King County Regional Homeless Authority (KCRHA) Homeless Management and Information System (HMIS)

PARTNER AGENCY PRIVACY AND DATA SHARING AGREEMENT

The Homeless Management Information System ("HMIS") is a shared database software application which confidentially collects, uses, and releases client-level information related to homelessness. Client information is collected in the HMIS and released to nonprofit and community housing and services providers, use the information to improve housing and services quality.

On behalf of the Seattle/King County Continuum of Care ("CoC"), HMIS is administered by King County Regional Authority on Homelessness (KCRHA) ("KCRHA") in a software application called Clarity Human Services ("Clarity"), a product of Bitfocus, Inc. ("Bitfocus"). KCRHA has contracted with Bitfocus to serve as the System Administrator for the HMIS.

This Partner Agency Privacy and Data Sharing Agreement (the "Agreement"), dated _____, (the "Effective Date"), is entered into by and between KCRHA and _____ _____ ("Partner Agency," or "Agency") (collectively "the Parties"), in order to further clarify the rights and responsibilities of the Parties regarding access to and use of the HMIS data by the Partner Agency.

HMIS has a steering committee (the "KCRHA System Performance Committee," or simply the "System Performance Committee") to oversee and support the implementation. This is overseen by the KCRHA CoC Advisory Committee. The group is composed of various stakeholders including: agencies funded by the U.S. Department of Housing and Urban Development ("HUD"), homeless services providers, people experiencing homelessness, local governments, community-based organizations participating in HMIS and other funders. The procedures for the qualifications and meetings of members of the System Performance Committee, and related matters, shall be set forth in the HMIS Governance Charter of the System Performance Committee, which may be amended from time to time according to the terms therein.

Agency and County agree as follows:

1. **General Understandings:**

    a.   In this Agreement, the following terms will have the following meanings:

        1.   "Client" refers to a consumer of services;

        2.   "Partner Agency" refers generally to any Agency participating in HMIS.

3. "Agency staff" refers to both paid employees and volunteers.

4. "HMIS" refers to the Homeless Management Information System administered KCRHA.

5. "Enter(ing)" or "entry" refers to the entry of any Client information into HMIS.

6. "Shar(e)(ing)," or "Information Shar(e)(ing)" refers to the sharing of information which has been entered in HMIS with another Partner Agency.

7. "Identified Information" refers to Client data that can be used to identify a specific Client. Also referred to as "Confidential" data or information.

8. "De-identified Information" refers to data that has specific Client demographic information removed. Also referred to as "non-identifying" information.

b. Client information is collected in the 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 HMIS to: improve housing and services quality; coordinate referral and placements for housing and services, 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.

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

d. The Agency recognizes KCRHA as the HMIS Lead to be the decision-making and direction-setting authority regarding the HMIS, including, without limitation, with regard to process updates, policy and practice guidelines, data analysis, and software or hardware upgrades.

e. The Agency will designate a staff member to attend HMIS Agency Administrators meetings regularly, and the Agency understands that Bitfocus, as the agent of KCRHA, will be responsible for coordinating HMIS Agency Administrator activities subject to the direction of KCRHA as the HMIS Lead.

2. **Confidentiality:**

a. Agency will not:

1. enter information into HMIS which it is not authorized to enter; and

2. designate information for sharing which it is not authorized to share, under any relevant federal, state, or local confidentiality laws, regulations or other restrictions applicable to Client information.

b. Agency represents that *(check applicable items)* for the purposes of the organization's participation in the HMIS:

❑ ☐ it is; ☐ is not; a "covered entity" whose disclosures are restricted under HIPAA (45 CFR 160 and 164); More information about "covered entities" can be found here: http://www.hhs.gov/ocr/privacy/hipaa/ understanding/coveredentities/i ndex.html

❑ ☐ it is; ☐ is not; a program whose disclosures are restricted under Federal Drug and Alcohol Confidentiality Regulations: 42 CFR Part 2;

If Agency is subject to any laws or requirements which restrict Agency's ability to either enter or authorize sharing of information, Agency will ensure that any entry it makes and all designations for sharing fully comply with all applicable laws or other restrictions.

c. To the extent that information entered by Agency into HMIS is or becomes subject to additional restrictions, Agency will immediately inform County in writing of such restrictions.

d. Agency shall comply with the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA) and Washington State RCW 43.185C.030. No Identified Information may be entered into HMIS for Clients in licensed domestic violence programs (Victim Service Providers) or for clients actively fleeing domestic violence situations.

e. Agency shall not enter confidential information regarding HIV/AIDS status, in accordance with RCW 70.02.220. If funding (i.e., HOPWA) requires HMIS use, those clients' data shall be entered without Identifying Information.

