

**SECOND AMENDED INTERGOVERNMENTAL AGREEMENT ESTABLISHING
PRAIRIECAT AND
AUTHORIZING MEMBERSHIP IN PRAIRIECAT**

**_____ FULLY PARTICIPATING _____ BASIC ONLINE
_____ UNION LISTING
(Check appropriate participation level)**

WHEREAS, each of the entities listed on Exhibit A to this Agreement is either a local library established pursuant to the Local Library Act, 75 ILCS 5/ 1-0.1, et seq., a public library district established pursuant to the Public Library District Act, 75 ILCS 16/ 1-1 et seq., a school district established pursuant to state statute or another entity with a library organized and existing under the laws of the state of Illinois; and

WHEREAS, pursuant to Article VII, Sec. 10 of the Illinois Constitution of 1970, the Intergovernmental Agreement Act, 5 ILCS 220/ 1 et seq., and to the respective statutes pursuant to which each of the public libraries, library districts and school districts are established, the Governing Body of each of the said entities is empowered and authorized to enter into intergovernmental contracts and agreements for library services and the other entities with a library have the authority to contract for library services; and

WHEREAS, the Libraries that have signed this Agreement have determined that it is in their best interest to join together to provide the services outlined in this Agreement and have decided to create an intergovernmental entity called "PRAIRIECAT," voluntarily established by contracting Public Libraries, Library Districts and other entities with libraries to provide the services and automated library system described and set forth in this Agreement; and

WHEREAS, PRAIRIECAT was initially established in December, 2010 and it has permitted new members to join subsequent to its establishment.

NOW, THEREFORE, in consideration of the agreements hereinafter provided, and in further consideration of the execution of this Agreement by two-thirds of the libraries listed on Exhibit A, the Governing Board of the _____, (hereinafter referred to as "Library" or "Member") agree as follows:

1. Incorporation of Preambles. The above and foregoing preambles are incorporated herein and constitute a part of this Agreement.
2. Establishment of PRAIRIECAT. The Libraries that have signed this Agreement hereby establish an intergovernmental entity, as contemplated by the Intergovernmental Cooperation Act, which shall be known as the PRAIRIECAT for the purpose set forth in the next section.

3. Purpose. The purpose of PRAIRIECAT is to provide cost-effective and efficient resource discovery and acquisition for patrons of PrairieCat member libraries.

4. Definitions.

“Member” - Any library, library district or other entity with a library which has executed an agreement which is accepted by PRAIRIECAT on substantially the same terms as this Agreement.

“Integrated Library System” or “ILS” - The integrated library system used by PRAIRIECAT including all equipment and software that is used for automation of library functions.

“Fully Participating Member” - A library that has use of all existing application programs as described in Exhibit B, Functionality by Membership Level and whose users have full access to the benefits of the ILS. Fully Participating members are voting members and may hold any office.

“Basic Online Member” - A library that has limited use of existing application programs as described in Exhibit B, Functionality by Membership Level and whose users have limited access to the benefits of the ILS. Basic Online members are voting members and may hold any office.

“Union Listing Member” - A library that contributes its holdings to the database for resource sharing activities only and has limited use of existing application programs, as described in Exhibit B, Functionality by Membership Level. Patrons of the library are not included as part of the patron database of the ILS. Union listing members may not hold any office. The Union Listing standing group will select four representatives to be the group’s co-chairs. Each of the four representatives will have voting privileges at Delegates Assembly meetings. No alternates may be designated.

5. PRAIRIECAT Administrative Council. There is hereby established a board of directors which shall be called the PRAIRIECAT Administrative Council (“Council”). The Bylaws contain the details regarding membership on the Council, elections, meetings, duties, operation and voting of the Council.

6. Obligations/Duties of Members. The obligations and duties of Members are as follows:

- A. To comply with such other reasonable rules and regulations, including but not limited to the Bylaws, as amended, as may be established by PRAIRIECAT for the administration of the Agreement and ILS as well as all policies of PRAIRIECAT, as amended.

- B. To appropriate or budget annually its liabilities for participation in PRAIRIECAT and the ILS and to meet its obligations hereunder.
- C. To cooperate fully with any agent, employee, officer or independent contractor of PRAIRIECAT in any matter relating to the purpose and powers of PRAIRIECAT.
- D. To make payments promptly to PRAIRIECAT as established in the Bylaws and this Agreement.
- E. To execute any agreement or other documents with Vendors, such as a confidentiality agreement, required for operation of or participation in the ILS.
- F. To act promptly on all matters requiring approval by the Members and to not withhold such approval unreasonably or arbitrarily.
- G. To make its library materials available for interlibrary loan in accordance with the ILLINET Interlibrary Loan Code and to enter its collection into the ILS database.
- H. To take responsibility for purchasing and maintaining all equipment and telecommunications services necessary for access/connectivity to the PRAIRIECAT system. All such equipment must be compatible with PRAIRIECAT's system, as well as vendor and PRAIRIECAT guidelines.
- I. To acknowledge that the vendors of the ILS have or may have certain proprietary rights in connection with the ILS and to assume and accept responsibilities/liabilities related to any violation of said proprietary rights by its patrons or users.
- J. To take no action inconsistent with this Agreement as originally written or hereafter amended.
- K. To attend Delegates Assembly meetings (Fully Participating and Basic Online members and Union Listing representatives).

