

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

---

*Please enter Agency Name in the line above.*

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”) is entered into by and between the County and \_\_\_\_\_ (the “Partner Agency,” or the “Agency”). This Agreement governs access to and use of the SCC HMIS by the Partner Agency. The Effective Date of this Agreement shall be the date of the last signature of a Party to this Agreement.

**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.

B.

The Agency will only access and enter HMIS information for the clients it serves. The Agency will use data and information derived from SCC HMIS only to: assess clients' needs for housing, counseling, food, and utility assistance; 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.

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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. 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.
- O. 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.
- P. The Agency and Bitfocus, as SCC HMIS System Administrator, understand that they are custodians of data and not owners of data.
- Q. 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.

- R. 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  
5940 S. Rainbow Blvd., Ste 400 #60866  
Las Vegas, NV 89118-2507

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 the 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 overwrite 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**

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.

- A. 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 A, which is attached hereto and incorporated by this reference. The indemnification provisions in Exhibit A shall apply to this Agreement.

#### **VII. Standard Terms and Conditions**

- A. **Entire Agreement.** This Agreement and its Appendices (if any) constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties.

It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

- B. **Amendments.** This agreement may only be amended by a written instrument signed by the Parties.
- C. **Conflicts of Interest; Political Reform Act.** The Agency shall comply, and require its employees, agents, and subcontractors to comply, with all (1) applicable requirements governing avoidance of impermissible client conflicts; and (2) federal, state, and local conflict of interest and disclosure laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Agency covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Agency further covenants that, in the performance of this Agreement, it will not use any contractor or employ any person having such an interest. The Agency, including but not limited to the Agency's employees, agents, and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Act are applicable to any individual providing service under this Agreement, the Agency shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to the Agency's employees, agents and subcontractors, who could be substantively involved in "mak[ing] a governmental decision" or "serv[ing] in a staff capacity" and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position, (2 CCR 18700.3), as part of the Agency's service to the County under this Agreement. The Agency shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. The Agency shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County. Contractor shall ensure that all such individuals identified pursuant to this paragraph understand that they are subject to the Act and shall conform to all requirements of the Act and other applicable conflict of interest and disclosure laws and regulations, and shall file Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30

days of their termination of service pursuant to this Agreement.

- D. **Levine Act Compliance.** If applicable, Agency will comply, and will ensure that its agents (as that term is defined under 2 Cal. Code Regs. § 18438.3(a)) and its subcontractors identified in Agency’s proposal responding to a County solicitation and/or identified in this Agreement (“Subcontractors”) comply, with California Government Code section 84308 (“Levine Act”) and the applicable regulations of the Fair Political Practices Commission concerning campaign disclosure (2 California Code of Regulations sections 18438.1 – 18438.8), which (1) require a party to a proceeding involving a contract to disclose on the record of the proceeding any contribution, as defined by Government Code section 84308(a)(6), of more than \$250 that the party or their agent has made within the prior 12 months, and (2) prohibit a party to a proceeding involving a contract from making a contribution, as defined by Government Code section 84308(a)(6), of more than \$250 to any County officer during the proceeding and for 12 months following the final decision in the proceeding. Agency agrees to submit any disclosures required to be made under the Levine Act at the Office of the Clerk of the Board of Supervisors website at <http://www.sccgov.org/levineact>, and Agency shall require any Subcontractors to do the same. If this Agreement is to be considered or voted upon by the County’s Board of Supervisors, the Agency shall complete the Levine Act Contractor Form: Identification of Subcontractors and Agents, and if applicable, shall ensure that any Subcontractor completes the Levine Act Subcontractor Form: Identification of Agents, and Agency must submit all such forms to the County as a prerequisite to execution of the Agreement.
- E. **Governing Law, Venue.** This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.
- F. **Assignment.** No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.

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.

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the County as the HMIS Lead, Bitfocus as an agent of the County, and the Agency.

- G. **Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.



