

DATA USE AGREEMENT

This Data Use Agreement (the “Agreement”), effective as of the ___ day of _____, 2020, is by and between the Texas Homeless Network (hereinafter referred to as “THN”) which is advised by Texas Homeless Data Sharing Network Board (hereinafter referred to as “THDSN BOARD”) and [Formal Legal Name of the CoC] (hereinafter referred to as the “CoC”) (collectively, the “Parties”; each, a “Party”).

1. Purpose

THDSN BOARD, through the Texas Homeless Network (THN), will create a statewide data system or warehouse (the “Texas Homeless Data Sharing Network” or “THDSN”) to collect local data from Texas Continuums of Care through the Homeless Management Information System (“HMIS”). CoC agrees to share the HMIS data (the “Data”) with THN in order to consolidate the Data in one database enabling THN to: (a) perform research and analytics on the Data; (b) support policy initiatives with respect to homelessness in Texas; (c) gain insights into the characteristics of people experiencing homelessness, identify patterns of service use, and identify gaps in services; (d) connect to other state and local-level data to understand the connection of various Texas systems of care to homelessness for strategic development and service/housing targeting; and (e) provide CoC with access to research findings and/or data analysis (the “Purpose”).

In order to accomplish the Purpose, by executing this Agreement, CoC agrees to provide THN with client-level HMIS records which include: (1) personally identifiable information from client records for matching and de-duplicating individuals across the State of Texas and linkage to other administrative records from Texas; and (2) service encounter elements from those same client records for the purpose of research, evaluation, and program improvement.

2. Data Sharing

2.1 CoC is authorized to share data under this Agreement pursuant to the 2004 Homeless Management Information Systems (HMIS) Data and Technical Standards Final Notice, Section 4, HMIS Privacy and Security Standards issued by the U.S. Department of Housing and Urban Development (HUD); and the Coordinated Entry Management and Data Guide.¹

2.2 CoCs and their HMIS lead agencies will provide the Data in a format that matches HUD-required data standards in the current specification (as such standards and guidance evolve during the term of this Agreement) for all universal data elements, program-specific data elements, and project descriptor data elements for all non-domestic violence clients. Clients that include program-specific data indicating involvement in Domestic Violence programs as indicated by the element “4.11 Domestic Violence” will be excluded from the shared data set. The Parties agree that additional data elements may be added or redacted to comply with federal and/or state reporting requirements. THN will extract the Data from the CoC through a secure connection. The Parties will mutually agree as

¹<https://www.google.com/url?q=https://files.hudexchange.info/resources/documents/2004HUDDataandTechnicalStandards.pdf&sa=D&ust=1593010194519000&usg=AFQjCNHTeoyBdDqrkzyQAeIvfRDtO5V3Fw>

to the frequency of transferring the Data from the CoC to THN, with such transfers occurring no less than quarterly during any calendar year.

2.3 If any consent or other authorization is necessary under applicable law for the disclosure of sensitive personal information to THN under this Agreement, it is the sole responsibility of CoC to ensure that such sensitive personal information is not included in the Data unless the required consent or other authorization has been obtained. THN explicitly disclaims any responsibility or liability related to or arising from CoC's failure to procure the required consent or the transmission of any data or personal information to THN without having procured such required consent. CoC explicitly acknowledges, understands, and agrees that it shall be fully liable with regard to such failure to procure any required consent or the unlawful transmission of any data or personal information without having procured such consent, and further agrees to fully indemnify, hold harmless, and release THN from any such liability, as further contemplated and described within this Agreement.

3. Use of Data

3.1 THN agrees to utilize the Data solely for the purposes outlined in this Agreement, including the Purpose set forth above. Any other use of the Data must be approved in advance by CoC in a written amendment to this Agreement that is signed by both Parties.

