

**Homeless Management Information System  
Agency Participation Agreement**  
between  
**The North Carolina Coalition to End Homelessness**  
and

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**[Insert Organization Name]**

This Agency Participation Agreement (“APA”) is entered into on mm/dd/yyyy between the North Carolina Coalition to End Homelessness, hereafter known as “NCCEH”, and Organization Name, hereafter known as "Agency", regarding access and use of the Homeless Management Information System, hereafter known as "HMIS,” administered by the North Carolina Coalition to End Homelessness.

**I. Introduction**

An HMIS is an internet-based, local information technology system used to collect client-level data about the number, characteristics, and needs of persons experiencing homelessness and those at risk of homelessness as well as data on the provision of housing and services to these populations. Use of an HMIS is mandated by the U.S. Department of Housing and Urban Development (“HUD”) for all communities and agencies receiving HUD Continuum of Care, Emergency Solutions Grant, and Housing for Persons with AIDS funds; by the U.S. Department of Veterans Affairs (“VA”) for agencies receiving Supportive Services for Veteran Families and Grant Per Diem funds; and by the U.S. Department of Health and Human Services (“DHHS”) for agencies receiving Projects for Assistance in Transition from Homelessness and Runaway and Homeless Youth funds (collectively the “Grants”).

Continuums of Care (“CoCs”) are community-wide initiatives that work to provide a range of housing and services for people experiencing homelessness. The Continuum of Care system includes homelessness prevention assistance, emergency shelter, transitional housing, permanent affordable and permanent supportive housing, supportive services, specialized programs and outreach for designated homeless subpopulations, and integration with “mainstream” programs. Each CoC is responsible for designating a Collaborative Applicant, which is the entity eligible to collect and submit the CoC registration and CoC consolidated application and to apply for CoC planning funds on behalf of the CoC during the CoC program competition. The CoC may assign additional responsibilities to the Collaborative Applicant so long as these responsibilities are documented in the CoC's governance charter.

The HMIS enables homeless service providers to collect uniform client information over time. The HMIS is essential to efforts to streamline client services and to inform public policy decisions aimed at addressing and ending homelessness at local, state, and federal levels. Through HMIS, people experiencing homelessness benefit from improved coordination in and between agencies, informed advocacy efforts, and policies that result in targeted services. Analysis of information gathered through HMIS is critical to the preparation of a periodic accounting of homelessness, which may include measuring the extent and nature of homelessness, the utilization of services and homeless programs over time, and the effectiveness of homeless programs. Such an unduplicated accounting of homelessness is necessary for service and systems planning, effective resource allocation, and advocacy. The parties to this agreement share a common interest in collaborating to end homelessness and successfully implementing and operating HMIS.

The HMIS, a shared database, allows authorized personnel at homeless, housing, and service provider agencies throughout the state of North Carolina to enter, track, and report on information concerning their own clients and to share information, subject to appropriate interagency agreements, on common clients.

The goals of the HMIS are to:

1. Improve coordinated care for and services to homeless persons in the participating CoCs;
2. Provide a user-friendly and high-quality automated records system that expedites client intake procedures, improves referral accuracy, and supports the collection of quality information that can be used for program improvement and service planning; and
3. Meet the reporting requirements of HUD, VA, DHHS, and other funding organizations, as needed.

In compliance with applicable local, state and federal requirements regarding client/consumer confidentiality and data security, the HMIS is designed to collect and deliver timely, credible, quality data about services and homeless persons or persons at risk of homelessness.

All homeless assistance and homelessness prevention service providers in participating CoCs are eligible to participate in the HMIS, except for victim service providers covered by the Violence Against Women Act (“VAWA”).

The purpose of this APA is to define the provisions for the implementation, maintenance, coordination, and operation of the HMIS. NCCEH is responsible for administering the HMIS on behalf of the CoC, including implementation, project management, training, maintenance, help desk support, and in coordination with the HMIS software provider, the enhancement and upgrading of the HMIS software. The Agency is responsible for entering client data in the HMIS according to program type requirements.