3. **Information Collection, Release and Sharing Consent:**

a. Collection of Client Identified information: An agency shall collect client identified information only when appropriate to the purposes for which the information is obtained or when required by law. An Agency must collect client information by lawful and fair means and, where appropriate, with the knowledge or consent of the individual.

1. 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 KCRHA and the CoC in the administration of the HMIS. Only the standard, County-issued Client Consent to Data Collection and Release of Information form may be used.

2. The Agency must maintain appropriate documentation of informed client consent, in writing and signed by each client, to participate in the HMIS. All documentation must be provided to KCRHA within ten (10) days upon request.

3. Consent Status and collection method used must be documented in HMIS by the agency creating the record for each household member.

b. Obtaining Client Consent: In obtaining client consent, each adult Client in the household must sign the approved <u>King County HMIS Client Consent to Data Collection and Release of Information</u> form to indicate consent to enter Client identified information into HMIS*.* If minors are present in the household, at least one adult in the household must consent minors by writing their names on the Client Consent to Data Collection and Release of Information form. If any adult member of a household does not provide written consent, identifying information may not be entered into HMIS for *anyone* in the household. Unaccompanied youth aged 13 or older may consent to have their personally identifying information entered in HMIS.

a. Revoking Consent: A Client may withdraw or revoke consent for Client identified information collection by signing the <u>Client Revocation of Consent form</u>. The Agency will follow KCRHA's policies for creating de-identified clients and all non-identifying information for the client shall be entered into the HMIS. If a Client revokes their consent, Agency is responsible for obtaining a Client Revocation of Consent form signed by the client and immediately contacting the HMIS System Administrator (Bitfocus Inc) at: <u>kcsupport@bitfocus.com</u> or 206.444.4001 x2 to have the client record de-identified according to KCRHA's policies.

Consent may be revoked verbally for records pertaining to drug/alcohol treatment and for records where client is actively fleeing domestic violence. If consent is revoked verbally to the Agency, the Agency will inform Bitfocus of such revocation immediately.

The Agency is prohibited from removing identified information from HMIS directly but is responsible for notifying Bitfocus Inc and the CE program to ensure that Client can be contacted for a housing referral if applicable.

2. **No Conditioning of Services:** Agency will not condition any services upon or decline to provide any services to a Client based upon a Client's refusal to allow entry of identified information into HMIS.

3. **Re-release Prohibited:** Agency shall not release any Client identifying information received from HMIS to any other person or organization without written Client consent, except when required by law. Any requests for information from or related to HMIS that are for purpose other than providing services to clients in the routine course of business, should be sent to Bitfocus and KCRHA. The Agency will also been encouraged to seek its own legal advice if required by law to provide identifying confidential client information.

4. **Client Inspection/Correction:** Agency will allow a Client to inspect and obtain a copy of his/her own personal information. Agency will also allow a Client to correct information

that is inaccurate. Corrections may be made by way of a new entry that is in addition to but is not a replacement for an older entry.

5. **Training/Assistance:** Agency will permit access to HMIS only after the authorized user receives appropriate confidentiality training including that provided by Bitfocus, KCRHA, and/or WA Department of Commerce. Agency will also conduct ongoing basic confidentiality training for all persons with access to HMIS and will train all persons who may receive information produced from HMIS on the confidentiality of such information. Agency will participate in such training provided from time to time by the HMIS System Administrator. The HMIS System Administrator will be reasonably available during defined weekday business hours for technical assistance (i.e. troubleshooting and report generation).