3.2 THN will use Data in order to match and de-duplicate individuals (i.e., in order to link records from one data source to another and to eliminate duplicate copies of repeating data about specific individuals). THN will use PII for the matching and de-duplication processes. In accordance with applicable privacy laws, the data may also be de-identified, so that it no longer includes personal identifying information. The de-identified Data will be used to fulfill the majority of the Purposes pursuant to this Agreement. To the extent permissible under applicable privacy laws, CoC grants THN the right to de-identify the Data. Data will be de-identified in accordance with applicable law. THN will adhere to data de-identification protocols similar to, but no less stringent than, the Texas Health and Human Services regulations as described in Texas HHSC's Primary Health Care Services Program Policy Manual section 3100 Client Records Management². THN will own any derivative works created using de-identified Data.

3.3 THN will link or integrate the Data with data from other organizations, including but not limited to other Continuums of Care, in order to conduct research and data analysis which may result in reports, insights, trends, and other work products. THN will solely and exclusively own the results of its research and data analysis, including, without limitation, reports and all other work products. At THDSN BOARD's sole and absolute discretion, THDSN BOARD may provide CoC certain reports and analyses developed or otherwise created by THN.

4. Data Provider Obligations

4.1 CoC acknowledges and agrees that THN may use, disclose, process, transfer, and store the Data in order for THN to fulfill the Purpose and as otherwise authorized under this Agreement. CoC shall ensure that it is authorized to transfer or disclose the Data to THN in order that THN may lawfully use, disclose, process, and transfer the Data in accordance with this Agreement. CoC shall

² <https://hhs.texas.gov/book/export/html/266901>

ensure that it is authorized and has the right to transfer and disclose the Data to THN in accordance with this Agreement. CoC shall ensure that allowable uses and disclosures under their privacy requirements and notice practices will allow THN to use the Data for research and analytics in furtherance of the Purpose, including the right to disclose to third-parties for analytics, research, and collaboration but only at the approval of the THDSN Board. CoC hereby grants THN a worldwide, non-exclusive, irrevocable license to use, disclose, and create derivative works of the Data, as permitted by applicable law and regulation, including the right to sublicense. Further, specifically excluding THN's development or creation of other reports, data, or analyses, all of which shall be the sole exclusively proprietary property of THN, all Data transmitted to THN by CoC shall be destroyed by THN within three (3) years from the date said other reports, data, or analyses are developed and/or otherwise created by THN, with such destruction to be confirmed in writing executed and delivered to CoC by THN. THN shall not disclose or redisclose any portion of the Data at any time upon receipt of same from CoC, but THN shall have no such restriction related to the disclosure or redisclosure of THN's proprietary reports or analyses, contemplated and described immediately above.

4.2 CoC shall have responsibility for the accuracy and quality of the Data and for ensuring that it has all necessary rights to submit such Data to THN for use as set forth herein.

4.3 CoC agrees to comply with all applicable federal and state privacy and security laws.

5. Data Recipient Obligations

5.1 As a condition of receiving the Data for carrying out the Purpose set forth above and as authorized under this Agreement, THN agrees to comply with applicable federal and state privacy and security laws, including, but not limited to, the Texas Public Information Act³. In addition, THN agrees to comply with relevant state and federal standards addressing the gathering, use, and protection of personal data and information, including the 2004 HMIS Data and Technical Standards Final Notice issued by HUD and the Texas Public Information Act.

5.2 THN further agrees not to use, disclose, process, or transfer the Data except to fulfill the purposes of this Agreement as described in Sections 1 and 3 above and as authorized under this Agreement.

5.3 THN agrees to use appropriate and reasonable safeguards designed to prevent the use or disclosure of the Data that are no less stringent in nature than those safeguards currently utilized by THN to protect THN's own confidential and proprietary information. THN, at the direction and guidance of the THDSN BOARD, shall take appropriate technical and organizational measures against unauthorized or unlawful processing of all Data or its accidental loss, destruction, or damage within what is permitted by law of the same level of security and stringency of the measures currently utilized by THN to protect and safeguard THN's own confidential and proprietary information.