## **II. Sublicense**

1. NCCEH hereby grants to the Agency and the Agency hereby accepts a revocable, non-exclusive, non-transferable, non-assignable, non-sublicensable limited Sublicense (“Sublicense”) to use WellSky Community Services (formerly, ServicePoint) software to access and utilize the HMIS database (“Software”) in accordance with the terms and conditions of this APA. The Agency acknowledges and agrees that the Software is being sublicensed, not sold or otherwise transferred, to the Agency by NCCEH. Agency understands and agrees that the Sublicense granted to Agency hereunder is always subject to and limited by the terms of those certain agreements and licenses by and between WellSky Community Services and NCCEH related to the Software (“License Documents”), and Agency hereby agrees to comply with all obligations required of Agency and NCCEH pursuant to the License Documents related to the use of the Software. The Agency further acknowledges and agrees that it shall not acquire any ownership interest in the Software sublicensed to Agency under this Agreement and that NCCEH reserves and shall retain its entire right, title, and interest in and to the Software and all intellectual property arising out of or relating to the Software except as expressly granted to the Agency in this APA. To the extent any of the services performed by the Agency, its employees, contractors, or agents pursuant to this Agreement result in the creation of any new intellectual property related to the Software, the Agency acknowledges that it will not have any ownership interest in such new intellectual property.
2. As a condition to the Agency’s right to use the Software, the Agency agrees as follows:
  - a. The Sublicense is non-exclusive, non-assignable, and non-transferable.
  - b. No rights or licenses to the Software other than those expressly granted to the Agency are hereby granted to the Agency, regardless of whether by implication, estoppel, or otherwise. No title to the underlying intellectual property comprising the Software, including any and all copyrights

- therein, are hereby transferred to the Agency.
- c. The Agency shall not reverse engineer, decode, decompile, disassemble, re-engineer, or adapt any part of the Software or otherwise create, gain access to, attempt to create or gain access to, or permit, allow, use, or assist others to create or gain access to the source code or its structural framework of WellSky Community Services software for any purpose whatsoever, except as and only to the extent this restriction is prohibited by law, or with respect to open-source components included in WellSky Community Services software, under the applicable open-source software Sublicense agreements governing the use of these components.
  - d. The Agency must not modify, alter, amend, fix, translate, enhance, or otherwise create derivative works of WellSky Community Services software.
  - e. The Agency shall not remove, disable, or otherwise create or implement any workaround to any security features contained in WellSky Community Services software.
  - f. The Agency shall not modify, delete, or remove any trademarks, copyrights or other property right notices on or in WellSky Community Services software.

### **III. Sublicense Fee**

It is anticipated by the parties that NCCEH will be paid for providing the Sublicense to Agency from funds paid by and through one or more of the CoCs. Provided, however, if CoCs are not able to reimburse NCCEH for the full costs of providing the Sublicense to Agency, then NCCEH has the option to charge agencies to continue to provide the Sublicense to Agency. The Agency shall have the option to pay to NCCEH the cost of providing the Sublicense to Agency for continued use or to terminate the APA as described in XII C. NCCEH will provide sixty (60) days' notice to Agency CoC funds are insufficient to compensate NCCEH for the full cost of the Sublicense (the "Shortfall Notice"). NCCEH shall have the unilateral right to terminate the Sublicense if Agency is unable or unwilling to pay NCCEH for the full cost of the Sublicense within ninety days (90) days after the delivery of the Shortfall Notice to Agency by NCCEH.

### **IV. NCCEH Responsibilities**

1. NCCEH has been designated as the HMIS Lead Agency by the participating CoCs as documented in each CoC's Governance Charter. NCCEH is responsible for administering the HMIS on behalf of the CoCs.
2. NCCEH will provide the Agency 24-hour access to the HMIS data-gathering system, via internet connection, exclusive of outages due to maintenance conducted by WellSky (formerly, Mediware/Bowman) or to outages resulting from factors out of NCCEH's reasonable control, such as interruptions in service from third-party providers.

### **V. Privacy and Confidentiality**

#### **A. Protection of Client Privacy**

1. The Agency will comply with all applicable federal and state laws regarding protection of client privacy.
2. The Agency will comply specifically with federal confidentiality regulations as contained in the *Code of Federal Regulations, 42 CFR Part 2*, regarding disclosure of alcohol and/or drug abuse records.
3. The Agency will comply specifically with the *Health Insurance Portability and Accountability Act of 1996, 45 C.F.R., Parts 160 & 164* and corresponding regulations established by the U.S. Department of Health and Human Services.
4. The Agency will comply with all privacy rules specified in *North Carolina General Statutes Chapter 75, the Identity Theft Protection Act, North Carolina General Statutes Chapter 122C*,

*Article 3, North Carolina General Statutes Chapter 130A, North Carolina General Statutes Chapter 7B, and North Carolina General Statutes Chapter 108A.*

5. The Agency will comply with all policies and procedures established by the HMIS Advisory Board pertaining to protection of client privacy.

