

PHILADELPHIA HOMELESS MANAGEMENT INFORMATION SYSTEM (HMIS)

PARTICIPATION AGREEMENT

This Philadelphia Homeless Management Information System Participation Agreement (hereinafter referred to as “Agreement”) is by and between the City of Philadelphia, acting through the Office of Homeless Services a body politic and corporate and an instrumentality exercising public and essential governmental functions of the City of Philadelphia with offices located at 1401 John F. Kennedy Blv 10th Floor, Suite 1030 Philadelphia, PA 19102 (“OHS”) and (insert legal name of Participant), a (insert type of entity, i.e. County or Municipal Government, non-profit, for-profit, faith-based, etc.), with principal offices located at (insert full address and county) (“Participant”). The signature of the authorized representative of the Participant below indicates its agreement with the terms of this agreement (“Agreement”) and is a prerequisite of the establishment of a HMIS account for such Participant.

INTRODUCTION

HMIS is designed to provide a standardized assessment system that allows authorized participating Participant personnel throughout the City of Philadelphia, to collect client data, produce statistical reports, and share information with select partner agencies. The HMIS allows OHS to evaluate the utilization of services, identify gaps throughout the City, improve the efficiency of homeless related services, and to understand the demographics and needs of persons experiencing homelessness within the City Limits. Specific goals of the ClientTrack (HMIS) include:

- Improve the quality of services
- Improve client and service tracking
- Ensure continuity of care
- Expedite client intake procedures
- Improve referral accuracy
- Improve case management
- Track client outcomes
- Provide aggregate information for program management, Boards of Directors, funding sources, and other stakeholders
- Provide aggregate information for program evaluation, systems design and policy decisions
- Provide aggregate information for addressing community-wide issues

The City of Philadelphia Office of Homeless Services (hereinafter referred to as “OHS”) will administer and maintain the HMIS. Security for the HMIS database will be provided through its server setup, firewall architecture, encryption, user authentication, password protection, user access levels, and audit trails. In addition, policies will be established to govern utilization of both client-identifying and aggregate data.

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RECITALS

- A) The purpose of the HMIS is to improve the quality and integration of services, to increase the productivity of case managers in participating agencies, and to provide a central repository of data for service planning, quality improvement, and policy decisions as well as to meet requirements for the U.S. Department of Housing and Urban Development's homeless assistance programs (HMIS Data and Technical Standards, Final Notice, Federal Register, Volume 69, No. 146 as published on Friday, July 30, 2004 and revised on March 29, 2010).
- B) OHS and the Participant wish to enter into an Agreement whereby, subject to applicable confidentiality protection; the Participant submits data about its clients into the HMIS and receives reports from the database consistent with the purpose of the standardized assessment system.
- C) The Participant agrees that the Participant is solely responsible for ensuring its notices; forms and other HMIS documentation meet HUD standards. The Participant shall not rely upon OHS review and shall hold OHS, its staff, officers, members and affiliates, harmless from and against any and all claims for damages, losses, liabilities, costs or reasonable expenses related to privacy issues and HUD requirements under this Agreement.

Now, therefore, in accordance with the terms of the OHS grants from the U.S. Department of Housing and Urban Development (HUD) and pursuant to the HEARTH Act, the parties agree as follows:

- 1. OHS has established guidelines, policies, and operating procedures for the HMIS and will make a copy available to each participating agency. OHS may, in its discretion, implement changes to these guidelines, policies, and procedures at any time upon ten (10) days written notice to participating participants. The Participant agrees to comply with these guidelines, policies, and procedures and to ensure that its officers, directors, employees, volunteers, and agents comply with these guidelines, policies and procedures and any subsequent changes.
- 2. OHS will operate and maintain or cause to be operated and maintained, network servers, network modems, network software, and other network and communications hardware and software for the functioning of the HMIS through the HMIS Contracted Vendor EccoVia, Inc. Security for the system may be provided through, but is not limited to, firewalls, encryption of data, use of security software, oversight of user access levels, and user ID and password.
- 3. The Participant shall be allowed to access data pertaining to its clients that was created and/or entered into the system by the Participant itself or for clients from whom the Participant has received valid, signed "Client Authorization to Share Confidential Information" form. Upon request, the Participant shall provide OHS with a copy of any "Client Authorization to Share Confidential Information" in the Participant's possession or control that was signed by an individual who has consented to the client authorization through HMIS.
- 4. The Agency shall provide accurate and timely client data to OHS through direct data entry into HMIS and/or the submission of data extract files for upload into HMIS (data integration). The manner of participation shall be determined by OHS on the project level and shall be based on the project's status in relation to the following factors:
 - a. Contractual relationship between OHS and the project; and
 - b. Project's existing client-level data collection system.
- 5. The Agency's minimum data collection requirements shall be determined on the project level and shall be based on the project's status in relation to the following factors:
 - a. Contractual relationship between OHS and the project; and
 - b. Project's receipt of U.S. Department of Housing and Urban Development (HUD) McKinney-Vento Act program funds

