

## **AGENCY PARTICIPATION AGREEMENT**

This Agency Participation Agreement (the “**Agreement**”) is made and entered into effective as of \_\_\_\_\_ (the “**Effective Date**”), by and between All Chicago Making Homelessness History, [a 501(c)(3) non-profit corporation] located at **651 W Washington, Chicago IL Suite 504** (“**All Chicago**”), and \_\_\_\_\_ and located at \_\_\_\_\_ (the “**Agency**”) regarding access and use of the Chicago Homeless Management Information System (the “**HMIS**”).

### **RECITALS**

WHEREAS, All Chicago desires to grant a revocable right to Agency to use and access the HMIS;

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, HMIS is used by authorized homeless service provider agencies to (i) coordinate the services they provide, (ii) manage their operations, (iii) generate unduplicated counts of their homeless population for a point in time or over a period of time, (iv) identify and understand patterns of service use, (v) measure the effectiveness of homeless programs and the homeless system as a whole, and (vi) generally better serve the homeless (each homeless, a “**Client**”). The data collected in HMIS may also be shared with researchers and community planning.

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.** 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 and the most current Standard Operating Procedures (each a “**SOP**”, and collectively the “**SOPs**”) made available by All Chicago, which SOPs are incorporated into this Agreement by reference and which may be modified from time-to-time at All Chicago’s sole discretion. In the event of a conflict between this Agreement and any SOP, the conflicting terms shall attempt to be read so as to avoid such conflict, provided that if the conflict cannot be avoided, the SOPs shall prevail over the terms and conditions of this Agreement.
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 and in the [SOPs](#).

- b. All Chicago shall make available to Agency the most current versions of the [SOPs](#) and such other 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 the updating of the [SOPs](#) and other matters related to the use and access of the HMIS by Agency.
- d. All Chicago shall provide access to the HMIS through ServicePoint, an Internet-based management information system developed by Bowman Systems (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 the license management protocol set forth in [SOP's](#).
- 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.
- f. All Chicago shall make available to Users: (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 Secure Socket Layer (SSL) encryption, and regularly scheduled product upgrades.
- h. All Chicago shall not publish reports on Client data that identify specific agencies or individuals and shall require that all reports published shall be limited to aggregate data.
- i. 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 and the [SOPs](#) promulgated by All Chicago. Agency acknowledges that the [SOPs](#) may be changed by All Chicago from time-to-time in the sole discretion of All Chicago. Agency agrees to abide by any and all such changes.
- 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 and the data and information provided by Clients.
- 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.
- v. Agency shall ensure that the data and information (collectively, the “Data”) 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 form for input, use and disclosures. If a Client withdraws consent for the

release of information, the Client Revocation form must be executed by Client. Agency shall keep executed copies of the Client Consent forms (and any Client Revocation forms) for the HMIS for the duration of Agency's use or access of the HMIS.

- vi. Agency shall ensure that the Data 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 shall be limited to non-identifying and statistical data on Clients it does not serve
- ix. Agency may make aggregate data available to other entities for funding or planning purposes pertaining to providing services to homeless persons. However, such aggregate data shall not directly identify individual Clients.
- x. All Chicago shall use only unidentified, aggregate HMIS Data for homeless policy and planning decisions, in preparing federal, state or local applications for homeless funding, to demonstrate the need for and effectiveness of programs, and to obtain a system-wide view of program utilization in the state.

**c. HMIS Use and Compliance.**

- i. Agency shall follow, comply with and enforce this Agreement, the User Code of Ethics and the [SOPs](#). Agency shall abide by all data quality and monitoring requirements as outlined in the [Data Quality and Monitoring Plan](#).
- ii. Agency shall utilize, and shall ensure that Users utilize, the HMIS for authorized purposes only. Agency shall ensure that Users shall not remove any Data from the HMIS or Agency location(s).
- 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 stated in the [Data Quality](#) and Monitoring Plan.
- vii. Currently, Data shall be visible to its respective agencies and be shared between agencies only if a Data Sharing Agreement is signed. If a decision to have an open system is made by All Chicago and/or its governing body in the future, all reasonable efforts shall be made by All Chicago to notify agencies and shall work with agencies to safeguard Client confidentiality before opening the system.

**d. Data Breach.**

- i. Agency will immediately take remedial actions to mitigate any Security Breach involving any Data and/or the HMIS. Agency will notify All Chicago immediately in writing of any such Security Breach. Agency will cooperate with any investigation relating to a 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. 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 and the [SOPs](#).

## 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 any term or condition of Section 4 and such suspension or termination will continue until the applicable issue is resolved to All Chicago's satisfaction.
- 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 that may be claimed against Agency:
  - (i) for liabilities, damaged or injuries to Agency, Users or another party arising from the access or use of the HMIS;
  - (ii) arising from any acts, omissions, neglect, or fault of Agency or its Users, agents, employees, licensees, or clients; or
  - (iii) arising from Agency's or any User's failure to comply with any Laws applicable to it or the conduct of its business. Agency will also hold All Chicago harmless for:
    - i. 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;
    - ii. any force majeure events or natural disasters or technological difficulties; and/or
    - iii. 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.



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

**All Chicago Making Homelessness History**

Print: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Print: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_