#### **B. Client Confidentiality**

1. The Agency agrees to provide a copy of the HMIS Privacy Notice (or an Agency-specific alternative that has been approved by NCCEH) to each client. The Agency will provide a verbal explanation of the HMIS and arrange for a qualified interpreter/translator in the event that an individual is not literate in English or has difficulty understanding the Privacy Notice or associated consent form(s).
2. The Agency will not solicit or enter information from clients into the HMIS database unless it is essential to provide services or to conduct evaluation or research.
3. The Agency will not divulge any confidential information received from the HMIS to any organization or individual without proper written consent by the client, unless otherwise permitted by applicable policy, regulations, or laws.
4. The Agency will ensure that all persons who are issued a user identification and password to the HMIS abide by this APA, including all associated confidentiality provisions. The Agency will be responsible for oversight of its own related confidentiality requirements.
5. The Agency agrees that it will ensure that all persons issued a user ID and password will have demonstrated mastery by passing required certification tests for HMIS training prior to activation of their Sublicense. Privacy training must be updated annually.
6. The Agency agrees that those granted Agency Administrator systems access must first become a Certified HMIS Agency Administrator through training provided by NCCEH.
7. The Agency acknowledges that ensuring the confidentiality, security, and privacy of any information downloaded from the system by the Agency is strictly the responsibility of the Agency. Agencies should be especially vigilant about data that includes personally identifying information.

#### **C. Custody of Data**

1. The Agency acknowledges, and NCCEH agrees, that the Agency retains ownership over all information it enters into the HMIS. Once data is entered into the HMIS, the Agency has a right to export the data according to NCCEH's then existing processes. However, Agency shall not delete or purge any data entered into HMIS even if the date was entered by Agency.
2. In the event that HMIS ceases to exist, participating agencies and any applicable Continuums of Care (CoCs) will be notified and provided with reasonable time to access and save client data on people served by the agency, as well as statistical and frequency data from the entire system. Thereafter, the information collected in the HMIS will be purged or appropriately stored.
3. In the event that NCCEH ceases to exist, the custodianship of the data within HMIS will be transferred by the HMIS Advisory Board to another organization for continuing administration designated as the HMIS Lead Agency, and all HMIS participating agencies will be informed in a timely manner.
4. In the event the CoC designates a new HMIS Lead Agency, the data within HMIS will be transferred to the CoC's new HMIS Lead Agency.
5. If this APA is terminated, NCCEH, the CoCs, and the remaining HMIS agencies shall retain their right to the use of all client data previously entered by the terminating Agency, subject to any restrictions requested by the client.