7. Powers and Duties of PRAIRIECAT. PRAIRIECAT may exercise any power, privilege, or authority, to perform and accomplish the purposes set forth in this Agreement and shall exercise such powers, privileges and authority through the PRAIRIECAT Administrative Council:

- A. To administer and supervise the ILS.
- B. To adopt Bylaws consistent with law and with this Agreement to govern its operation, which Bylaws shall include, among other things, provisions dealing with election of officers, meetings, voting,

operational services, committees, budgeting, assessment of fees and other policies.

- C. To employ or contract with agents, employees, vendors, independent contractors or other entities, including legal counsel, accountants and such other persons as may be necessary to provide any services required for the ILS or its implementation, to store any of the equipment required to carry out the services outlined in this Agreement and to accomplish the purposes of PRAIRIECAT.
- D. To purchase or lease equipment, machinery, or personal property necessary for the carrying out of the purpose of the ILS.
- E. To collect payments and assessments from Members.
- F. To procure insurance for the ILS against risks of loss or damage for an amount equal to the replacement cost of the equipment, subject to the usual conditions, stipulations and exceptions.
- G. To hold title to the ILS, except for any equipment held solely by a Member.
- H. To pass an annual budget.
- I. To carry out such other activities as are necessarily implied or required to carry out the purposes of the ILS.

8. Use of ILS. The Members will jointly determine the use of the ILS. PRAIRIECAT does not warrant or guarantee the ILS, nor shall PRAIRIECAT be liable for any damages resulting from the malfunction of the ILS.

9. LIMITATION OF LIABILITY/DAMAGES.

A. ANY SPECIFICATION, DESCRIPTION, OR OBJECTIVE IN THIS AGREEMENT CONCERNING THE OPERATION OF THE ILS IS A STATEMENT OF THE UNDERSTANDING OF THE PARTIES AS TO THE DESIGN AND SERVICE OBJECTIVES OF THE ILS, AND DOES NOT CREATE AN EXPRESS OR IMPLIED WARRANTY THAT THE ILS DOES OR WILL ALWAYS CONTINUE TO OPERATE AS DESCRIBED.

B. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PRAIRIECAT NOR ITS OFFICERS, ADMINISTRATIVE COUNCIL MEMBERS, EMPLOYEES OR AGENTS SHALL BE LIABLE TO OR THROUGH THE MEMBER FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO DIRECT (WITH THE EXCEPTION OF PERSONAL INJURY AND PROPERTY DAMAGE DIRECTLY CAUSED BY WILLFUL AND WANTON CONDUCT), INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUES OR FAILURE TO REALIZE EXPECTED

SAVINGS) SUSTAINED OR INCURRED IN CONNECTION WITH THE PERFORMANCE OR NONPERFORMANCE OF SERVICES UNDER THIS AGREEMENT, AND ANY AMENDMENTS THERETO, OR THE PROVISION, USE OR OPERATION OF THE ILS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT AND ANY AMENDMENTS THERETO, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

C. NEITHER PARTY TO THIS AGREEMENT, INCLUDING THEIR OFFICERS, ADMINISTRATIVE COUNCIL MEMBERS, EMPLOYEES AND AGENTS, SHALL BE LIABLE IN ANY WAY FOR DELAYS, FAILURE IN PERFORMANCE, LOSS OR DAMAGE DUE TO FORCE MAJEURE CONDITIONS OR CAUSES BEYOND SUCH PARTY'S REASONABLE CONTROL.

D. ANY ACTION IN LAW OR IN EQUITY ARISING FROM OR IN CONNECTION WITH ANY MATTER UNDER THIS AGREEMENT MUST BE BROUGHT WITHIN TWO YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED.

E. EXCEPT AS SET FORTH EXPRESSLY IN THIS AGREEMENT, NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY PRAIRIECAT.

F. THE TERMS AND CONDITIONS IN THIS SECTION 9 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10. Notices. All notices of claims or any other notice required to be given pursuant to this Agreement, shall be in writing, shall be sent by certified mail and shall be addressed to or to such address or such other parties as the Parties may from time to time designate by notice as provided herein:

PRAIRIECAT
c/o RAILS
220 W 23rd Ave
Coal Valley, IL 61240
Attention: PRAIRIECAT Chair

And to:
(Insert address and contact for Member)

Library name: _____

Address: _____

Attention: _____

11. Payments by Members – Assessments. Each Member shall pay all fees set forth on the PRAIRIECAT Annual Budget, Fee Schedule or any other costs and fees determined by the Members. Any Library joining PRAIRIECAT whose records must be migrated or entered into PRAIRIECAT must pay impact fees for joining PRAIRIECAT.