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Minimum Data Reporting Requirements:

| Program Status | HUD Universal Data Elements | HUD Program-Specific Data Elements | Data Elements Established by OHS |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|-------------------------------------------|-----------------------------------------|
| <ul style="list-style-type: none"> ▪ No contractual relationship with OHS and the Agency ▪ Does not receive HUD McKinney-Vento Act funds and ▪ Does not receive Homelessness Prevention and Rapid Re-Housing Project funds | X | | |
| <ul style="list-style-type: none"> ▪ No contractual relationship with OHS and ▪ Receives HUD McKinney-Vento Act funds and/or ▪ Receives Homelessness Prevention and Rapid Re-Housing Project funds | X | X | |
| <ul style="list-style-type: none"> ▪ Contractual relationship with OHS and ▪ Does not receive HUD McKinney-Vento Act funds and ▪ Does not receive Homelessness Prevention and Rapid Re-Housing Project funds | X | X | X |
| <ul style="list-style-type: none"> ▪ Contractual relationship with OHS and ▪ Receives HUD McKinney-Vento Act funds and/or ▪ Receives Homelessness Prevention and Rapid Re-Housing Project funds | X | X | X |

6. The Participant understands that the HMIS files server, which shall contain all HMIS entered Client information, shall be located off-site with the HMIS Vendor under a secure server that is electronically monitored, and that the Client information in the HMIS is backed up daily. The Participant further understands that the files server containing all HMIS entered Client information is maintained by the HMIS Vendor contracting with OHS to provide said services. The contracted HMIS Vendor has access to Client information, said access being necessary to provide technical services to OHS. Further, the contracted HMIS Vendor has agreed to keep all information confidential and maintained in accordance with HUD privacy standards.
7. Only Agencies who have signed this Agreement will be permitted access to HMIS and the information contained in its system. The Participant will not provide non-authorized users with access to HMIS.
8. In no way does the HMIS require or imply that services must be contingent upon a Client's participation in the HMIS database. Participant shall provide services to Client s regardless of Client's participation in HMIS, provided the Client would otherwise be eligible for the services. The Participant shall have access to identifying and statistical data on all Clients who consent to have their information entered in the HMIS database, except for data input into the database by "Blind Service Providers".

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9. A Participant that is a Blind Service Provider shall have access to identifying and statistical data that the Participant inputs into HMIS database for clients served by that Participant.
10. A Participant that is a Blind Service Provider shall not have access to identifying and statistical data input into the HMIS database for Clients served by other Blind Service providers.
11. The Participant shall consistently enter information into the HMIS database and is required to meet the requirements outlined in the HMIS Data Quality and Functionality Plan for real-time data entry conducted within the allotted time period of seeing the client.
12. The Participant shall not include or use profanity or offensive language in the HMIS database.
13. The Participant shall utilize the HMIS database for business purposes only.
14. OHS may require the Participant to pay a participation or support fee to add new users and/or to maintain the software and use of HMIS.
15. Neither the Participant's right to participate in the standardized assessment system nor any other right, privilege, license, duty, obligation, nor responsibility may be transferred or assigned, voluntarily or involuntarily, through agreement, merger, consolidation, or otherwise without the express written consent of OHS.
16. The Participant hereby agrees to abide by all federal and state laws and regulations pertaining to client privacy and confidentiality and any subsequent revisions or amendments.
17. The Participant agrees to indemnify, hold harmless and defend the OHS, its officers, directors, employees, and agents in any action, claim or dispute that arises in connection with or as the result of this Agreement, or from the Participant's use or implementation of the HMIS, or from the acts and/or omissions of the Participant, its officers, directors, employees, volunteers, agents or any person or entity using HMIS through the express or implied permission of the Participant. This indemnification clause covers, but is not limited to, any action, claim or dispute that arises from a breach of confidentiality or security or the non-consensual release of Client information; from the failure to furnish services or a delay in furnishing services; from the transmission of inaccurate or faulty information through the network server or HMIS; from the failure to input and transmit information through the network server or HMIS or; from any malfunction of hardware, software or electronic communications system that results in a breach of security and/or confidentiality.
18. **This Agreement will remain in effect as long as the Participant maintains a HMIS license from OHS. Unless terminated, in writing, by either of the Parties, this Agreement will renew automatically.**