### **VI. Regular Use of HMIS and Additional Agency Responsibilities**

1. The Agency will not deny services to a client or potential client based on their refusal to provide information or refusal to share data with other agencies in HMIS.
2. The Agency will not permit user IDs and passwords to be shared among users.
3. If a client has previously given the Agency permission to share information with multiple agencies, beyond basic identifying information and non-restricted service transactions, and then chooses to revoke that permission with regard to one or more of these agencies, the Agency will contact its partner agency/agencies and explain that, at the client's request, portions of that client record will no longer be shared. The Agency will then "lock" those portions of the record impacted by the revocation to the other agency/agencies.
4. If the Agency receives information that necessitates a client's information be entirely removed from the HMIS, the Agency will notify NCCEH. NCCEH will work with the Agency, sharing partners, and Mediware/Bowman to remove the record from the data set. The Agency agrees it will work with NCCEH to explore a variety of options for closing records and that they will only request actual removal of a record as a last resort.
5. The Agency will enter all Universal Data Elements as defined by the U.S. Department of Housing and Urban Development (HUD) for all persons whose data is captured on the system. The Agency will abide by additional data entry standards based on program type or funding source.
6. The Agency will enter data in a consistent manner and will strive for real-time, or close to real-time, data entry. All data entry must be complete within 10 days of collection from the client.
7. The Agency will not knowingly enter inaccurate information into HMIS and shall be solely responsible for any claims or damages relating to the provision of inaccurate information.
8. The Agency acknowledges that once the Client Release of Information & Sharing Plan Form expires, any new information entered into the database will be closed to sharing. Information entered before the date of the expired release will continue to be available to the sharing partners.
9. The Agency acknowledges that a fully executed Client Release of Information & Sharing Plan Form permits it to share restricted client information with select agencies in compliance with the Agency's approved confidentiality policies and procedures.
10. The Agency will prohibit anyone with an Agency-assigned user ID and password from entering offensive language, profanity, or discriminatory comments based on race, color, religion, national origin, ancestry, disability, age, sex, sexual orientation, gender or perceived gender orientation.
11. The Agency will utilize the HMIS for business purposes only.
12. The Agency will keep updated virus protection software on Agency computers that access the HMIS.
13. Transmission of material in violation of any federal or state regulations is prohibited.
14. The Agency will not use the HMIS with intent to defraud the federal, state, or local government or an individual entity or to conduct any illegal activity.
15. The Agency agrees that NCCEH or the local Continuum of Care Collaborative Applicant may convene local or regional user meetings to discuss procedures, updates, policy and practice guidelines, data analysis, and software/hardware upgrades. The Agency will designate at least one specific staff member to regularly attend user meetings.
16. The Agency will incorporate procedures for responding to client concerns regarding use of the HMIS into its existing grievance policy. A copy of any HMIS-related grievance, and the Agency's response, must be submitted to NCCEH within 5 days of completion of the Agency's response. Any complaint that involves a breach of information must be reported to NCCEH immediately to ensure the record has been closed. A full report of such a breach must be made to the NCCEH Executive Director within 5 working days. The Director will work with staff to confirm any breaches and to implement corrective action. Any confirmed privacy breaches will be reported to the HMIS Advisory Board.
17. Notwithstanding any other provision of this APA, the Agency agrees to abide by all policies and procedures relevant to the use of HMIS that NCCEH publishes annually. HMIS Policies and

Procedures are posted on the NCCEH website at [www.ncceh.org/hmis/administrative](http://www.ncceh.org/hmis/administrative). NCCEH will notify users of updates to the HMIS Policies and Procedures via email as well as publish an “alert” on the “system news” located on the sign-in screen on WellSky Community Services.

18. Agency assures that the following fully executed documents will be on file and available for review
  - Executed APA
  - The Agency’s board-approved confidentiality policy.
  - The Agency’s grievance policy, including a procedure for external review.
  - The Agency’s official privacy script/notice for HMIS clients.
  - Executed HMIS Client Release of Information & Sharing Plan Forms.
  - A copy of any HMIS Agency Sharing Agreement that defines sharing of client data between partnering agencies.
19. The Agency agrees that it will restrict the use of any and all client information as provided in applicable laws, and the Agency assumes full responsibility for ensuring the appropriateness of using and relying upon the client information stored in, generated by, or provided by the HMIS in view of all attendant circumstances, indications, and contraindications.

## **VII. Administrative Use**

The Agency agrees to share information entered into HMIS for the general purpose of administration and system-related data use. NCCEH and designated Continuum of Care Collaborative Applicant staff will provide administrative functions related to HMIS as required or authorized by law or otherwise permitted by client consent. These functions include training, administration, coordination, and report generation. NCCEH and the Continuum of Care Collaborative Applicant will also utilize or disclose information entered into HMIS for the purposes of meeting the CoC's duties, obligations, and goals relative to HMIS.

## **VIII. Publication of Reports**

1. The Agency agrees that it may only release aggregated information generated by the HMIS that is specific to its own services, not information on services provided by other agencies.
2. The Agency acknowledges that the release of aggregated information, will be governed by policies established by relevant committees operated by the HMIS Advisory Board.

## **IX. Database Integrity**

1. The Agency will not share assigned user IDs and passwords to access the HMIS with any other organization, governmental entity, business, or individual.
2. The Agency will not intentionally cause corruption of the HMIS in any manner. Any unauthorized access or unauthorized modification to computer system information, or interference with normal system operations, will result in immediate suspension of services, and, where appropriate, legal action against the offending entities.

## **X. Indemnification, Hold Harmless & Insurance**

1. The Agency, at all times, will indemnify and hold NCCEH, the HMIS Advisory Board, and participating Continuums of Care, and their respective directors, officers, shareholders, members, managers, partners, employees, contractors, and agents (“Indemnified Parties”) harmless from any damages, liabilities, claims, and expenses, including costs and reasonable attorneys’ fees, (“Claims”) asserted by any third party against any of the Indemnified Parties resulting from or related to all of the following: (i) the Agency’s (which such term shall include Agency’s directors,

officers, shareholders, members, managers, partners, employees, contractors, agents, and clients for the purposes of this Section) use of the HMIS or the Software; (ii) any Claims arising from any of Agency's acts, omissions, neglect, or fault; (iii) any Claims arising from Agency's failure to comply with laws, statutes, ordinances, or regulations applicable to it or the conduct of its business; (iv) any Claims arising from Agency's breach of any covenant, or obligation under this APA; (v) any Claims arising out of or related to client information stored in, generated by, or provided by the HMIS, to the extent such claims arise from the Agency's actions or inactions, intentional or otherwise; (vi) any Claims that a clients' privacy has been violated in some respect, directly or indirectly, through Agency's use or misuse of the HMIS or the Software.

2. The Agency agrees to keep in force a comprehensive general liability insurance policy with combined single limit coverage of not less than five hundred thousand dollars (\$500,000). Said insurance policy shall include coverage for theft or damage of the Agency's HMIS- related hardware and software, as well as coverage of Agency's indemnification obligations under this APA. The Agency, if self-insured, may provide a letter stating such coverage in lieu of providing a commercial policy.

## **XI. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

**EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES REGARDING THE SOFTWARE OR HMIS INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. IN NO EVENT WILL NCCEH BE LIABLE TO AGENCY FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR HMIS DATA EVEN IF NCCEH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NCCEH'S LIABILITY TO AGENCY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID IN CASH BY AGENCY TO NCCEH DURING THE TWELVE-MONTH PERIOD PRIOR TO THE DATE OF THE OCCURRENCE GIVING RISE TO THE CLAIM. PURSUANT TO THIS APA. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. THE SOFTWARE IS BEING PROVIDED TO AGENCY EXCLUSIVELY ON AN "AS-IS" BASIS.**

## **XII. Additional Terms and Conditions**

### **A. Term**

This APA shall remain in effect for 1 year ("Initial Term") from the agreement date unless terminated pursuant to paragraph XII, part C hereof. This APA shall automatically renew each year on the anniversary date for up to ten years, subject to termination as provided in paragraph XI, part C hereof. If the Agency chooses not to renew this APA, the Agency shall notify NCCEH in writing of nonrenewal at least 30 days before the expiration of the then-current term.

### **B. Additional Understandings**

1. The parties hereto agree that this APA is the complete and exclusive statement of the agreement between parties and supersedes all prior proposals and understandings, oral and written, relating to the subject matter of this APA.
2. The Agency shall not transfer or assign the Sublicense or any rights or obligations under the APA without the written consent of NCCEH.
3. This APA may be modified or amended by written agreement executed by both parties with 30 days advance written notice.
4. NCCEH may assign this APA, or the CoC or HMIS Advisory Board may cause NCCEH to assign this APA, upon due 10-day notice to the Agency.
5. NCCEH does not currently collect an agency participation fee prior to HMIS activation for new or renewing agencies. NCCEH reserves the right to institute an agency participation fee at any time and with thirty day-notice.

**C. Termination**

This APA shall remain in force until terminated by either party as provided herein. NCCEH and Agency have the right to terminate this APA by providing 30 days advance written notice to the other party. The Sublicense granted herein shall automatically terminate upon the termination of this APA. In addition, NCCEH, in its sole discretion, may immediately suspend, revoke, or terminate the Sublicense, including Agency’s access to the HMIS, upon Agency’s breach of any term of this APA or any misuse of HMIS or the Software.

IN WITNESS WHEREOF, the parties have entered into this Agreement:

**Agency:** \_\_\_\_\_

**By (Signature):** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

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

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

**North Carolina Coalition to End Homelessness**

**By:** \_\_\_\_\_

**Printed Name:** Denise Neunaber

**Title:** Executive Director

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