

# A Model Membership Agreement for a Credit Clearing Service<sup>1</sup>

The following draft agreement is applicable to either a for-profit credit clearing service or to a nonprofit mutual credit clearing association. While this draft is worded in terms of the latter, the same provisions should apply to for-profit clearing services such as the commercial “barter” exchanges that have been proliferating for the past three decades. The terms highlighted in bold type are of particular relevance in providing safeguards and remedies for certain suboptimal, inappropriate, or exploitative practices that have, in the past, been prevalent in credit clearing services.

## The Mutual Credit Clearing Union (MCCU)

### Membership Terms, Conditions, and Agreement

This agreement is made and entered into on the date shown herein by and between The Mutual Credit Clearing Union—hereinafter referred to as either MCCU, “the Union,” or “the Exchange”—and the individual, corporation, partnership, or other entity (hereinafter referred to as the Member) who do mutually agree as follows.

#### 1. About These Terms

1.1 Nature of Terms: The terms set out in this agreement specify:

- (a) the basis upon which each Member is entitled to participate in the MCCU;
- (b) the rights and obligations of each party to the agreement, including the roles of, and limitations upon, the MCCU administration.

1.2 Alteration of Terms: MCCU may alter any of these terms (including the fees and charges payable) by giving notice to each Member. Any alteration will be effective from the date specified by MCCU, which date must not be earlier than 30 days from the date on which notice of the alteration is given.

1.3 No partnership: Nothing in these Terms creates any partnership, agency, or joint venture relationship between MCCU and any Member or between any two or more Members.

1.4 Definitions: Some words that are used in these Terms are defined in section 24.

#### 2. MCCU’s Role

2.1 The essential purpose of the MCCU is to facilitate trade among its members on a noncash basis. **Except as stated in section 2.3, MCCU’s role is that of a third-party record keeper and clearing agent.** The parties to any Transaction made through the Exchange are entirely responsible for its fulfillment and the quality or acceptability of the goods or services involved. The MCCU has no liability to either party in relation to the quality of the goods or services, timely delivery, prices, warranties, or commitments made by either party to the Transaction. Members are expected to exercise the same discretion that they would in undertaking a cash transaction.

2.2 Any disputes in relation to a Transaction are to be resolved between the parties to that Transaction. MCCU has no responsibility in relation to any such dispute, but it will provide for appropriate adjustments to be made to Members’ MCCU accounts where a request is made in accordance with the Operating Procedures.

2.3 **The MCCU may also transact business through the Exchange as a principal for its own account; however, to avoid any conflict of interest between the Exchange and its members, such**

**transactions will be strictly limited as follows:**

1. Transactions through the system account shall be limited to receiving service fee revenues from exchange Members for services rendered, and the disbursement of payments to Members for the purchase of services and goods necessary for system operations.
2. Any credit line allocated to the system account must be determined using the same criteria that are applied to other member accounts, as outlined in section 5 below. The MCCU shall have no special privileged access to credit within the Exchange.

**3. MCCU Clearing Accounts**

- 3.1 The MCCU will maintain a clearing account for each Member. The internal currency used in the Exchange is denominated in units called *VALs*. Credits and debits to clearing accounts are made in terms of *VALs*, which are not legal tender and have no value other than to enable Members to make purchases from other Members on a noncash basis in accordance with these Terms. Each *VAL* shall be valued at par with the official currency unit in the legal jurisdiction in which the MCCU is established, or in some other unit mutually agreed to by the members.
- 3.2 In no circumstances is MCCU, or any other person, obliged under these terms to redeem *VALs* for cash. However, **anyone wishing to buy or sell *VALs* for cash may do so at any rate of exchange that may be negotiated between the parties to the transaction.**
- 3.3 MCCU will credit to a Member's *VAL* account:
  - (a) the number of *VALs* received from each sale or supply made by that Member through the Exchange in accordance with these Terms; and
  - (b) any other amounts as may be provided for in these Terms or agreed between the Member and MCCU.
- 3.4 MCCU will debit from a Member's *VAL* account:
  - (a) the number of *VALs* paid for each purchase made by that Member through the Exchange in accordance with these Terms;
  - (b) the *VAL* component of the fees payable to MCCU by the Member in accordance with section 7;
  - (c) any other amounts as may be provided for in these Terms or agreed between the Member and MCCU.