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**ARTICLE I
DEFINITIONS**

The following words or phrases when used in this Agreement shall have the meanings given to them in this article unless the context clearly indicates otherwise.

| | |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Blind Service Provider” | A participating agency serving specific protected client populations which typically have one or more of the following issues: domestic violence; HIV/AIDS; alcohol or substance abuse, or both; or mental health. |
| “Client” | A consumer of services. |
| “Client records” | All information received by a participating agency from a client which is collected and stored in PHILAHMIS. |
| “HIPAA” | Health Insurance Portability and Accountability Act. |
| “HUD” | The U.S. Department of Housing and Urban Development. |
| “Non-participating agency” | An agency which does not participate in the PHILAHMIS. |
| “Participating agency” | An agency which has executed a Philadelphia Homeless Management Information System Participation Agreement and which has agreed to work together to provide services to homeless and low-income individuals and families. |
| “Protected health Information” | Information, whether oral or recorded in any form or medium: <ul style="list-style-type: none"> (a) That relates to: <ul style="list-style-type: none"> (i) The past, present or future physical or mental condition of an individual; (ii) The provision of health care to an individual; or (iii) The past, present or future payment for the provision of health care to an individual; and (b) That identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. |
| “Protected personal information” | Any client records in PHILAHMIS maintained by or for a participating agency about a living homeless client or homeless person that: <ul style="list-style-type: none"> (a) identifies, either directly or indirectly, a specific individual; (b) can be manipulated by a reasonably foreseeable method to identify a specific individual; or (c) can be linked with other available information to identify a specific individual. |
| “Timely data entry” | An entry made within seven (7) calendar days of the initial meeting with the client, except in the case of emergency shelter clients which require an entry within 24 hours of the initial meeting with the client. |

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ARTICLE II

PARTICIPANT PRIVACY AND SECURITY STANDARDS

1. The Participant shall establish and maintain policies and procedures to ensure that client information is uniformly collected, maintained and secured in such a manner as to avoid any unauthorized release of client information.
2. HUD HMIS - Privacy and Security Standards. the Participant shall review and comply with all standards for privacy and security, appropriate for the Participant's particular organization, as set forth in the *Department of Housing and Urban Development Homeless Management Information System (HMIS); Data and Technical Standards Final Notice*, as found in the Federal Register dated July 30, 2004, Volume 60, Number 146, as subsequently amended, paying particular attention to Section 4 of the notice.
3. OHS HMIS – Governance Charter with Attachments. The Participant shall review and comply with all OHS PhilaHMIS governance procedures.
4. The Participant shall publicly display a privacy posting, which summarizes its privacy policy, and provide copies of its privacy policy when requested.
5. It is the responsibility of the Participant to ensure that the AGENCY's policies, notices, forms and other HMIS documentation meet HUD standards. The Participant shall not rely upon OHS's review in determining compliance with HUD standards and shall hold OHS harmless from and indemnify OHS against any and all claims, demands and actions based or arising out of any activities performed by the Participant and its employees and agents under this Agreement relating to privacy issues and compliance with HUD requirements and shall defend any and all actions brought against OHS based upon any such claims, demands or actions.

