

HOMELESS MANAGEMENT INFORMATION SYSTEM AGENCY PARTICIPATION AGREEMENT

This Agency Participation Agreement (the "Agreement") is made and entered into effective as of <<Date>> (the "Effective Date"), by and between All Chicago Making Homelessness History, an Illinois not for profit corporation located at 651 W Washington, Suite 504, Chicago, IL 60661 ("All Chicago"), and <<agency>> located at <<Address>> (the "Agency") regarding access and use of the Chicago Homeless Management Information System (the "HMIS").

RECITALS

WHEREAS, HMIS is a data collection tool designed to record and store client-level information on the characteristics and service needs of persons at risk of, or currently experiencing homelessness within a community.

WHEREAS, in compliance with all state and federal requirements regarding client/consumer confidentiality and data security, the Homelessness Management Information System ("HMIS") is designed to collect and deliver timely, credible, quality data about services and homeless persons or persons at risk for being homeless (each a "Client").

WHEREAS, All Chicago desires to grant a revocable right to Agency to use and access the HMIS and Agency desires to obtain such a right upon the terms and conditions described herein.

NOW, THEREFORE, in consideration of the premises and mutual promises hereinafter set forth, Agency and All Chicago mutually agree as follows:

1. **Term.** The term of this Agreement begins on the Effective Date and continues until terminated in accordance with Section 5.
2. **Precondition to HMIS Access and Use/Revocable Use.** As a precondition to Agency receiving access to the HMIS, Agency agrees to abide by and comply with the terms and conditions of this Agreement, All Chicago's standard Privacy Policy (the "Privacy Policy"), and any and all operating procedures of All Chicago ("Operating Procedures"). Agency shall abide by the terms of the Privacy Policy and Operating Procedures as amended from time to time by All Chicago in its sole discretion. Subject to Agency's compliance with the foregoing preconditions, All Chicago shall grant a revocable right to Agency to use and access the HMIS with such access rights as determined by All Chicago in its sole discretion. In accordance with applicable laws, All Chicago reserves the right to charge Agency a fee for the services provided hereunder. If All Chicago implements a fee, All Chicago shall provide Agency with 30 days prior written notice of the fee and the Agency agrees to pay the fee in accordance with the payment terms set forth by All Chicago.
3. **Duties of All Chicago.**
 - a. All Chicago shall provide, to the extent reasonably practical (as determined in All Chicago's sole discretion), support, assistance, direction, guidance, resources, and training to Agency to facilitate and support the use of the HMIS and Agency's compliance with the responsibilities and obligations set forth herein. All Chicago will provide Agency with reports from time to time with respect to data that Agency enters into HMIS.

- b. All Chicago shall make available to Agency the most current versions of the applicable documents, including various training guides, as are reasonably necessary, as determined by All Chicago in its sole discretion, for Agency to access and use the HMIS.
- c. All Chicago may from time-to-time, in its sole discretion, solicit Agency input into matters related to the use and access of the HMIS by Agency.
- d. All Chicago shall provide access to the HMIS through the Community Services application (previously "ServicePoint"), an Internet-based, Software-as-a Service (SaaS) system provided by WellSky (hereafter referred to as the "Vendor"). All Chicago shall be responsible for procuring licenses to the HMIS for the staff, volunteers, and other personnel at or associated with Agency who shall use and access the HMIS (each such person a "User", and collectively the "Users"), and shall administer the management of these licenses based on all applicable license management protocols.
- e. As between All Chicago and Agency, all worldwide right, title and interest in and to any and all of the hardware, software and materials licensed, provided or purchased under the agreement with Vendor are owned at all times by All Chicago. Agency is being granted a revocable right to use the HMIS and Agency acknowledges and agrees that Agency shall have no ownership right in HMIS or the data contained therein, and that All Chicago will use any data contained within HMIS in accordance with the Privacy Policy.
- f. All Chicago shall make available to Users, as determined by All Chicago: (i) training on the use of the HMIS; (ii) training on client confidentiality, security, and privacy requirements; and (iii) high-level technical support and assistance (i.e., general troubleshooting, workflow guidance and assistance with report generation).
- g. All Chicago shall be responsible for interacting with the Vendor, and shall require that the Vendor provide data backup, disaster recovery services, system maintenance, database level and communication encryption, and regularly scheduled product upgrades as mutually agreed upon by Vendor and All Chicago.
- h. For the avoidance of doubt, All Chicago does not require or imply that Agency services must be contingent upon a Client's participation in the HMIS database. Agency always has the discretion to provide services to Clients regardless of HMIS participation, provided that the Clients would otherwise be eligible for the services in accordance with Agency requirements.