H. **Termination.** 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.

I. **Compliance with all Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention.**

(1) The Agency shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Compliance with Non-Discrimination and Equal Opportunity Laws: The Agency shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Compliance with Wage and Hour Laws: The Agency shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(4) Material Breach: Failure to comply with any part of this Subsection H shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:

- (i) Suspend or terminate any or all parts of this Agreement.
- (ii) Withhold payment to Contractor until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
- (iii) Offer Contractor an opportunity to cure the breach.

J. **Budget Contingency.** This Agreement is contingent upon the appropriation of

sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

- K. County No-Smoking Policy.** The Agency and its employees and agents, 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.
- L. California Public Records Act.** The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If the Agency's proprietary information is contained in documents or information submitted to County, and the Agency's claims that such information falls within one or more CPRA exemptions, the Agency must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to the Agency prior to such disclosure. If the Agency contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County is required to respond to the CPRA request. If the Agency fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

The Agency further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Agency.

- M. Intellectual Property Rights.** Ownership: County shall own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term "Deliverables" shall mean any documentation and deliverables created by the Agency during the performance of services that are identified in this Agreement. The Agency hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor's agreement with the County or result from the use of premises leased, owned or contracted for by the County.

Contractor acknowledges that all original works of authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all

copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County.

N. **Intellectual Property Indemnity.** The Agency represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in VII of this agreement.

O. **County Data**

(1) Definitions: "County Data" shall mean data and information received by the Agency from County. County Data includes any information or data that is transported across a County network, or that resides in a County-owned information system, or on a network or system under the control and management of a contractor for use by County. "County Confidential Information" shall include all material, non-public information (including material, non-public County Data) appearing in any form (including, without limitation, written, oral or displayed), that is disclosed, directly or indirectly, through any means of communication by County, its agents or employees, to the Agency, its agents or employees, or any of its affiliates or representatives.

(2) The Agency shall not acquire any ownership interest in County Data (including County Confidential Information). As between the Agency and County, all County Confidential Information and/or County Data shall remain the property of the County. The Agency shall not, without County's written permission, use or disclose County Data (including County Confidential Information) other than in the performance of its obligations under this Agreement.

(3) The Agency shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, and protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users. Upon termination or expiration of this Agreement, the Agency shall seek and follow County's direction regarding the proper disposition of County Data.

(4) The Agency shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, and notifying County by phone or in writing within 24 hours of any incident of unauthorized access to County Data, or any other breach in the Agency's security that materially affects County or end users. If the initial notification is by phone, the Agency shall provide a written notice within 5 days of the incident. The Agency shall be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality, privacy, and information security requirements of this Agreement. Should County Confidential Information and/or legally protected County Data be divulged to unauthorized third parties, the Agency shall comply with all applicable federal and state laws and regulations, including but

not limited to California Civil Code sections 1798.29 and 1798.82 at the Agency's sole expense. The Agency shall not charge County for any expenses associated with the Agency's compliance with these obligations.

(5) The Agency shall defend, indemnify and hold County harmless against any claim, liability, loss, injury or damage arising out of, or in connection with, the unauthorized use, access, and/or disclosure of information by the Agency and/or its agents, employees or subcontractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the Agency.

P. **Contract Execution.** 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: \_\_\_\_\_

Date: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

AGENCY: \_\_\_\_\_

*(Document should be signed by Director or Designee)*

ADDRESS:

**COUNTY OF SANTA CLARA**

BY: \_\_\_\_\_

Date: \_\_\_\_\_

Consuelo Hernandez  
Director  
Office of Supportive Housing

ADDRESS:

County of Santa Clara  
Office of Supportive Housing  
150 W. Tasman Drive  
San Jose, CA 95134

Approved as to Form and Legality:

BY: \_\_\_\_\_

Stefanie Wilson  
Deputy County Counsel

Date: \_\_\_\_\_

## EXHIBIT A

### INSURANCE REQUIREMENTS

#### 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 subcontractors, 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 contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

#### 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

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

General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

2. 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.

3. Cyber Liability

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000

Cyber liability coverage shall include at a minimum, but not limited to:

- a. Information Security and Privacy Liability
- b. Privacy Notification Costs

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