ARTICLE III

CONFIDENTIALITY

1. The Participant shall comply with all Federal, State and Local laws and regulations pertaining to confidentiality of information and records to ensure that client records are protected and not subject to disclosure. The Participant shall only release client records to Non-Participants with written consent by the Client, unless otherwise provided in the relevant laws and regulations.
2. The Participant shall seek legal advice in the event that a Non-Participant requests identifying confidential client information, in order to ensure compliance with Federal, State and Local laws seeking to protect the privacy of persons with physical and/or mental illness, who have been treated for alcohol and/or substance abuse, have been diagnosed with HIV/AIDS, and/or have been a victim of domestic violence.
3. The Participant agrees not to release any individual Client information obtained from the HMIS to any organization or individual without prior written Client authorization. Such written Client authorization shall specify exactly what information the Client allows to be released.
4. OHS shall provide training to selected Participant employees in the use of the HMIS. Training updates shall be provided by OHS as deemed necessary by OHS. The Participant agrees to participate in such training and user groups to ensure the effective implementation of the HMIS.
5. The parties acknowledge and agree that their mutual use and participation in HMIS will cause each party to disclose or make available to OHS and other participating agencies information that is confidential and which, in some cases, may be subject to special protections under state and federal law. While OHS will have access

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to all information that has been entered into HMIS, other participating agencies will only have access to client-identifying data that has been expressly approved for release, as noted in the electronic client record. To protect the confidentiality of the data on the HMIS, the Participant agrees to the terms of the HMIS Privacy and Security Plan, as part of the HMIS Governance Charter. Information that is not approved for disclosure, in writing, by the Client shall not be released. The Participant agrees to provide access (including a copy) of the Client's own protected information to the Client within thirty (30) days of the Client's written request to the Participant. In addition to documentation in the client's electronic record, authorization to release information shall be established through a written, signed "Client Authorization Form" to be obtained by the Participant and retained in the Participant's files.

6. If the Participant utilizes its own HIPAA-compliant Consent to Release Information for Data Sharing form, the Participant should incorporate the HMIS Client Authorization Form titled "HMIS Client Authorization to Share Confidential Information" into its form.
7. The Participant shall provide each client with a copy of the attached Notice of Privacy Practices and shall arrange for a qualified interpreter or translator in the event that an individual is not literate in English or has difficulty understanding the consent and release forms.
8. The Participant shall ensure that all employees, volunteers and other persons issued a User ID and password for HMIS receive basic confidentiality training and that a single user is identified for each user identification and password issued.
9. The Participant shall immediately revoke the database access of any staff, volunteer or other person who has been granted a User ID and password and is found to have willfully committed a breach of system security and/or client confidentiality and will take disciplinary action against any such staff, volunteer or other person consistent with the Participant's policies and procedures. OHS reserves the right to review Participant's policies and procedures, review discipline and seek remedies, in its sole discretion, against anyone found to have willfully committed a breach of system security and/or client confidentiality.
10. If this Agreement is terminated, OHS and remaining partner agencies shall maintain their right to the access and use of all client data previously entered by the terminating partner Participant. All client data will be held in the strictest of confidence in accordance with the HIPAA Compliance Agreement.
11. If a client notifies a Participant that he or she has withdrawn consent for the release of new information through HMIS, the Participant will be responsible for ensuring that the new information is no longer released through HMIS.
12. The Participant shall keep signed copies of the "HMIS Client Authorization to Share Confidential Information Form" for HMIS for a period of no less than seven (7) years. Agencies shall be responsible for maintaining these documents even if the Participant later terminates participation in HMIS and this Agreement.

**ARTICLE IV
REASSIGNMENT**

Participant may not assign this Agreement or any of its obligations hereunder without the prior written consent of OHS.

**ARTICLE V
MODIFICATIONS**

This Agreement, including all referenced documents, constitutes the entire agreement between the parties. No agent,

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representative, employee or officer of either OHS or the Participant has authority to make any statement, agreement or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, changes, or waiver to this Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.”

**ARTICLE VI
AVAILABILITY OF FUNDING**

OHS’s obligations hereunder shall cease immediately, without penalty, if funding is no longer available to meet such obligations.