³ https://www.google.com/url?q=https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/publicinfo_hb.pdf&sa=D&ust=1593010194481000&usg=AFQjCNFIEZOI2u2DA5bFlwivO9CdopHhLA

5.4 THN agrees that its internal disclosure of the Data will only allow for relevant and necessary access in compliance with Texas Business and Commerce Code; Sec. 521.051. UNAUTHORIZED USE OR POSSESSION OF PERSONAL IDENTIFYING INFORMATION⁴.

5.5 THN agrees to comply with Texas Business and Commerce Code; Sec. 521.052. BUSINESS DUTY TO PROTECT SENSITIVE PERSONAL INFORMATION⁵ if and when THN provides by contract for the operation or maintenance of Data which THN has received pursuant to this Agreement.

5.6 THN will comply with applicable law, including but not limited to Texas Business and Commerce Code, Sec. 521.053. NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA⁶, related to a breach of the security of the Data.

5.7 THN does not obtain any right, title, or interest in any of the Data provided by CoC other than that authorized or allowed by this Agreement.

6. Confidentiality

6.1 "Confidential Information" means all information disclosed by a Party to the other Party, whether orally or in writing, that is designated as confidential, that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, or that meets the definition of "personal identifying information" as defined in Texas Business and Commerce Code, Section 521.002⁷. All data contained in CoC datasets, paper case files, and information provided verbally, is Confidential Information. Confidential Information does not include information, technical data, or work product which (a) was in the public domain at the time it was disclosed or enters the public domain through no fault of the receiver; (b) can be shown by written documentation to have been known to the receiver, without restriction, at the time of disclosure; (c) was independently developed by the receiver without any use of the discloser's Confidential Information; or (d) becomes known to the receiver, without restriction, from a source other than the discloser without breach of any confidentiality agreement and otherwise not in violation of the discloser's rights, obligations or agreements.

6.2 THN and CoC each agree to use and disclose the Confidential Information disclosed to it by the other Party only to perform its obligations and exercise its rights under this Agreement, which includes, without limitation, use in accordance with Sections 1 and 3, and as authorized and granted under this Agreement. Each Party will treat the Confidential Information of the other Party: (i) in a manner compliant with applicable state and federal laws and regulations; and (ii) in a confidential manner with the same degree of care as such Party treats its own confidential or proprietary information of like importance, which will be no less than a reasonable degree of care. Except as set forth in this Agreement, each Party will disclose the Confidential Information of the other Party only to such of its employees, agents, contractors, or consultants who are required to have the information

⁴ <https://statutes.capitol.texas.gov/Docs/BC/htm/BC.521.htm#521.051>

⁵ <https://statutes.capitol.texas.gov/Docs/BC/htm/BC.521.htm#521.052>

⁶ <https://statutes.capitol.texas.gov/Docs/BC/htm/BC.521.htm#521.053>

⁷ <https://statutes.capitol.texas.gov/Docs/BC/htm/BC.521.htm#521.002>

in connection with this Agreement and who are bound by confidentiality obligations at least as restrictive as those contained in this Section 6.

6.3 Notwithstanding anything in the foregoing to the contrary, THN may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request, or similar method, provided that THN promptly notifies, to the extent practicable, CoC in writing of such demand for disclosure so that CoC, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided in the case of a broad regulatory request with respect to THN (not targeted at CoC), THN may promptly comply with such request provided THN agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, CoC with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if CoC is unable to obtain or does not seek a protective order and THN is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

6.4 The Parties shall immediately notify one another upon the discovery of any unauthorized use or disclosure of Confidential Information by either Party, or either Party's agents or representatives, or any other breach of this Agreement by either Party, or either Party's agents or representatives, and will cooperate with efforts by either Party to help the non-disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use.