**4. Authorization Of Transactions**

- 4.1 MCCU will credit a selling or supplying Member's *VAL* account only where the Transaction is authorized by MCCU. Any request by a Member for authorization of a Transaction must be made in accordance with the Operating Procedures.
- 4.2 MCCU will not authorize a Transaction if:
  - (a) at the time of the Transaction either party's right to engage in Transactions has been suspended, in accordance with section 14;
  - (b) the Transaction would result in the purchasing Member's credit limit being exceeded.
- 4.3 While MCCU will use all reasonable endeavors to ensure that its approval system is functioning properly at all times, it is unable to guarantee uninterrupted operation. MCCU excludes all liability to Members arising out of:
  - (a) any Transaction being improperly declined or improperly approved by MCCU; or
  - (b) any failure of MCCU to provide a prompt response to any request for authorization of a Transaction.

## 5. Credit Limits

- 5.1 Each Member agrees that MCCU is allowed to establish for each Member a line of credit on their VAL account (i.e., a maximum debit balance or “overdraft”), the amount of such credit lines being as MCCU, in its discretion, considers appropriate.
- 5.2 MCCU may at any time increase or reduce a Member’s credit limit, although it will not increase a Member’s credit limit beyond the level requested by the Member or beyond the maximum level determined according to section 5.3 below.
- 5.3 The line of credit (debit balance) on any account may not exceed a maximum determined as follows:
  1. Maximum credit lines (debit balances) will be determined according to each Member’s recent record of sales into the network, or the value of goods currently offered and available for sale within the Exchange, not upon the value of any nonliquid collateral that may be pledged as surety of contract.
  2. For each account, credit lines may not exceed one quarter of annual sales into the Network, based on the most recent twelve-month period (six-month period for those who have been members for less than one year).
  3. New members may be granted a minimum line of credit based on their sales history prior to membership but such credit lines may not exceed two months’ sales averaged over the past twelve months.
- 5.4 MCCU may at its discretion require a Member to provide a guarantee, cash deposit, or other security acceptable to MCCU as surety for the performance by the Member of its obligations under these Terms. Such security shall be used only to provide surety of contract, not to determine the amount of credit lines.
- 5.5 The maximum line of credit (debit balance) on the MCCU credit clearing account shall be determined according to the same criteria as applied to any other Member account, as outlined in section 5.3 above.

## 6. Commitments By MCCU

- 6.1 MCCU agrees to use its best efforts to:
  - (a) Encourage a wide range of businesses to become Members of the Exchange;
  - (b) **Recruit the companies or individuals that typically supply goods or services to existing Members;**
  - (c) Operate the Exchange in accordance with sound and ethical industry practice;
  - (d) Respond to queries from Members in a timely manner;
  - (e) Authorize (or decline, where appropriate) transactions between Members on a real-time basis;
  - (f) Maintain an accurate and up-to-date database of Members that can be accessed by Members during normal business hours. Every attempt will be made to provide continuous online access to this database via the Internet.
- 6.2 MCCU agrees to act in good faith toward each Member, **and avoid, as much as possible, any actions that would conflict with the interests of its members.**

## 7. Payment Of Fees

- 7.1 In consideration of MCCU performing services as specified in these Terms, each Member agrees to pay MCCU, **in a timely manner, all fees due as defined by its current fee schedule.** Such fees may include, but are not necessarily limited to:
  - (a) transaction fees on the Transactions (either sale or purchase) made by that Member through the Exchange (as a set percentage of the total transaction value);
  - (b) **initiation fees on new memberships;**

- (c) **annual membership fees;**
- (d) **fees associated with credit checks and assurance of lines of credit requested by the Member, at the rates applicable at the time of request.**

7.2 MCCU will send each member a monthly statement and invoice **showing all the transactions done in the previous month including the fees charged by MCCU.** Any cash amount owing to MCCU by the Member must be paid within fourteen days of receipt of that statement. Any fees that are payable in VALs will be deducted from the Member's VAL account by MCCU seven days after the date of the statement.

7.3 Direct debit: Each Member must provide MCCU with a direct debit authority for the cash payments referred to in the fee schedule, if required by MCCU.

7.4 Interest: If any sum owing to MCCU by a Member is not paid on the due date the Member shall pay MCCU interest at twice the prevailing prime rate on the outstanding sum from the due date for payment, until the date when payment is made in full.

## **8. Obligations Of Members**

8.1 Terms of Sale. Members of the Exchange shall offer their goods and services for sale to other Members at their prevailing and customary cash prices and accept VALs same as cash without any price discrimination.

8.2 Blended Trades. Blended trades shall be allowed only on transactions that exceed 1,000 VALs according to the following schedule:

If the amount of a single transaction is less than 1,000 VALs, seller must accept 100 percent of payment in VALs.