**ARTICLE VII
PARTICIPANT REPRESENTATIONS AND WARRANTIES**

Participant makes the following representations and warranties.

- 1) The Participant is duly organized and existing under the laws of the City of Philadelphia or is duly authorized to do business in the City of Philadelphia and has the power and authority to carry on its business as now conducted.
- 2) The Participant has the requisite power and authority to enter into this Agreement and to perform all of its obligations hereunder and to manage and control and ensure each individual or entity that Participant authorized permits or allows access to the HMIS or related services and equipment or facilities also complies with the terms of this Agreement in exercising such individual’s access.
- 3) This Agreement has been duly and validly authorized, executed and delivered by the Participant and constitutes a valid and binding obligation of the Participant, enforceable in accordance with its terms.
- 4) In performing its obligations hereunder, the Participant will comply with all laws, rules, and regulations of all governmental bodies having jurisdiction.
- 5) The Participant holds all required regulatory authorizations to perform this Agreement according to the terms of this Agreement.
- 6) The Participant’s execution and delivery of this Agreement and the Participant’s compliance with the terms and provisions of this Agreement will not conflict with or cause a violation of any of its organizational documents or agreements that affect the Participant or its property.
- 7) The Participant does not know of any litigation or governmental proceeding pending or threatened against the Participant regardless of the nature or the amount in controversy other than that which has been previously disclosed to OHS in writing.
- 8) The Participant is not currently under citation for violation of any federal, state or local law.
- 9) Except as previously disclosed to OHS in writing, neither the Participant, nor any officer or principal of the Participant, has ever (i) been convicted of any crime (other than minor traffic offenses), (ii) filed for bankruptcy or had a bankruptcy proceeding filed against it or him/her, or entered into an arrangement with creditors or comparable agreement, or (iii) had any trustee or guardian of his/her affairs appointed.

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**ARTICLE VIII
REPORTING**

Direct Data Entry into HMIS:

1. The Agency shall only solicit or input into HMIS client information that is essential to providing services to the client.
2. The Agency shall not knowingly enter false or misleading data under any circumstance, nor use HMIS with intent to defraud federal, state or local governments, individuals or entities, or to conduct any illegal activity.
3. The Agency shall ensure that all staff, volunteers and other persons who use HMIS are issued an individual User ID and password.
4. The Agency shall ensure that all staff, volunteers and other persons issued a User ID and password for HMIS receive confidentiality training, HMIS training, and comply with the attached *HMIS User Agreement* and the *HMIS Participation Agreement*.
5. The Agency shall enter information into HMIS on a timely (real-time or close to real time) basis.

Data Integration:

1. The Agency shall submit client-level data to OHS for integration into HMIS in an agreed upon format no less than once annually.
2. All data shall be cleaned, updated, and formatted according to agreed upon data specifications prior to submission to OHS.
3. The data specifications shall be collaboratively developed by the Agency and OHS based on the Agency's existing database, the Agency's capacity to modify said database and the Agency's data reporting requirements.
4. The Agency shall not knowingly submit false or misleading data under any circumstance.

Data Output:

1. OHS may provide aggregate or statistical data to the Agency on a periodic basis.
2. The Agency may make aggregate data available to other entities for funding or planning purposes pertaining to providing services to homeless persons in accordance with HUD's HMIS Data and Technical Standards. Such aggregate data shall not directly identify individual clients.
3. OHS will use HMIS data for homeless policy and planning decisions; in preparing federal, state or local applications for homelessness funding; to demonstrate the need for and effectiveness of projects; and, to obtain a system-wide view of project utilization.
4. If the Agency ceases to participate in HMIS, OHS will retain all HMIS client data previously entered/submitted by the Agency.

Participant Reports:

1. The HMIS access granted to the Participant will permit the Participant to report on identifying and statistical data on the clients the Participant serves, subject to the terms of this Agreement.
2. The Participant shall only report on identifying and statistical data on the clients the Participant serves, subject to the terms of this Agreement regarding client confidentiality.