6.5 The Parties understand that either Party will suffer irreparable harm in the event that either Party, its agents, or representatives breaches any of the obligations set out in this Agreement and that monetary damages will be inadequate to compensate the non-disclosing Party for said breach. Accordingly, the Parties agree that in the event of a breach or threatened breach by either Party, its agents, or representatives for any part of this Agreement, the non-disclosing Party, in addition to any other rights or remedies available, shall be entitled to temporary restraining orders, temporary injunctions, and permanent injunctions in order to prevent or to restrain any such breach. The Parties agree that if either Party, its agents, or representatives, violates any of the covenants or provisions herein, the non-disclosing Party shall be entitled to a claim for damages and reasonable attorney's fees arising from said violation(s); its remedy shall be in addition to any injunctive relief, liquidate damages, or other remedies to which the non-disclosing Party may be entitled to pursue.

7. Information Security

THN shall store the information so that it is secure from unauthorized access. THN shall maintain appropriate and reasonable administrative, physical, and technical safeguards designed to prevent unauthorized access, use, or disclosure of the Data. The Data must be encrypted when in transit using FIPS 140-2 approved encryption technology.

8. Term and Termination

8.1. This Agreement shall be effective as of the date first set forth above and shall continue for five (5) years unless terminated with or without cause as set forth below. This Agreement will automatically renew for subsequent five (5) year terms unless a Party provides the other Party with a written notice of termination at least sixty (60) days prior to the expiration of the then-current term.

8.2. If either Party breaches any provision in this Agreement and such breach remains uncured after thirty (30) days written notice to the breaching Party, the non-breaching Party may terminate this Agreement on a date specified by such Party.

8.3. Either Party may terminate this Agreement for convenience on thirty (30) days written notice to the other Party. If the CoC terminates this Agreement, the CoC may not request the removal of Data already submitted to THN and the Data will not be returned.

8.4. After the termination of this Agreement, THN agrees to maintain the confidentiality of the Data as set forth in this Agreement.

9. Mutual Defense and Indemnification

Each Party (as "Indemnitor") shall indemnify, hold harmless, and defend the other Party (as "Indemnitee"), as well as the Indemnitee's appointees, officers, directors, employees, agents, affiliates, successors, and permitted assigns, from and against any and all liability, claims, damages, losses, and expenses, including but not limited to attorney's fees and costs (with attorneys of the Indemnitee's choosing, at its sole and absolute discretion), caused by, arising out of, in connection with, or resulting from the Indemnitor's performance under this Agreement, where any such liability, claim, damage, loss, or expense is caused by and arises, in whole or in part, from any negligent or non-negligent act or omission of the Indemnitor or any of the Indemnitor's appointees, employees, agents, subcontractors, or others.

10. Dispute Resolution

In any dispute over or in any way related to the provisions of this Agreement, and in all other disputes among the Parties (the "Disputing Parties") (including issues of enforceability, termination, and arbitrability), the dispute shall:

- (a) Be professionally, promptly, and under commercially reasonable circumstances presented and negotiated in good faith between the Disputing Parties;
- (b) In the event that negotiation fails or upon the expiration of one (1) month of the event(s) giving rise to the dispute, whichever is sooner, the dispute shall then be submitted to non-binding mediation. The Disputing Party shall apply to the American Arbitration Association for a mediator, with the mediation to take place in Houston, Harris County, Texas.
- (c) In the event mediation fails to resolve all of the issues between or among the Disputing Parties, or if mediation is not held within two (2) months of the event(s) giving rise to the dispute, then the matter or any remaining matters shall be submitted to final, non-appealable, binding arbitration. The arbitration shall be held by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The place of arbitration shall be Houston, Harris County, Texas. The arbitration will be conducted in English. The arbitrator may issue any preliminary, injunctive, and/or equitable relief. Nothing in this Section will serve to restrict the ability to apply for emergency relief. Any Party may, after failure of the negotiation and mediation procedures above, commence arbitration of the dispute by sending a written request for arbitration to all other Disputing Parties. The request shall state the nature of the dispute to be resolved by arbitration, and arbitration shall be commenced as soon as practical after such Parties receive a copy of the written request. The Parties may not bring suit regarding