4. Duties of Agency

a. General

- i. At all times, Agency shall, and shall cause its officers, directors, employees, agents, committee members and volunteers, to comply with the terms and conditions of this Agreement.
- ii. At all times, Agency shall comply with any and all applicable local, state, and federal laws, rules, regulations, ordinances, interpretive letters and other official releases of or by any governmental agency or authority (including, without

limitation, HUD), decrees, orders and codes (including any requirements for permits, certificates, approvals and inspections), as the same are promulgated, supplemented and/or amended from time to time(collectively, "Laws").

- iii. Agency cannot and shall not attempt to legally bind All Chicago to any agreement without All Chicago's express prior written consent.

b. Confidentiality and Data Access

- i. Agency shall comply with any and all applicable Laws regarding protection of Client confidentiality and privacy with respect to the data and information provided by Clients and the information accessible to Agency in HMIS.
- ii. Agency shall provide a verbal explanation of the purpose of the HMIS and the terms of consent to each Client and shall arrange for a qualified interpreter or translator in the event that a Client is not literate in English or has difficulty understanding the consent form.
- iii. Agency shall not solicit or input information from Clients into the HMIS unless it is essential to provide services, or to conduct evaluation or research, management reporting and operational support.
- iv. Agency shall ensure that all Users shall sign and follow the HMIS End User Policy, HMIS Code of Ethics, and any other required documents provided by All Chicago, as such documents may be amended from time to time.
- v. Agency shall ensure that the data and information entered or input into the HMIS is true and valid and accurately represents information on the Clients receiving services from Agency. Agency shall not knowingly enter false or misleading data under any circumstances. Agency shall be responsible for and shall ensure that each Client has executed a Client Consent for Data Sharing (Release of Information).
- vi. Agency shall ensure that data from HMIS is not made visible to any visitors or unauthorized users (including, but not limited to, by keeping all input screens dark when not in use and having no printed or screen shots of the data in printers (if applicable) or on desktops).
- vii. Agency acknowledges and agrees that ensuring the confidentiality, security and privacy of any data and information downloaded from the HMIS by Agency is strictly the responsibility of Agency.
- viii. Agency shall retain access to identifying and statistical data on their Clients. However, Agency's access to data on Clients within HMIS that Agency does not serve shall be restricted in such manner as determined by All Chicago in its sole discretion.
- ix. Agency agrees that it shall (a) maintain the data in strict confidence; (b) use at least the same degree of care in maintaining the secrecy of the data as Agency uses in maintaining the secrecy of its own proprietary, secret, or confidential

information, but in no event less than a reasonable degree of care; and (c) use the data only for the purposes set forth in this Agreement.

c. HMIS Use and Compliance

- i. Agency shall follow, comply with and enforce this Agreement and all of Agency's obligations contained herein.
- ii. Agency shall utilize, and shall ensure that Users utilize, the HMIS for authorized purposes only.
- iii. HMIS User passwords and other access codes are highly confidential and assigned specifically to the User. It is Agency's responsibility to ensure that Users shall never compromise the HMIS and Client confidentiality by sharing the assigned passwords and access codes at any time.
- iv. Agency shall not use the HMIS with intent to defraud federal, state, or local governments, individuals or entities, or to conduct any illegal activity. Agency shall not include or input profanity, offensive or discriminatory language in the HMIS.
- v. The transmission of any data or other materials in violation of any Laws is prohibited. This includes, but is not limited to, copyright-protected material, material legally judged to be threatening or obscene, and material considered protected by trade secrets.
- vi. Agency shall consistently enter information into the HMIS and shall strive for real-time data entry. Timeline for data entry for each of the programs shall strictly follow the guidelines provided by All Chicago.

d. Data Breach

- i. If Agency has knowledge of any Security Breach, it shall: (a) notify All Chicago immediately (which in no event shall be longer than twelve (12) hours from the time Agency becomes aware of the Security Breach); (b) take prompt and appropriate action to prevent further Security Breaches and; (c) cooperate with the All Chicago and any government authorities with respect to the investigation and mitigation of any such Security Breach; and (d) take such other actions as All Chicago may reasonably direct to remedy such Security Breach, including, if required under any federal or state law, providing notification to the affected individuals. Agency will cooperate with any investigation relating to any Security Breach that is carried out by, or on behalf of, All Chicago and with any investigation relating to a Security Breach carried out at the direction of any relevant governmental, regulatory, quasi-regulatory, or governing body, providing any information or material in its possession or control and implementing new security measures to the extent reasonably requested by All Chicago. "Security Breach" means any suspected or actual unauthorized use of, disclosure of, or access to the HMIS, the data, physical intrusion of facilities, or theft, misappropriation or loss of documents or hardware or media that accesses the HMIS.

- ii. In the event of a Security Breach, All Chicago may discontinue Agency's access or connectivity to the data and/or the HMIS, as determined in All Chicago's sole discretion. Under no circumstances will such discontinuance of access or connectivity constitute a breach or default by All Chicago of this Agreement.
- iii. From time-to-time and upon reasonable notice, All Chicago and its auditors (internal and external) and governmental regulators will have the right to inspect, examine and audit the systems, records, data, practices and procedures of Agency to verify the integrity of the data, the access and use of the HMIS, and Agency's compliance with the data privacy, data protection, confidentiality and security requirements of this Agreement.

5. **Termination Rights; Remedies for Agency Breach**

- a. **Right to Suspend.** All Chicago may suspend or terminate Agency's access to the HMIS, at All Chicago's sole option, upon notice to Agency, if Agency breaches or is suspected to have breached any term or condition of this Agreement and such suspension or termination will continue until the applicable issue is resolved to All Chicago's satisfaction, which may include Agency completing a corrective action plan.
- b. **Termination for Convenience.** Each of All Chicago and Agency has the right to terminate this Agreement and its obligations under this Agreement at any time and for any reason upon thirty (30) days prior written notice to the other party.
- c. **Termination for Breach.** In the event a party materially breaches any term or condition of this Agreement or any of its obligations under this Agreement, and such breach has not been cured within thirty (30) days of receipt of written notice of such breach from the non-breaching party, then the non-breaching Party shall have the right to terminate this Agreement and its obligations under this Agreement.
- d. **Effect of Termination.** Upon any termination of this Agreement, Agency shall return to All Chicago, or at All Chicago's option, Agency shall destroy, all items and materials of All Chicago's confidential or proprietary information then in Agency's possession or control and, upon request, shall certify in writing to All Chicago that it has complied with the foregoing. All Chicago shall not be liable to Agency or any third party for All Chicago's suspension or termination of Agency's access to, or right to use, the HMIS as such termination or suspension is authorized under this Agreement. Upon the effective date of termination of this Agreement for any reason, whether by Agency or All Chicago, (i) Agency's right to access and use the HMIS shall immediately cease, (ii) Agency and its Users' access to the HMIS will terminate and (iii) Agency shall cease accessing and using the HMIS and All Chicago may take such actions to preclude such access and use.
- e. **Injunctive Relief.** It is specifically agreed by All Chicago and Agency that monetary damages would not adequately compensate All Chicago for a breach of this Agreement by Agency, that irreparable harm shall result to All Chicago and that All Chicago has no adequate remedy at law for such a breach. Therefore, this Agreement shall be specifically enforceable, and any breach or threatened breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order and All Chicago shall be entitled to appropriate injunctive relief. Further, each party hereto waives any claim

or defense that there is an adequate remedy at law for any breach or threatened breach hereof. This provision shall be effective notwithstanding the breach of any agreement or understanding between All Chicago and Agency.

6. Warranties; Limitation of Liability.

- a. Limited Agency Warranty.** Agency represents and warrants that: (i) it has the full right, power and authority to execute, deliver and perform the terms of this Agreement and to bind itself and all necessary action, approvals and consents have been duly taken or obtained to authorize such execution, delivery and performance; and (ii) it is not subject to any restriction, agreement, law, judgment or decree which would be prohibited or violated by the execution and delivery hereof or by the consummation of the transactions contemplated herein.
- b. No Other Warranties.** ALL CHICAGO DOES NOT WARRANT THAT ACCESS TO OR USE OF THE HMIS IS OR WILL BE UNINTERRUPTED OR ERROR FREE. AGENCY ACKNOWLEDGES AND AGREES THAT THE HMIS (AS WITH TECHNOLOGY GENERALLY), MAY HAVE ERRORS BUGS AND MAY ENCOUNTER UNEXPECTED TECHNICAL PROBLEMS. ACCORDINGLY, FROM TIME TO TIME AND AT ANY TIME, AGENCY MAY EXPERIENCE DOWNTIME AND ERRORS IN THE OPERATION, FUNCTIONALITY OR PERFORMANCE OF THE HMIS.
- c. Indemnification.** Agency, at all times, will indemnify, defend and hold All Chicago harmless from any damages, liabilities, claims, and expenses, including reasonable attorney's fees, that arise out of or relate to:
 - i. liabilities, damages or injuries to Agency, Users or another party arising from the access or use of the HMIS;
 - ii. any acts, omissions, neglect, or fault of Agency or its Users, agents, employees, licensees, or Clients;
 - iii. Agency's or any User's failure to comply with any Laws applicable to it or the conduct of its business;
 - iv. any loss or damage resulting in the loss of data due to delays, non-deliveries, deliveries in error, or service interruption caused by All Chicago or Vendor, by Agency's or any member agency's negligence or errors or omissions;
 - v. any force majeure events or natural disasters or technological difficulties; and/or
 - vi. any other issue or cause not under the reasonable control of All Chicago.
- d. Limitation of Liability.** ALL CHICAGO SHALL NOT BE LIABLE FOR ANY DAMAGES OR LIABILITIES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ALL CHICAGO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES OR LIABILITIES ARISING OUT OF THE ACCESS OR USE OF THE HMIS AND/OR THE DATA CONTAINED THEREIN.

7. General Terms

- a. Notices.** Whenever, under the terms of or in connection with this Agreement, any notice, consent, approval, authorization or other information is proper or required to be given by either party, such notice, consent, approval, authorization or other information shall be in writing and shall be given or made by reputable overnight courier with documentation of receipt to the intended recipient thereof or by registered or certified mail, return receipt requested, and with all postage prepaid, to the address set forth in the preamble of this Agreement, or to such other address for either party as may be supplied by notice given in accordance herewith.
- b. Amendment; No Waiver.** This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both parties. No failure or delay of All Chicago in any one instance to exercise any remedy or power given it herein or to insist upon strict performance by Agency of any obligation imposed on it herein shall constitute a waiver or a modification of the terms hereof by All Chicago or of any right it has herein to demand strict compliance with the terms hereof by Agency in any other instance. All of the remedies permitted or available to All Chicago under this Affiliation Agreement, or at law or in equity, shall be cumulative and not alternative and the exercise of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.
- c. Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provisions shall continue in full force and effect.
- d. Force Majeure.** All Chicago shall not be liable for any failure or delay in performance under this Agreement due to fire, explosion, earthquake, storm, flood or other weather; unavailability of necessary utilities or raw materials; Internet service provider failures or delays, or denial of service attacks; war, civil unrest, acts of terror, insurrection, riot, acts of God or the public enemy; strikes or other labor problems; any law, act, order, proclamation, decree, regulation, ordinance, or instructions of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by All Chicago of this Agreement); or any other event beyond the reasonable control of the party whose performance is to be excused.
- e. Entire Agreement.** This Agreement, including all Order(s), Statement(s) of Work, and Exhibits to this Agreement, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.
- f. Assignment.** Neither party shall assign, transfer, or convey any of its duties or obligations or rights hereunder without first obtaining the prior written consent of the other party.
- g. Relationship of the Parties.** The parties hereto acknowledge and agree that they are at all times acting and performing as independent contractors with respect to the subject matter of this Agreement. At no time shall Agency be considered an agent, employee, partner, or joint venture of All Chicago.

- h. Counterparts, Facsimile and E-mail Transmission.** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement. The parties may sign and deliver this Agreement by facsimile transmission, or by e-mail with attached scanned signature page image. Each of the parties agree that they shall have the same force and effect as delivery of original signatures and that each of the parties may use such signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.

[Signature Page Follows]



IN WITNESS WHEREOF, this Agency Partnership Agreement is effective as of the Effective Date

**ALL CHICAGO MAKING HOMELESSNESS
HISTORY**

<<Agency>>

Name: Carolyn Ross

Name: _____

Signature: _____

Signature: _____

Title: President and CEO

Title: _____

Date: _____

Date: _____