Area Reports:

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1. The Participant operating in an area shall be able to report on non-identifying and statistical data concerning only the clients served by the Participant.
2. The HMIS, through the system administrator, shall develop protocols on customizing and releasing area reports.
3. The Participant may make aggregate data available to other entities outside of the system for funding or planning purposes pertaining to providing services to homeless persons. However, such aggregate data shall not directly identify individual clients.
4. HMIS shall use only unidentified aggregate HMIS data for homeless policy and planning activities in preparing federal, state or local applications for homelessness funding; to demonstrate the need for and effectiveness of programs; and to obtain a system-wide view of program utilization in the City of Philadelphia.

**ARTICLE IX
TEMPORARY SUSPENSION OF THE CONTRACT**

Upon written notice and at any time during the period covered under this Agreement, OHS may suspend all or any part of the activities undertaken pursuant to this Agreement, until such time as the reasons for the suspension have been resolved by the Participant to the satisfaction of OHS. OHS may give such notice to suspend for the following reasons:

1. Violations of laws and regulations; a breach of the Participant's system security or client confidentiality; substantial noncompliance with the terms and conditions of this Agreement, or when responsible public officials or private citizens make allegations of mismanagement, malfeasance or criminal activity.
2. When, in the opinion of OHS, the activities cannot be continued in such manner as to adequately fulfill the intent of statute or regulations due to an act of God, strike or disaster.

**ARTICLE X
TERMINATION**

1. OHS may terminate this Agreement, for cause, if it determines that the Participant has violated any material term.
2. Upon termination of this Agreement for any reason, the Participant shall return or destroy all protected information received from the HMIS program, or created or received by the Participant on behalf of the HMIS program. This provision shall apply to protected information that is in the possession of subcontractors or agents of the Participant. The Participant shall retain no copies of the protected health information.
3. In the event that the Participant determines that returning or destroying the protected information is infeasible, the Participant shall notify OHS of the conditions that make return or destruction infeasible within two weeks in writing to the HMIS Administrator. Upon notification that the return or destruction of the protected information is infeasible, the Participant shall extend the protections of this Agreement to such protected information and limit further uses and disclosures of the information to those purposes that make the return or destruction infeasible, as long as the Participant maintains the information.
4. This Agreement may be terminated by either party upon sixty (60) days written notice.

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**ARTICLE XI
ENTIRE AGREEMENT**

This Agreement, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either OHS or the Participant has authority to make any statement, agreement or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Agreement. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

This Agreement contains the entire agreement between the parties and supersedes all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, between the parties with respect to the subject matter of this Agreement and the transactions contemplated by this Agreement.

**ARTICLE XII
SEVERABILITY**

Should any section or any part of any section of this Agreement be rendered void, invalid or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or part of any section of this Agreement.

**ARTICLE XIII
CONSTRUCTION**

This Agreement shall be interpreted and construed in accordance with federal law, where applicable, and with the laws of the City of Philadelphia. All of the terms and conditions of this Agreement are expressly intended to be construed as covenants as well as conditions. The titles of the sections and subsections herein have been inserted as a matter of convenience and reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein.

**ARTICLE XIV
NONWAIVER OF REMEDIES**

No delay or failure on the part of OHS in exercising any right, power or privilege hereunder shall affect such right, power or privilege; nor shall any single or partial exercise thereof or any abandonment, waiver, or discontinuance of steps to enforce such a right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies of OHS hereunder are cumulative and concurrent and not exclusive of any rights or remedies which it might otherwise have. OHS shall have the right at all times to enforce the provisions of this Agreement in accordance with the terms hereof notwithstanding any conduct or custom on the part of OHS in refraining from so doing at any time or times. The failure of OHS at any time or times to enforce its rights under such provisions, in accordance with the same, shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Agreement or as having in any way or manner modified or waived the same.

**ARTICLE XV
NOTICE PROVISIONS**

Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service with confirmed receipt, and sent to the following:

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1. If to OHS: OHS's address as it appears on page one of this Agreement, unless OHS provides written notice to the Participant of a change in address subsequent to the full execution of this Agreement.
2. If to the Participant: The Participant's address as it appears on page one of this Agreement, unless the Participant provides written notice to OHS of a change in address subsequent to the full execution of this Agreement.

**ARTICLE XVI
BREACH**

OHS shall notify Participant of any breaches of the terms of this Agreement by Participant, any other Participant or any individual acting directly or indirectly under the authority of Participant. Participant shall have such time as OHS, in its sole and absolute discretion specifies in its notice breach, to cure such breach. In the event such breach is not cured within the notice period, this Agreement may be terminated by the OHS without further notice.

- 1) In the event of a breach of system security or client confidentiality, the Participant shall notify the HMIS Administrator within 24 hours. Any Participant that is found to have had breaches of system security and/or client confidentiality shall enter a period of probation, during which technical assistance shall be provided to help the Participant prevent further breaches. Probation shall remain in effect until the Administrator has evaluated the Participant's security and confidentiality measures and found them compliant with the policies stated in this Agreement and the HMIS User Agreement. Subsequent violations of system security may result in suspension from the system. OHS reserves the right to conduct routine and random audits to monitor security and client confidentiality.

**ARTICLE XVII
INTERPRETATION**

The construction of this Agreement shall not be construed against the party causing its preparation but shall be interpreted on the basis of the plain meaning of the terms used which have been reviewed by both parties in consultation with their respective counsel.

**ARTICLE XVIII
LAWS**

This Agreement is governed by the laws of the City of Philadelphia, and applicable Federal laws.

**ARTICLE XIX
CAPTIONS**

Captions in this agreement are asserted for convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any of the terms of this agreement.

**ARTICLE XX
SUCCESSORS AND ASSIGNS**

All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors and assigns.

**ARTICLE XXI
FURTHER ASSURANCE**

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The parties shall cooperate with each other and execute any documents necessary to carry out the intent and purpose of this Agreement.

**ARTICLE XXII
AUTHORIZING THE ACTION**

This Agreement shall become effective upon full execution of the agreement.

1. THE OFFICE OF HOMELESS SERVICES (OHS) DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, STATUTORY, ORAL, WRITTEN, OR OTHERWISE), WITH RESPECT TO THE HMIS OR ANY PART THEREOF INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT OHS KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN TRADE, OR BY COURSE OF DEALING. IN ADDITION, OHS EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OR ENTITY OTHER THAN OHS WITH RESPECT TO THE HMIS OR ANY PART OR USE THEREOF.
2. TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS AND THE CONSTITUTION OF THE CITY OF PHILADELPHIA, THE PARTICIPANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OHS, ITS TRUSTEES, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LIABILITIES, CLAIMS, ACTIONS, EXPENSES (INCLUDING ATTORNEY'S FEES AND COSTS RELATED TO THE INVESTIGATION OF ANY SUCH CLAIM, ACTION, OR PROCEEDING), OBLIGATIONS, LOSSES, FINES, PENALTIES, AND ASSESSMENTS RESULTING FROM OR ARISING OUT OF THE PARTICIPANT'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR WILLFUL MISCONDUCT, WHETHER BY THE PARTICIPANT, ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS. THE PARTICIPANT SHALL UTILIZE LEGAL COUNSEL OF THE OHS'S CHOOSING WITH RESPECT TO THE PARTICIPANT'S DEFENSE-RELATED OBLIGATIONS UNDER THIS SECTION.

Executed this _____ day of _____, 20__.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed, attested and unsealed by their proper officials, pursuant to due and legal action authorizing the same to be done as of the date first written above.

For: **[INSERT PARTICIPANT'S NAME]**

Federal Identification Number

BY:

Agency Authorized Signature, Date

Please print name and title
ATTEST:

Witness for Subscriber Signature and Date

PHILADELPHIA HOMELESS MANAGEMENT INFORMATION SYSTEM (HMIS)

PARTICIPATION AGREEMENT

Update Log

Created: January, 2011

Reviewed and Reapproved: March 29, 2011
September 11, 2017
June, 2019

Attachments:

- A. HMIS Governance Charter
 - a. HMIS Privacy and Security Plan
 - i. Notice of Privacy Practice
 - 1. HMIS Consumer Notice
 - 2. HMIS Client Authorization Form
 - a. Information Request Form
 - b. Acknowledge Form
 - b. HMIS Data Quality Assurance Plan
 - c. HMIS User Agreement