any disputes, controversies, or claims subject to this Section of this Agreement in any venue other than an arbitration pursuant to this Section of this Agreement, except in order to enforce this Section or enforce an arbitral award made pursuant to this Section. In the event that a Party attempts to bring an action in violation of this Section, the Parties agree that the other Party will be entitled to the arbitrator or judge entering an injunction to enjoin such unauthorized action. All Parties shall initially share the cost of arbitration, but the prevailing Party or Parties shall be awarded attorney's fees, costs, and other expenses of arbitration. All arbitration decisions shall be final, binding, and conclusive on all the Parties to arbitration, and legal judgment may be entered based upon such decision in accordance with applicable law in any court having jurisdiction to do so. The Parties agree that the arbitral award shall be recognized by any applicable courts pursuant to all applicable statutes, conventions, and treaties. The Parties agree that this Agreement concerns interstate commerce for purposes of the Federal Arbitration Act and the Federal Arbitration Act shall apply.

11. Contact Persons

11.1. To facilitate successful administration of this Agreement and for purposes of the initiation of this Agreement, the representatives designated as "CoC Representative" and "THN Representative" will act as the contact persons for each Party. The representatives are identified on Attachment A, attached hereto. Moreover, the THN Representative designated as "Custodian for Data Recipient" on Attachment A will be responsible for observing the security and privacy arrangements specified in this Agreement. The person designated as the "CoC Data Provider" on Attachment A will be the point-of-contact for purposes of providing data to THN.

11.2. Either Party may change its Representative by notifying the other Party in writing of such change within five (5) business days. Any such change will become effective upon the receipt of such notice by the other Party to this Agreement and completion of the required training module assigned to

12. Miscellaneous.

12.1. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to THN:

Attn: Eric Samuels, President/CEO of Texas Homeless Network

If to CoC:

Attn: _____

12.2. Modifications. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized representative of each of the Parties hereto.

12.3. Governing Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Texas, without regard to applicable conflict of laws principles.

12.4. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.

12.5. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

12.6. Severability. The provisions of this Agreement shall be severable and, if any provision of this Agreement shall be held or declared to be illegal, invalid, or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid, or unenforceable provision had not been contained herein.

12.7. No Third-Party Beneficiary. Nothing in this Agreement is intended to confer on any person other than the Parties to this Agreement or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a Party to this Agreement nor imposing any obligations on either Party hereto to persons not a Party to this Agreement.

12.8. Entire Agreement. This Agreement, together with all attachments, exhibits, schedules, riders, and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the exhibits, schedules, or riders, the provisions of this Agreement shall control.

12.9 No Binding Agreement for Other Transactions. The Parties agree that neither Party will be under any legal obligation of any kind whatsoever with respect to any other transaction by virtue of this Agreement, except for the matters specifically agreed to herein. This Agreement does not create a joint venture or partnership between the Parties.

12.10 Further Assurances. The Parties agree to execute and deliver additional documents and instruments and to perform all additional acts and things necessary or appropriate to effectuate, carry-

out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated herein.

12.11 Counterparts. This Agreement may be executed simultaneously or in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.12 Separate Counsel. By signing this Agreement, each Party acknowledges that this Agreement is the product of an arms-length transaction between the Parties and should be construed as such. Each Party acknowledges that it has been advised to seek separate counsel and has had adequate opportunity to do so.

[Signature page to follow]

By signing below, each Party agrees and accepts all of the foregoing by signature of its authorized representative:

THN Representative

[Name of CoC]

Signature

Signature

Name

Name

Title

Title

Date

Date

ATTACHMENT A

CONTACT NAMES

CoC Representative	THN Representative
Name:	Name:
Phone Number:	Phone Number:
Email:	Email:

CoC Data Provider	Custodian(s) for THN Representative
Name:	Name:
Phone Number:	Phone Number:
Email:	Email: