by the Board, who may, in its sole discretion, determine the nature and timing of any distribution of assets to a withdrawing member.

Withdrawing members may apply for post-termination use of MCCC software in use by such Member as of withdrawal, in the same manner as provided in Article X below for terminating Members.

Article IX Insurance

From time to time, MCCC may purchase and maintain liability insurance coverage with carriers and such coverage terms as are approved by the Executive Committee in order to insure the activities of MCCC and its joint software, information systems and services, with copies of such policies made available to members upon request.

Article X Term of Agreement/Termination

This Agreement shall remain in effect indefinitely until:

- A. Terminated by the written agreement of all MCCC members;
- B. Suspended or superseded by a subsequent agreement between the MCCC members, adopted and approved at a duly called meeting or otherwise as provided by the Bylaws;
- C. Dissolution of MCCC by affirmative vote of a majority of its members;.
- D. Otherwise terminated by operation of law;

- E. Terminated by the parties' mutual written agreement; or
- F. Terminated by MCCC following delivery of any exclusion notice issued by MCCC to Member under Article VI of the then-current MCCC Bylaws, or otherwise in any manner provided for therein.

In the event that the MCCC is terminated as specified in subsections (A)-(D) above, and subject to the provisions below relating to software products then in use by MCCC, any property or other assets acquired by the Board shall be distributed to the then-current members in a manner commensurate with their contributions, or otherwise as determined by the Board. However, sufficient reserves shall be retained and maintained consistent with the MCCC's obligations and known or foreseeable risks, under this Agreement, the Bylaws, and applicable laws or regulations.

Termination under subsections (E)-(F) of this Agreement, or of the MCCC as provided in subsections (A)-(D) above will also terminate that member's rights and license to use MCCC software or related services, except with MCCC's express prior written consent. MCCC agrees to grant its consent upon request and provided that such member is no longer delinquent in any payment or other pre-termination obligations for the then-current version(s) of any software owned by MCCC, and/or licensed from third parties and sublicensable after termination of such membership. Any such post-termination use of software by a former MCCC member will be on a nonexclusive, nontransferable basis; fully subject to the terms of any then-current license or sublicense agreements; and contingent on the execution of an assumption, release and indemnification agreement in a form specified by MCCC, acknowledging that such software is being acquired without warranty and in "AS IS" condition, and that the user(s) thereof will indemnify, defend and hold MCCC, its members, employees, licensees and other affiliates harmless from any liability for post- termination use thereof.

Article XI

Entire Agreement; Amendments

This Agreement and the Bylaws constitutes the parties' entire agreement and understanding regarding the organization and operation of the MCCC, and replaces all prior oral or written agreements or understandings regarding the subject matter thereof. Any member may propose one or more amendments to this Agreement, which shall be forwarded to all members upon receipt. In order to amend this Agreement, at least two-thirds of all members must affirmatively approve of such amendment, effective as of the date of the last required member approval obtained.

Article XII

Remedies

Amounts not paid by Member within 30 days of invoice (or such other time period as may be specified by the Board) shall bear interest on the unpaid balance from date of invoice at the lower of : (a) 9 percent per annum, compounded quarterly; or (b) the highest legal rate allowed by applicable law. MCCC shall also be entitled to recover or be reimbursed from Member for any collection costs or expenses, including, without limitation, its reasonable attorney's fees.

Article XIII
Governing Law/Jurisdiction and Venue

This Agreement will be governed by the internal laws of the State of Minnesota, applicable to contracts to be entered into and performed wholly within this state. Each party irrevocably submits to the jurisdiction of the applicable federal or state courts located in Ramsey County, Minnesota, and Member and MCCC each agree that such courts shall be the exclusive venues for any disputes arising hereunder.

IN WITNESS WHEREOF, the undersigned Member and MCCC have caused this agreement to be signed in duplicate or counterpart originals, all of which are considered to be a single agreement dated and effective as of the date hereof and delivered on their behalves.

County of _____ (MEMBER) MINNESOTA COUNTIES
COMPUTER COOPERATIVE (MCCC)

ATTEST:

Name:
Chair Board

By: _____
Lisa Christine Meredith, Executive Director

By: _____

By: _____
MCCC Board Chair

By: _____

By: _____