6. **Retention of paper copies of personally identifying information:** Agencies must develop and adopt policies governing the retention of paper records containing personally identifying information. The policy must define how long paper records are retained after they are no longer being actively utilized, and the process that will be used to destroy the records to prevent the release of personally identifying information. The policy must require the destruction of the paper records derived from an HMIS no longer than seven years after the last day the person was served by the Agency.

7. **Information Entry Standards:**

   a. Information entered into HMIS by Agency will be truthful, accurate and complete to the best of Agency's knowledge.

   b. Agency will *not* solicit from Clients or enter information about Clients into the HMIS database unless the information is required for a legitimate business purpose such as to provide services to the Client, to conduct program evaluation, to administer the program, or to comply with regulatory requirements.

   c. Agency will only enter information into HMIS database with respect to individuals that it serves or intends to serve, including through referral.

   d. The Agency will adhere to the KCRHA HMIS Standard Operating Policies ("SOPs"), HMIS Security Plan, Continuous Data Quality Improvement Process, HMIS Data Standards Manual, HMIS Data Standards Data Dictionary, and other HMIS regulations issued by the U.S. Department of Housing and Urban Development ("HUD").

   e. Agency will not alter or over-write information entered by another Agency.

   f. 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 HMIS and will subject a user or Agency to immediate suspension.

8. **Use of HMIS:**

   a. Agency shall be responsible for complying with all HMIS policies and procedures, and for establishing and maintaining the HMIS Security Plan that is designed to ensure the

security and confidentiality of the data from HMIS to which Agency has access. This includes protection against any anticipated threats or hazards to the security or integrity of HMIS data, and protection against unauthorized access to or use of HMIS Data that could result in substantial harm or inconvenience to KCRHA or any client or HMIS user.

b. The Agency will utilize the HMIS as part of the Coordinated Entry (CE) system in accordance with the CE Standard Operating Procedures. Use of HMIS for CE includes, but is not limited to, entering data for the approved CE tools in order to place clients into the priority pool for referral to housing programs, and accepting referrals for clients from the Coordinated Entry system.

c. Agency will not access identifying information for any individual for whom services are neither sought nor provided by the Agency.

d. If the Agency wishes to provide information from HMIS beyond information related solely to services provided by the Agency, it must first inform and receive approval from KCRHA as the HMIS lead.

e. Agency will use HMIS database for legitimate business purposes only.

f. Agency will not use HMIS in violation of any federal or state law, including, but not limited to, copyright, trademark and trade secret laws, and laws prohibiting the transmission of material, which is threatening, harassing, or obscene.

Agency will not use the HMIS database to defraud federal, state or local governments, individuals or entities, or conduct any illegal activity.

9. **Monitoring and audits:** County reserves the right to monitor agency privacy practices and compliance with the provisions of this agreement through document review and site visits. Monitoring and audit visits may be performed by County staff or by Bitfocus.

10. **Proprietary Rights of the HMIS:** The Agency and Bitfocus as the HMIS System Administrator, understand and recognize that they are custodians of HMIS data and not owners of HMIS data.

11. **Technical Administrator and Security Officer:**

a. 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 HMIS Partner Agency Technical Administrator and Security Officer Agreement.

b. The Agency will comply with the HMIS Security Plan which includes completing the semi-annual Security Compliance Checklist.

c. 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 HMIS.

Such background check must be completed and the results approved by the Partner Agency Executive Director or Acting 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 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 KCRHA upon request.

12. **Incidents of unauthorized access:** As outlined in the HMIS Security Plan, should confidential and/or legally protected client 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. Agency shall take appropriate action to address any incident of unauthorized access to HMIS. These actions must include:

a. Immediately working to remedying or mitigating the issue that resulted in such unauthorized access;

b. Notifying KCRHA within 24 hours of any incident of unauthorized access to HMIS data, or any other breach in the Agency's security that materially affects County or HMIS;

c. Upon request from KCRHA, Agency shall provide a corrective action plan that addresses the incident and is designed to ensure compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions in this Agreement; and

d. Agency will be responsible for notifying all impacted clients.