If the amount of a single transaction is between 1,000 VALs and 2,000 VALs, the buyer may be required to make partial payment in cash, but in no case shall the cash portion exceed 30 percent.

If the amount of a single transaction is between 2,000 VALs and 5,000 VALs, the buyer may be required to make partial payment in cash, but in no case shall the cash portion exceed 50 percent.

If the amount of a single transaction is greater than 5,000 VALs, the buyer may be required to make partial payment in cash, but in no case shall the cash portion exceed 70 percent.

8.3 Code of Conduct. Each Member agrees

- (a) to act in good faith towards MCCU and other Members;
- (b) to do nothing that is likely to diminish the good name or goodwill of MCCU or the Exchange;
- (c) to comply with all relevant laws when engaging in Transactions;
- (d) to comply with all relevant tax obligations;
- (e) to not use the name or any trademark of MCCU, except in a manner approved by MCCU.

8.4 Taxable Transactions. It is the obligation of each Member to pay any sales or value added taxes that may be due on sales made to other Members. MCCU is not responsible for any tax liability incurred by any of its Members.

## **9. Liability**

9.1 All liability of any kind of MCCU to any Member with respect to the services provided by it (whether arising under the Consumer protection laws, or any other enactment, or otherwise) is excluded to the fullest extent permitted by law.

## **10. Entire Agreement**

10.1 These Terms contain all of the terms relating to each Member's participation in the Exchange.

## **11. Waiver**

11.1 No exercise or failure to exercise or delay in exercising any right or remedy by MCCU will constitute a waiver by MCCU of that or any other right or remedy available to it.

## **12. Confidentiality And Publicity**

12.1 Terms and agreements: In the interests of transparency and the public interest, these Terms are to be considered public record and may be disclosed to any individual for any purpose.

12.2 Member's transaction and account information: MCCU will, to the best of its ability, maintain the confidentiality of Member's transactions and account information, except as follows:

- (a) If required by law, MCCU will disclose such information to government investigators and/or tax authorities.
- (b) MCCU may publish its membership directory online or otherwise, including Members' contact details.
- (c) MCCU, in the course of recruiting Members' suppliers, may divulge to said suppliers the identities of its Member customers.

## **13. Privacy**

13.1 MCCU will treat information regarding Members in accordance with MCCU's Privacy Policy and, where applicable, in accordance with the State and Federal privacy regulations.

## **14. Suspension**

14.1 MCCU may suspend a Member's ability to engage in Transactions if MCCU reasonably believes that the Member has breached any of its obligations under these Terms.

14.2 Any suspension under section 14.1 will be lifted when MCCU is reasonably satisfied that no breach has occurred, or that any breach that did occur has been remedied.

## **15. Termination Of Membership**

15.1 Termination on notice: A Member may cease to be a Member by giving five working days written notice to MCCU. MCCU may terminate a Member's membership by giving five working days written notice to the Member.

15.2 Termination by MCCU on default: MCCU may terminate a Member's membership with immediate effect by giving written notice to the Member:

- (a) if the Member has committed any material breach of these Terms; or
- (b) if the Member becomes insolvent, or a receiver or manager of any asset of the Member is appointed, or an order made or resolution passed for the liquidation of the Member's business.

## **16. Consequences Of Termination**

16.1 Upon termination of a Member's membership for any reason the Member must immediately pay to MCCU:

- (a) the cash equivalent of any debit balance remaining in the Member's VAL account; and
- (b) all charges that have accrued in accordance with section 7.

16.2 If MCCU reasonably believes that the Member is unable to pay their cash fees and/or that the Member may be insolvent, MCCU reserves the right to seize stock, goods, fittings, and fixtures to the value of all cash and VAL fees *plus* the Member's VAL account balance. MCCU can seize these goods immediately upon termination of the Member's account. For the purpose of seizing goods these shall be:

- (a) Valued at wholesale price.
- (b) MCCU shall return said goods only on the condition that the member meets their obligations as defined in 16.1 (a) and 16.1 (b).

16.3 MCCU may add the reasonable cost of recovery of any debts that require the assistance of a third-party debt collection agency to collect, to the total amount payable to MCCU.

## **17. Termination Of The Exchange**

17.1 If for any reason the MCCU ceases to operate each Member that has a debit balance in its VAL account must immediately pay to MCCU the cash equivalent of that debit balance. Any payments made pursuant to this section will be held in trust by MCCU and will be distributed prorata among the Members having credit balances in their VAL accounts.

