

**SANTA CLARA COUNTY HMIS
PARTNER AGENCY PRIVACY AND DATA SHARING AGREEMENT
BY AND BETWEEN
COUNTY OF SANTA CLARA
AND**

The Santa Clara County Homeless Management Information System (“SCC HMIS”) is a shared database and software application which confidentially collects, uses, and shares client-level information related to homelessness in Santa Clara County. On behalf of the Santa Clara County Continuum of Care (“CoC”), SCC HMIS is administered by the County of Santa Clara (“County”) in a software application called Clarity Human Services (“Clarity”), a product of Bitfocus, Inc. (“Bitfocus”). The County also contracted Bitfocus to serve as the System Administrator for SCC HMIS.

This Partner Agency Privacy and Data Sharing Agreement (the “Agreement”), dated _____, (the “Effective Date”), and entered into by and between the County and _____ (the “Partner Agency,” or simply the “Agency”), governs access to and use of the SCC HMIS by the Partner Agency.

I. Introduction

Client information is collected in the SCC HMIS, and shared with housing and services providers (each, a “Partner Agency,” and collectively, the “Partner Agencies”), which include community-based organizations and government agencies. Partner Agencies use the information in SCC HMIS to: improve housing and services quality; identify patterns and monitor trends over time; conduct needs assessments and prioritize services for certain homeless and low-income subpopulations; enhance inter-agency coordination; and monitor and report on the delivery, impact, and quality of housing and services.

Subject to the direction of the County, in its role as HMIS Lead, Bitfocus will act as the SCC HMIS System Administrator and Software as a Service (“SaaS”) provider, and will assume responsibility for overall project administration; hosting of the SCC HMIS technical infrastructure; and restricting or allowing access to the SCC HMIS to the Partner Agencies in accordance with the direction of the County.

II. Confidentiality

- A. The Agency will comply with all applicable Federal and State confidentiality laws and regulations that protect client records, and the Agency will only enter information into the SCC HMIS and/or release confidential client records to authorized agents and representatives and with informed consent in a writing signed by the client, or the client’s guardian, unless otherwise provided for in the regulations or laws. For purposes of clarity, “client” refers to anyone who receives services from the Agency

and “guardian” refers to one legally in charge of the affairs of a minor or of a person deemed incompetent. For convenience of reference, future references in this Agreement to a client include reference to any guardians of a client.

- B. The Agency will comply with all state and federal laws regarding the privacy of medical, mental health, and substance abuse treatment information, including but not limited to the following:
 - 1. The Health Insurance Portability and Accountability Act, 45 CFR Parts 160, 162, and 164 (“HIPAA”);
 - 2. The Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), Pub. L. 111-5, Div. A, Title XIII, § 130001 et seq., Div. B, Title IV, § 4001 et seq., Feb. 17, 2009, 123 Stat. 226, 467, 42 U.S.C.A. § 300ii, et seq., and 4 U.S.C.A. § 17901, et seq.;
 - 3. California Welfare and Institutions Code section 5328 et seq.;
 - 4. California Evidence Code section 1010 et seq.; and
 - 5. Code of Federal Regulations, at 42 CFR Part 2.
- C. The Agency will provide a written explanation of the SCC HMIS to all clients and will provide all forms in English and any other languages provided by the County.
- D. The Agency will not enter client information into the SCC HMIS unless it is necessary to give effect to the purposes described in Section I of this Agreement.
- E. The Agency will not disclose any confidential information contained in the SCC HMIS to any participating Partner Agency, outside organization, or individual without (i) obtaining informed consent in a writing signed by the client and (ii) taking reasonable steps to ensure that Partner Agency authorized agents and representatives (each, an “SCC HMIS End User,” or simply an “End User”) have signed and executed applicable End User Agreements, unless otherwise permitted by relevant regulations or laws.
- F. The Agency is encouraged to seek its own legal advice in the event that a non-participating agency (i.e., an agency that is not a participating Partner Agency) requests identifying confidential client information.
- G. The Agency must maintain appropriate documentation of informed client consent, in writing and signed by each client, to participate in the SCC HMIS. Only the standard, County-issued Client Consent to Data Collection and Release of Information form may be used. All documentation must be provided to the County within ten (10) days upon request.
- H. If a client does not consent in writing to the inclusion of even basic identifying client information and non-confidential service data into SCC HMIS, then such information cannot be entered into the SCC HMIS.
- I. The Agency will use the Client Consent to Data Collection and Release of Information form, describing how client information may be collected, used, and released by the County and the CoC in the administration of the SCC HMIS. The

County, Bitfocus, or their contractors may conduct periodic audits to monitor compliance with informed consent standards. However, Partner Agencies bear the primary responsibility for monitoring compliance with these standards.

- J. The Agency will adopt the HMIS Client Grievance Procedures recommended by the County, or to add them as an addendum to its existing client grievance procedures.
- K. The Agency will adopt the Privacy Statement recommended by County, or add the relevant terms to its existing privacy notice or statement, which describes policies and procedures for safeguarding confidential client information.
- L. The Agency understands that provision of services by the Agency is not and cannot be contingent upon a client's participation in the SCC HMIS, and that nothing in the County's policies, procedures, forms, agreements, or other documentation shall be construed to require or imply otherwise.
- M. Agency shall be responsible for complying with all SCC HMIS policies and procedures, and for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of the data from SCC HMIS to which Agency has access. This includes protection against any anticipated threats or hazards to the security or integrity of SCC HMIS data, and protection against unauthorized access to or use of SCC HMIS Data that could result in substantial harm or inconvenience to County or any client or SCC HMIS user.
- N. Agency shall take appropriate action to address any incident of unauthorized access to SCC HMIS, including addressing and/or remedying the issue that resulted in such unauthorized access, notifying County immediately of any incident of unauthorized access to County Data, or any other breach in the Agency's security that materially affects County or SCC HMIS; and be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions hereof. Should confidential and/or legally protected County Data be divulged to unauthorized third parties, Agency shall be responsible for complying with all applicable federal and state laws and regulations and shall be solely responsible for the costs associated with any and all activities and actions required.
- O. The Agency and Bitfocus, as SCC HMIS System Administrator, understand that they are custodians of data and not owners of data.
- P. If this Agreement is terminated, the County and all participating Partner Agencies maintain their rights to the use of all client information previously entered into the SCC HMIS, subject to the terms of this Agreement and other applicable rules, regulations, and agreements.
- Q. Upon any such termination of this Agreement, the Agency may request and receive one export copy of all data entered by it into the SCC HMIS from the Effective Date up to the date of termination. If such a copy is requested, the Partner Agency will be responsible for reimbursing the County for the costs associated with producing the report.

III. Data Entry and/or Use

- A. The Agency will adopt and comply with the most recent versions of the HMIS Standard Operating Procedures and the HMIS Governance Charter recommended by the County.
- B. If a client has previously provided written consent in a signed writing to one or more Partner Agencies to collect, use, and release her or his information, and the client subsequently chooses to revoke such consent from one or more such Agencies, the Agency to which such choice is expressed will immediately provide the written revocation of consent to Bitfocus at the following address:

Bitfocus, Inc.
ATTN: SCC HMIS
9101 W. Sahara Ave. #105-158
Las Vegas, NV 89117

Consent may be revoked verbally for records pertaining to drug/alcohol treatment or mental health treatment. If consent is revoked verbally to the Agency, the Agency will inform Bitfocus of such revocation immediately.

Partner Agencies understand that they are prohibited from penalizing or threatening to penalize clients for either revoking their previously provided written consent or requesting that their information be held in the strictest confidence.

- C. The Agency will avoid any misrepresentations related to client information in the SCC HMIS (including, without limitation, that the Agency will ensure that its authorized agents and representatives will not purposefully enter inaccurate information on any records).
- D. The Agency will enter data into the SCC HMIS in a consistent and timely manner.
- E. Discriminatory comments based on race, ethnicity, ancestry, skin color, religion, sex, gender identity, sexual orientation, national origin, age, familial status, or disability are not permitted in the SCC HMIS and will subject a user or Agency to immediate suspension.
- F. Offensive language and profanity are not permitted in the SCC HMIS.
- G. The Agency will utilize the SCC HMIS for business purposes only, and specifically, to give effect to the purposes described in Section I of this Agreement.
- H. The Agency will utilize the SCC HMIS as part of the CoC's Coordinated Assessment system in accordance with the CoC's Policies and Procedures. Use of SCC HMIS for Coordinated Assessment includes, but is not limited to, entering data from the triage assessment survey recommended by the County in order to place clients into the community queue for prioritization in housing programs, and accepting referrals for clients from the community queue.
- I. The Agency recognizes County as the HMIS Lead to be the decision-making and direction-setting authority regarding the SCC HMIS, including, without limitation, with regard to process updates, policy and practice guidelines, data analysis, and software or hardware upgrades.

- J. The Agency will designate a staff member to attend SCC HMIS Agency Administrators meetings regularly, and the Agency understands that Bitfocus, as the agent of County, will be responsible for coordinating SCC HMIS Agency Administrator activities subject to the direction of the County as the HMIS Lead.
- K. The Agency may report non-identifying client information from SCC HMIS regarding the services provided by the Agency for funding, auditing, or planning purposes. If the Agency wishes to provide information from SCC HMIS beyond information related solely to services provided by the Agency, it must first inform and receive approval from County as the HMIS lead.
- L. The Agency will report only non-identifying information, and only information about services provided by the Agency, in response to requests from the SCC HMIS unless otherwise required by law. Any other requests for information from or related to HMIS should be sent to Bitfocus and County.
- M. The Agency will not use the SCC HMIS in violation of any federal or state law, including, but not limited to, copyright, trademark, and trade secret laws, as well as laws prohibiting the transmission of material which is threatening, harassing, or obscene.
- N. The Agency will not use the SCC HMIS to defraud federal, state, or local governments, or individuals or agencies, or to conduct illegal activity.
- O. The Agency will not share assigned passwords and access codes for the SCC HMIS with any Partner Agency or other entity or individual.
- P. The Agency will exercise due diligence in its use of the SCC HMIS and will not take any action that results in the corruption of the SCC HMIS or the inappropriate release of client information, and the Agency expressly accepts responsibility for any liability and/or other damages its use of the SSC HMIS may cause to the County or clients.
- Q. The Agency will not alter or over-write information entered by a Partner Agency with the exception of basic demographic information if that data has not been entered or was found to be incorrect.
- R. The Agency will comply with the requirements of the most recent versions of the HMIS Data Standards Manual, HMIS Data Dictionary, and other HMIS regulations issued by the U.S. Department of Housing and Urban Development (“HUD”).

IV. Technical Administrator and Security Officer

- A. The Agency will comply with the SCC HMIS Standard Operating Procedures and the SCC HMIS Security Plan. Each HMIS Partner Agency must also designate a technical administrator (the “Partner Agency Technical Administrator”) and a security officer (the “Partner Agency Security Officer”) to fulfill the responsibilities

detailed in the SCC HMIS Partner Agency Technical Administrator and Security Office Agreement.

- B. The Partner Agency must perform a background check on any End User:
 - 1. Designated as a Partner Agency Technical Administrator,
 - 2. Designated as a Partner Agency Security Officer, or
 - 3. Granted administrator-level access in SCC HMIS.

Such background check must be completed and the results approved by the Partner Agency Executive Director before the End User is (i) granted with a Technical Administrator or Security Officer title, or both, as applicable, and (ii) granted administrator-level access in SCC HMIS. The results of the background check must be retained by the Partner Agency in the End User's personnel file and must be provided to the County upon request.

V. Reports

- A. The Agency understands that it will have full access to all identifying client information and statistical information it has entered into SCC HMIS and may have access to additional information on those clients entered by other Partner Agencies.
- B. The Agency understands that access to information on clients it does not serve will be limited or unavailable.
- C. The Agency understands that before non-client-identifying system-wide aggregate information collected by the SCC HMIS is released to participating Partner Agencies or to their auditors or funders, it must be authorized by the County as the HMIS Lead.
- D. The Agency will annually provide a written report Bitfocus with up-to-date information on all current End Users, as well as the names of former End Users who no longer have access to the SCC HMIS.

VI. Insurance and Indemnification

The Agency shall maintain insurance in accordance with the County's standard insurance requirements set forth in Exhibit B-2, which is attached hereto and incorporated by this reference. The indemnification provisions in Exhibit B-2 shall apply to this Agreement.

VII. Standard Terms and Conditions

- A. This Agreement is the complete and exclusive statement of agreement between the parties, and it supersedes all prior agreements, oral or written, relating to the subject matter of this Agreement.
- B. Neither party shall have the right to assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party.
- C. This Agreement shall remain in force until revoked in writing by either party with thirty (30) days' advance written notice. Notwithstanding the foregoing, if there is credible evidence regarding potential or actual breach of this Agreement and the nature of the breach threatens the integrity of the SCC HMIS, the County as the HMIS Lead will have the right to immediately suspend or restrict the access rights of the breaching party to the SCC HMIS pending investigation and resolution of the matter to the extent reasonably required to protect the integrity of the system.
- D. This Agreement may be amended or modified only by a written agreement signed and executed by both parties.
- E. This Agreement is made for the purpose of defining and setting forth the rights and responsibilities of the County as the HMIS Lead, Bitfocus as an agent of the County, and the Agency. It is made solely for the protection of the County, Bitfocus, the Agency, and their respective heirs, personal representatives, successors, and assigns. No other individual or entity shall have any rights of any nature under this Agreement or by reason hereof. Without limiting the generality of the preceding sentence, no End User of the SCC HMIS in her or his capacity as such and no current, former, or prospective client of any Partner Agency shall have any rights of any nature under this Agreement or by reason hereof.
- F. Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.
- G. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

PARTNER AGENCY

BY: _____ [NAME, TITLE]
Date

ADDRESS:

COUNTY OF SANTA CLARA

BY: _____ Date: _____
Ky Le
Director
Office of Supportive Housing

ADDRESS:

County of Santa Clara
Office of Supportive Housing
3180 Newberry Drive, Suite 150
San Jose, CA 95118

Approved as to Form and Legality:

BY: _____ Date: _____
Tony LoPresti
Deputy County Counsel

INSURANCE REQUIREMENTS FOR
STANDARD CONTRACTS ABOVE \$100,000

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

EXHIBIT B-2 (revised)

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products/Completed Operations aggregate - \$2,000,000
 - d. Personal Injury - \$1,000,000

2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

EXHIBIT B-2 (revised)

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self- insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self- insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self- insurance programs or self- insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.

EXHIBIT B-2 (revised)

4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.