13. **Guidelines on Removing Partner Agencies or Users**

Voluntary Removal: If a Partner Agency or user no longer wants to access the HMIS, they simply need to inform Bitfocus of such decision. In the case of user removal, it is the Partner Agency's responsibility to contact Bitfocus in a timely manner so the User ID can be deactivated to prevent unauthorized access to the system. A Partner Agency requesting removal from the HMIS understands the following:

a. The Partner Agency will receive upon request one copy of the data it has input into the HMIS. Such copy will be in a format determined by Bitfocus and approved by the System Performance Committee. The Partner Agency will be given an appropriate description of the data format.

b. The data the Partner Agency enters into the system will remain in the system for the purposes of producing aggregate non-identifying reports. Any Partner Agency information will remain in the system but will be marked as inactive.

c. The Partner Agency understands and accepts any ramifications of not participating in the HMIS, including impacts on coordinated entry.

Involuntary Removal: It is vital for the KCRHA and Bitfocus to provide a secure service for all Users. Any action(s) that threaten the integrity of the system will not be tolerated.

a. Bitfocus reserves the right to modify, limit, or suspend any user account or remove any Partner Agency at any time if there is a security risk to the system.

b. Any improper use of the HMIS is subject to immediate suspension of the user's account. The penalties imposed on a user for improper system use will vary based on the level of the offense. Typically the user will receive a warning upon the first offense. However, if the offense is severe enough, Bitfocus reserves the right to disable the account immediately and, in extreme cases, to disable all users' access at the Partner Agency in question.

c. Bitfocus will contact the Partner Agency within one business day of any such suspension.

d. If a user's account is suspended, only the Executive Director (or acting Executive Director) for a Partner Agency may request account re-activation. Suspended users may be required to attend additional training before having their access reinstated.

e. In the event that a Partner Agency is removed from the system, it must submit a written request for reinstatement to KCRHA and Bitfocus. If the Partner Agency is not reinstated into the system after review of its reinstatement request, the Partner Agency will be given one copy of its data upon request in a format that will be determined by Bitfocus and approved by the System Performance Committee. (The Partner Agency will also be provided with a description of the data format.) Data will not be given to the Partner Agency until all hardware (firewalls, etc.) belonging to Bitfocus is returned. Any fees paid for participation in the HMIS will not be returned.

14. **Limitation of Liability and Indemnification:** No party to this Agreement shall assume any additional liability of any kind due to its execution of this agreement of participation in the HMIS. It is the intent of the parties that each party shall remain liable, to the extent provided by law, regarding its own acts and omissions; but that no party shall assume additional liability on its own behalf or liability for the acts of any other person or entity except for the acts and omissions of their own employees, volunteers, agents or contractors through participation in HMIS. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement creates no rights in any third party.

15. **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 HMIS, KCRHA as the HMIS Lead will have the right to immediately suspend or restrict the access rights of the breaching party to the HMIS pending investigation and resolution of the matter to the extent reasonably required to protect the integrity of the system.

d. If this Agreement is terminated, KCRHA and all participating Partner Agencies maintain their rights to the use of all client information previously entered into the HMIS, subject to the terms of this Agreement and other applicable rules, regulations, and agreements.

e. Upon any such termination of this Agreement, the Agency may request and receive one export copy of all data entered by it into the 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 KCRHA for the costs associated with producing the report.

f. This Agreement may be amended or modified only by a written agreement signed and executed by both parties.

g. This Agreement is made for the purpose of defining and setting forth the rights and responsibilities of KCRHA as the HMIS Lead, Bitfocus as an agent of KCRHA, and the Agency. It is made solely for the protection of KCRHA, 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 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.

h. Unless otherwise prohibited by law or KCRHA 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 KCRHA.

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This Partner Agency Privacy and Data Sharing Agreement (the "Agreement") is entered into by and between KCRHA and _____ ("Partner Agency," or "Agency") (collectively "the Parties"), in order to clarify the rights and responsibilities of the Parties regarding access to and use of the HMIS data by the Partner Agency.

By signing, I agree to fulfill all of the responsibilities enumerated in the HMIS Partner Agency Privacy and Data Sharing Agreement.

_____

Executive Director Printed Name

_____

Executive Director Signature   Date

King County Regional Authority on Homelessness

_____

Designated KCRHA Representative Printed Name

_____   _____

Designated KCRHA Representative Signature   Date