

# **AMENDED AND RESTATED JOINT POWERS AGREEMENT**

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT, made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Minnesota Counties Computer Cooperative (“MnCCC”) and \_\_\_\_\_ (“Member”), to amend, restate, and redefine the operation of MnCCC, and the rights, benefits, obligations, and liabilities of MnCCC members.

## **WITNESSETH:**

WHEREAS, MnCCC 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, software, and other information management systems for the use and benefit of the parties; and

WHEREAS, Minnesota Statutes § 471.59, subd. 1, authorizes two or more units of government jointly or cooperatively to exercise any power common to the 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 § 471.59 as amended, and any other applicable statutes, the parties hereto do hereby mutually agree and affirm as follows:

### **Article I Purpose**

Member and the other members of MnCCC have agreed to a cooperative mechanism, enabling them to jointly exercise powers common to each participating member to:

- A. Develop, maintain and enhance proprietary software programs and related information systems and services of interest to MnCCC members and licensees, that can be registered and owned by MnCCC, and which may also be offered to third parties for commercialization by license or other agreement outside of Minnesota;
- B. Acquire or license third party software programs and related information systems and services of interest to MnCCC members;
- C. Provide for post-installation training, maintenance, support, enhancement, and related managed professional services for MnCCC software programs and related information systems;
- D. Pursue government and related technology grants and related opportunities to acquire or improve software programs and information systems of interest to MnCCC members and eligible licensees;
- E. Assess, collect, hold, and disburse dues, contract payments and other member contributions authorized by the Board;

- F. Employ a full-time Executive Director to administer MnCCC operations and directive of the Board, and such other employees as may be necessary or desirable to administer MnCCC operations;
- G. Rent, purchase, or otherwise acquire and hold property and other assets necessary or reasonable desirable for the successful operation of MnCCC;
- H. Organize and conduct annual regional and MnCCC conferences, User Group training sessions, workshops, and other meetings of members and licensees; and
- I. Establish and maintain a listing of such minimum acceptable contract terms to be included in any software license or managed services agreement, including such minimum required liability insurance obligations for all such licensors or service providers that meet or exceed the minimum standards as recommended by Minnesota Counties Intergovernmental Trust (MCIT), or of any other primary insurer of MnCCC.
- J. 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 this Agreement, and to establish a mechanism whereby additional and/or alternative programs and services may be developed for the benefit of MnCCC members and eligible software licensees.

## **Article II Name**

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

## **Article III Membership**

Membership in MnCCC shall be open to any governmental unit or other political subdivision of the State of Minnesota as contemplated by Minnesota Statute § 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 MnCCC, with differing member rights, privileges or obligations as it deems appropriate to protect the interest of MnCCC 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, administrative rules, or other applicable Minnesota regulations for Minnesota joint powers organizations. During the term of membership, Member shall be entitled to use software and related managed professional services for all software in use by any User Group that Member belongs to, subject to payment of all applicable User Group fees or other associated charges relating to such software.

Member agrees that such access and use of software is also contingent upon and subject at all times to compliance with all then-current MnCCC software and information systems rules and regulations (as well as those license and other covenants and obligations made by MnCCC with any third-party owners). Member shall maintain in strictest confidence any and all software source code, user documentation or other confidential asset of MnCCC and/or any third party licensor, and acknowledges that such access and usage is reserved and authorized solely for Member's

confidential internal use only, and that Member has no right to, and will not sell, object code or system or user documentation or any derivatives thereof, or to make any other unauthorized use of such assets without the prior written authorization of the MnCCC Board or Executive Director; and that all MnCCC or third-party licensor software or other property (including copies thereof) will be removed from such Member's systems and returned to MnCCC (or destroyed, if so requested by MnCCC), promptly following such Member's withdrawal, other termination of membership, or following any uncured breach of such license or other software use agreement. In the event that any Member is authorized to and modifies the source code, such Member shall indemnify, defend and hold MnCCC, other members or licensees, harmless from any claims resulting from such modifications, as well as for any unauthorized disclosure or other unauthorized use of such source code.

#### **Article IV Board of Directors**

There is hereby created a Board of Directors of MnCCC, herein referred to as the "Board", which shall be empowered to oversee and administer MnCCC, in the manner provided in the Bylaws, as may be amended. The Board shall be fully empowered to oversee and direct all the affairs of MnCCC and to do all things necessary or convenient for the furtherance of the purposes of MnCCC, 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. At all times as Member is an eligible Voting Member (as such term is defined in the Bylaws), Member and each other eligible MnCCC Voting Member shall elect those Board representatives as provided in the Bylaws, whose term shall be defined by the Bylaws.

The Board shall have the full authority and direction of Membership to oversee and manage the business of MnCCC, except: (a) as may be limited or otherwise modified by any resolution duly approved by the majority affirmative vote of Voting Members in attendance at the Annual Meeting, or at a special meeting of Voting Members called, noticed, and held for such purposes; or (b) and/or except for matters of long range policy, or any proposed amendment of this Agreement or of the Bylaws; or (c) the approval of the MnCCC annual budget, which shall each be the exclusive province of the Voting Members. The MnCCC Board shall be comprised of the officers, regional representatives, and the Technical Representative, all as designated in the Bylaws, and a majority of all then-current Board members shall be necessary and sufficient to constitute a quorum for the transaction of business.

#### **Article V User Groups**

The Board shall be empowered to create, manage, modify, or terminate MnCCC User Groups, to be comprised of members and other licensed end users of similar software programs and other information systems ("User Groups"), to be operated under such standard User Group Rules and Regulations as have been approved by the Board (the "User Group Rules and Regulations"). Subject to Board approval, 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 or propose revisions to its User Group's Rules and Regulations.

**Article VI**  
**Bylaws and Operating Policies and Procedures**

MnCCC's then-current Voting Members 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 MnCCC. The Voting Members, by resolution of the affirmative majority vote of eligible Voting Members in attendance at the Annual Meeting, or at any special meeting called, noticed, and held for such purpose, or by electronic ballot in lieu of a meeting, 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 to direct and document the specific activities of MnCCC, consistent with this Agreement and the Bylaws. The Board may adopt Rules and Regulations to govern the business and operation of all User Groups regarding membership Dues, Fees for software applications, managed services agreements and/or other jointly authorized projects that the group is concerned with, and any other group-related matters not specifically addressed by Articles I through XIII of the Bylaws.

**Article VII**  
**Financial Matters/Limitation of Liability**

MnCCC shall have a calendar fiscal year beginning January 1 and ending each December 31. On or before June 1 of each year, the MnCCC Board 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 affirmative majority vote of Voting Members at the Annual Membership Meeting. During each fiscal year, the approved MnCCC budget and individual line items therein may be adjusted by the Board in order to reflect actual costs incurred; changes in estimated expenses, costs, or revenues; or reallocation of budgeted costs and expenses, with any total budget adjustments over 5% promptly reported to all MnCCC members. Each User Group shall be responsible for determining and providing amounts to MnCCC'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 MnCCC expenses, as well as its User Group fees or other contributions upon receipt of and in the manner designated in MnCCC invoices, and to pay or reimburse MnCCC for its reasonable attorney's fees or other costs incurred in enforcement of the Agreement (collectively, "Costs"). All software licenses and similar agreements will include comparable provisions for User Group Member, or for licensee User Group participants, who are not eligible for MnCCC membership as defined in Article III above. Member will be temporarily ineligible to vote if and for as long as any invoice(s) and any interest or other expenses remain unpaid. Minnesota Statutes Chapter 118A shall govern all depositories and investments of MnCCC funds.

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

governing bodies of those Voting Members present and voting at the Annual Meeting, or at a special meeting of all MnCCC Voting Members called, noticed, and held for such purpose.

MnCCC shall be considered a separate and distinct public entity to which the Members have transferred all responsibility and control for actions taken pursuant to this Agreement. MnCCC shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of Minnesota Statutes §466.

MnCCC shall fully defend, indemnify, and hold harmless the Members against all claims, losses, liability, suits, judgments, costs, and expenses by reason of the action or inaction of the Board and/or employees and/or the agents of MnCCC. This Agreement to indemnify and hold harmless does not constitute a waiver by any participant of limitations on liability provided under Minnesota Statutes §466.04.

To the full extent permitted by law, actions by the members pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity”, and it is the intent of the members that they shall be deemed a “single governmental unit” for the purposes of liability, all as set forth in Minnesota Statutes § 471.59, Subd. 1a(a); provided further that for purposes of said statute, Member expressly declines responsibility for the acts or omissions of MnCCC, or of any other MnCCC member. The members of this Agreement are not liable for the acts or omissions of the other participants to this Agreement, except to the extent to which they have expressly agreed in writing to be responsible for acts or omissions of the other member.

#### **Article VIII Withdrawal of Member**

Member or any other MnCCC members may only withdraw from this Agreement, or any MnCCC User Group created pursuant to Article V, in the manner provided in this Article VIII. To withdraw from a User Group and/or MnCCC, Member must give at least ninety (90) days’ certified written notice of its intent to do so to MnCCC’s Executive Director, either delivered by certified or registered mail or national overnight courier service or by facsimile or email (in cases where Member can provide verified, reliable proof of delivery), 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.

Member 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 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 Member’s delivery of the termination notice specified in the prior paragraph. Member’s financial withdrawal liability and payment arrangements therefor 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 Member on or prior to the effective date of termination. Member shall also be liable for all MnCCC enforcement costs for any withdrawal obligation not paid within ten (10) days of invoice, or of such other payment deadline as specified by the Board.

Member’s withdrawal shall not affect the continuance of MnCCC or any User Group by the remaining members and other participants. If Member terminates or ceases to qualify for participation in MnCCC, Member shall have no right or claim to the assets, reserves or other

holdings of MnCCC on withdrawal or termination, unless 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.

Member may apply for post-termination use of MnCCC software in use by such Member as of withdrawal, in the same manner as provided in Article X below for termination of MnCCC membership.

### **Article IX Insurance**

MnCCC may purchase and maintain liability insurance coverage with carriers and such coverage terms as are approved by the Board, in order to insure the activities of MnCCC 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 of All Member Agreements**

This Agreement shall remain in effect indefinitely until:

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

In the event that MnCCC is terminated as specified in subsections (A)-(D) above, and subject to the provisions of Article XII below relating to potential future use of software products then in use by MnCCC, any property or other assets acquired by the Board shall be distributed to Member and the then-current other 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 MnCCC's obligations and known or foreseeable risks, under this Agreement, the Bylaws, and applicable laws or regulations.

### **Article XI Term of Agreement/Termination of Member's Agreement**

This Agreement shall remain in effect indefinitely until:

- A. Terminated by the mutual written agreement of MnCCC and Member; or
- B. Terminated by MnCCC following delivery of any exclusion notice issued by MnCCC to Member under Article VI of the then-current MnCCC Bylaws, or otherwise in any manner provided for therein.

**Article XII**  
**Post-Termination Use of MnCCC Software**

Termination under Article X or Article XI will also terminate Member's rights and license to use MnCCC software or related services, except with MnCCC's express prior written consent. MnCCC agrees to grant its consent upon request and provided that Member is no longer delinquent in any payment or other pre-termination obligations for the then-current version(s) of any software owned by MnCCC, and/or licensed from third parties and sublicensable after termination of such membership. Any such post-termination use of software by a former 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 MnCCC, 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 MnCCC, its other members, employees, licensees, and other affiliates harmless from any liability for post-termination use thereof.

**Article XII**  
**Entire Agreement; Amendments**

This Agreement, the Bylaws, and applicable User Group Rules and Regulations constitute the parties' entire Agreement and understanding regarding the organization and general operation of MnCCC. This Agreement replaces all prior oral or written agreements or understandings regarding the common exercise of joint powers as contemplated by Minnesota Statutes § 471.59. Any Voting 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, more than half of all eligible Voting Members attending the Annual Meeting or any special meeting called for such purpose, or voting by electronic ballot taken in lieu of a meeting, must affirmatively approve such amendment, effective as of the date of the meeting or resolution, or such later affirmative date as may be specified therein.

**Article XIV**  
**Remedies**

Amounts not paid by Member within thirty (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) nine percent (9%) per year, compounded quarterly; or (b) the highest legal rate allowed by applicable law. MnCCC shall also be entitled to recover or be reimbursed from Member for all Costs incurred in enforcement.

**Article XV**  
**Governing Law/Jurisdiction and Venue**

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

IN WITNESS WHEREOF, the undersigned Member and MnCCC 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 each of their behalf.

\_\_\_\_\_ (MEMBER)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Board Chair

MINNESOTA COUNTIES  
COMPUTER COOPERATIVE

By: \_\_\_\_\_  
[insert name], Board Chair

And: \_\_\_\_\_  
Lisa Christine Meredith  
Executive Director