12. Rights of Members. Rights of each Member of PRAIRIECAT shall include the following:

- A. To enforce the obligations of PRAIRIECAT as set forth herein as a contractual obligation. This contract may be enforced in a court of law either by PRAIRIECAT itself or by any of its Members. The consideration for the obligations imposed herewith shall be based upon the mutual promises and agreements of the Members set forth herein.
- B. To participate on uniform and nondiscriminatory terms.

13. Amendments. The PRAIRIECAT Administrative Council may propose amendments to this Agreement at any time. The proposed amendment must be approved by a vote of at least two-thirds (2/3) of PRAIRIECAT Delegates Assembly Representatives.

14. Waiver. The waiver by any Library signing this Agreement or by PRAIRIECAT of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

15. Execution of Agreement. This Agreement may be executed in counterparts, each of which will be signed by one Member Library, and each separate Agreement and all such collectively constitute one original. Facsimile signatures shall be sufficient.

16. Financial Arrearages. In the event that a Member Library fails to meet any of its financial obligations, the Administrative Council may suspend participation of the Library and terminate integrated library services to the Library, including denial of access of the Library's computers to the database, until the Library makes payment. If such Member Library fails to make full payment within ninety (90) days after such termination of services, it shall be deemed to have voluntarily terminated and withdrawn from PRAIRIECAT, and shall be subject to the provisions of Section 18, with specific recognition of the continuing obligation of the Library to make payments, among any other payments due at the time of withdrawal, to the end of the PRAIRIECAT fiscal year in which the withdrawal occurs.

17. Assignment. Under no circumstances shall this Agreement be assigned by any party or be construed as one of agency, partnership, joint venture or employment between the Parties. The Parties shall each be solely responsible for the conduct of their respective officers, employees and agents in connection with the performance of their obligations under this Agreement.

18. Effective Date. Effective Date shall be the first day of the calendar month next following the month in which both the Member and the Delegates Assembly have duly approved and executed this Agreement or a substantially similar agreement. The contract shall be terminated at the end of the contract year, which is June 30.

19. Term and Termination. This contract shall be effective when signed by the Member and be in effect through June 30, 20___. After the initial contract period, the contract shall be automatically extended for successive one-year periods. Termination of contract requires notification to the Chair of the Delegates Assembly at least 180 days in advance of the next fiscal year. If the Agreement is terminated, the Member must pay all unpaid costs incurred up to and including the time of termination. The obligation to pay all such costs survives the termination of this Agreement. If the Member terminates the Agreement, the Member shall pay all costs incurred by PRAIRIECAT due to the Member's decision to leave PRAIRIECAT, including any work performed by PRAIRIECAT employees or agents after the termination of the Agreement. The process for withdrawal from PRAIRIECAT is outlined in the Bylaws.

20. Dissolution. PRAIRIECAT may be dissolved by a two-thirds (2/3) vote of the Delegates Assembly. If PRAIRIECAT dissolves, PRAIRIECAT will first offer title to all system hardware and software to any entity that is composed of at least 2/3 of all Delegates Assembly Members that had an executed agreement with PRAIRIECAT when the vote to dissolve was passed. If there is no such entity, Members shall have the right of first refusal regarding the purchase of all equipment, property and other assets of PRAIRIECAT and shall share in the proceeds, if any, in accordance with the Member's proportionate share of capital contributions, purchases, or balance on account. Surplus funds, if any, shall be distributed in the same manner.

21. Section Headings. The section headings inserted in this Agreement are for convenience only and are not intended to and shall not be construed to limit, enlarge or affect the scope or intent of this Agreement or the meaning of any provision hereof.

22. Validity and Savings Clause. In the event that any provision of this Agreement shall be declared by a final judgment of a court of competent jurisdiction to be unlawful or unconstitutional or invalid as applied to any Member, the lawfulness, constitutionality or validity of the remainder of this Agreement shall not be deemed affected thereby.

23. Governing Law. This Agreement shall be construed in accordance with the Constitution and laws of the State of Illinois.

IN WITNESS WHEREOF, the Library whose signature is set forth below, acting under the authority of its Governing Body, has caused this Agreement to be executed by its duly authorized officer. This Agreement shall be executed in several counterparts, each of which shall be signed by one Member Library, and each separate Agreement shall collectively constitute one original.

Name of Member: _____

BY: _____

(print name and title of representative authorized to execute this Agreement)

ATTEST:

BY: _____

(print name and title)

APPROVED THIS _____ DAY OF _____, 20__.

PRAIRIECAT:

BY: _____

(PrairieCat Chair)

APPROVED THIS _____ DAY OF _____, 20__.

Adopted by the PrairieCat Delegates Assembly on 10/6/10
Revised by the PrairieCat Delegates Assembly on 1/26/2011
Revised by the PrairieCat Delegates Assembly on 1/23/2013
Revised by the PrairieCat Delegates Assembly on 4/17/2013