17.2 Cessation of the Exchange's operations does not release any Member from liability to make any payment due to MCCU at the time the Exchange's operations cease.

## **18. Receipt Of Cash By MCCU**

18.1 Where a Member pays cash to MCCU in respect of any debit balance in that Member's VAL account MCCU will debit an equivalent number of VALs from its own MCCU VAL account, so that the payment has a neutral effect on the Exchange.

## **19. Taxes On Services**

19.1 Payments to be made by Members under this Agreement are exclusive of any taxes that may be levied, which must be paid by the person to whom the goods or services are provided.

## **20. Assignment**

20.1 No Member may assign its rights under these Terms. MCCU may by notice to the Members assign its rights under these Terms.

## **21. Partial Invalidity**

21.1 If any provision of these Terms or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of these Terms and their application will not be affected and will remain enforceable to the greatest extent permitted by law.

## **22. Third Parties**

22.1 Nothing in these Terms is intended to confer a benefit upon anyone other than MCCU and the Members.

## **23. Notices**

23.1 Service of notices: Any notice given pursuant to these Terms will be deemed to be validly given if personally delivered, posted, faxed, or e-mailed to:

- (a) in the case of a notice to MCCU, to the address set out below the signatures of this agreement or to such other address as MCCU may advise.
- (b) in the case of a notice to a Member, the address or facsimile number that is listed in MCCU's records as the address or facsimile number of that Member.

23.2 Time of service: Any notice given pursuant to this Agreement will be deemed to be validly given:

- (a) in the case of delivery, when received;

- (b) in the case of facsimile transmission, when sent provided that the sender has a facsimile confirmation receipt recording successful transmission;
- (c) in the case of mailing, on the second working day following the date of mailing; provided that any notice personally delivered or sent by facsimile either after 5:00 pm on a working day or on any day that is not a working day will be deemed to have been received on the next working day.

**24. Interpretation**

24.1 Definitions: In these Terms unless the context otherwise requires:

- 1. "Exchange" means the credit clearing union known as MCCU, which was established by and is operated by MCCU;
- 2. "Member" means a person, company, or organization that has applied to become a member of the exchange and whose application has been accepted by MCCU;
- 3. "Operating Procedures" means the procedures applicable from time to time relating to the operation of the Exchange, which are set out on the MCCU Website;
- 4. "MCCU" means MCCU the Mutual Credit Clearing Union;
- 5. "Terms" means these Terms and Conditions of Membership of the MCCU;
- 6. "Transaction" means the supply of goods and/or services from one Member to another made through the Exchange in accordance with these Terms;
- 7. "working day" means a day (other than a Saturday, Sunday, or legal Holiday) on which chartered banks are normally open for business in the jurisdiction in which MCCU has its headquarters;
- 8. "Blended Trade" means a transaction in which payment is rendered partly in VALs and partly in cash;
- 9. "Fee schedule" means the schedule of fees established by MCCU and charged to Members and others who receive its services.

24.2 General construction: In interpreting these Terms the following rules must be applied unless the context otherwise requires:

- (a) Headings to sections are for reference only and are not an aid in interpretation.
- (b) References to statutory provisions will be construed as references to those provisions as they may be amended or reenacted or as their application is modified by other provisions from time to time.
- (c) References to sections are to sections of these Terms.
- (d) References to cash are to the official currency in the place in which MCCU has its headquarters.
- (e) Any date that is not a working day, upon or by which anything is due to be done by any party, will be deemed to be a reference to the next working day.
- (f) Words importing the plural include the singular and vice versa and words importing gender import all genders.
- (g) Any obligation not to do something will be deemed to include an obligation not to suffer, permit, or cause that thing to be done.

Date: \_\_\_\_\_  
 Member name: \_\_\_\_\_  
 Member mailing address: \_\_\_\_\_  
 Member phones: \_\_\_\_\_  
 Member fax: \_\_\_\_\_  
 Member e-mail: \_\_\_\_\_  
 Member Website: \_\_\_\_\_

Member signature: \_\_\_\_\_

Member agent: \_\_\_\_\_, Title: \_\_\_\_\_

For MCCU

MCCU agent: \_\_\_\_\_, Title: \_\_\_\_\_

MCCU agent signature: \_\_\_\_\_

---

<sup>1</sup> This draft agreement, while mainly original, has adapted the topical and hierarchical structure of an agreement of Ozone Barter Company, supplied by Daniel Evans.