

## DATA USE AGREEMENT

This Data Use Agreement (the “Agreement”), effective as of the \_\_\_ day of \_\_\_\_\_, 2020, is by and between the California Business, Consumer Services and Housing Agency (hereinafter referred to as “BCSH”) and **Continuum of Care for CA-521 Davis, Woodland/Yolo County** (hereinafter referred to as the “CoC”) (collectively, the “Parties”; each, a “Party”).

### 1. Purpose

BCSH, through its Homeless Coordinating and Financing Council (HCFC), will create a statewide data system or warehouse (the “Homeless Data Integration System” or “HDIS”) to collect local data from California Continuums of Care through the Homeless Management Information System (“HMIS”), as authorized by Welfare and Institutions Code section 8257, subdivision (b)(13). CoC agrees to share the HMIS data (the “Data”) with BCSH in order to consolidate the Data in one database enabling BCSH to: (a) perform research and analytics on the Data, (b) support policy initiatives with respect to homelessness in California, (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-level data to understand the connection of various California systems of care to homelessness, 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 BCSH with client level HMIS records which include: (1) personally identifiable information from client records for matching and de-duplicating individuals across the State of California and linkage to other administrative records from California; 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.

**2.2** CoC will provide the Data in a format that matches HUD required data standards and comma separated values (CSV) extract guidance (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. The Parties agree that additional data elements may be added or redacted to comply with federal and/or state reporting requirements. BCSH will extract the Data from the CoC through a secure connection. The Parties will mutually agree as to the frequency of transferring the Data from the CoC to BCSH, with such transfers occurring no less than quarterly during the year.

**2.3** If any consent or other authorization is necessary under applicable law for the disclosure of sensitive personal information to BCSH 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.

### **3. Use of Data**

**3.1** BCSH 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** BCSH 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). In accordance with applicable privacy laws, Data will be de-identified, so that it no longer includes personal identifying information. The de-identified Data will be used to fulfill the Purpose pursuant to this Agreement. To the extent permissible under applicable privacy laws, CoC grants BCSH the right to de-identify the Data. Data will be de-identified in accordance with applicable law. BCSH will adhere to data de-identification protocols similar to, but no less stringent than, the California Health and Human Services protocols. BCSH will own any derivative works created using de-identified Data.

**3.3** BCSH will link or integrate the Data with data from other organizations, including other Continuums of Care, in order to conduct research and data analysis which may result in reports, insights, trends and other work product. BCSH will own the results of its research and data analysis, including, without limitation, reports and all other work product. At BCSH's sole and absolute discretion, BCSH may provide CoC certain reports and analyses.

### **4. Data Provider Obligations**

**4.1** CoC acknowledges and agrees that BCSH may use, disclose, process, transfer and store the Data in order for BCSH 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 BCSH and the State of California in order that BCSH may lawfully use, disclose, process and transfer the Data in accordance with this Agreement. CoC shall ensure that it is authorized and has the right to transfer and disclose the Data to BCSH in accordance with this Agreement. CoC shall ensure that allowable uses and disclosures under their privacy requirements and notice practices will allow BCSH 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. CoC hereby grants BCSH 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.

**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 BCSH 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, BCSH agrees to comply with applicable federal and state privacy and security laws, including, but not limited to, the California Information Practices Act of 1977 (Civ. Code, § 1798 et seq.). In addition, BCSH 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 State of California Information Security Policies, Standards and Procedures (Outlined in State Administrative Manual Chapter 5300).

**5.2** BCSH 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** BCSH agrees to use appropriate and reasonable safeguards designed to prevent the use or disclosure of the Data other than as provided for by this Agreement. BCSH shall take appropriate technical and organizational measures against unauthorized or unlawful processing of all Data or its accidental loss, destruction or damage.

**5.4** BCSH agrees that its internal disclosure of the Data will only allow for relevant and necessary access in compliance with California Civil Code section 1798.24, subdivision (d).

**5.5** BCSH agrees to comply with California Civil Code section 1798.19 if and when it provides by contract for the operation or maintenance of Data which it has received pursuant to this Agreement.

**5.6** BCSH will comply with applicable law, including but not limited to California Civil Code Section 1798.29, related to a breach of the security of the Data.

**5.7** The Data received by BCSH from CoC will be destroyed upon completion of the purpose for which they were obtained. The Data shall be destroyed in a manner to be deemed unusable or unreadable. BCSH may retain de-identified Data and any derivative works of such de-identified Data, reports, analyses or any other work product developed pursuant to this Agreement.

**5.8** BCSH 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 information" in California Civil Code section 1798.3, subdivision (a). 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** BCSH 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 in connection with this Agreement and who are bound by confidentiality obligations at least as restrictive as those contained in this Section 6.

## **7. Information Security**

BCSH shall store the information so that it is secure from unauthorized access. BCSH 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 years unless terminated with or without cause as set forth below. This Agreement will automatically renew for subsequent five-year terms unless a Party provides the other Party with a written notice of termination at least 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 BCSH and the Data will not be returned.

**8.4.** After the termination of this Agreement, BCSH 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**

If a dispute arises under this Agreement, the Parties shall attempt to resolve it informally and at the lowest level of intervention before elevating the dispute up their respective chains of command for resolution in accordance with applicable law and the terms of this Agreement. During any dispute, the Parties shall continue with their respective responsibilities under this Agreement.

**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 “BCSH Representative” will act as the contact persons for each Party. The representatives are identified on Attachment A, attached hereto. Moreover, the BCSH person 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 BCSH.

**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.

**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 BCSH:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

If to CoC:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

**12.2.** 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.** 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 California, without regard to applicable conflict of laws principles. Any dispute arising out of or relating to this Agreement shall be exclusively adjudicated in a court of competent jurisdiction located in Sacramento County, California. Each Party agrees and submits to the personal jurisdiction and venue thereof.

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

**12.5.** 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.** 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.** 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.

*[Signature page to follow]*

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

**California Business, Consumer Services  
and Housing Agency**

**Continuum of Care for CA-521  
Davis, Woodland/Yolo County**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**Lourdes M. Castro Ramírez**  
Name

\_\_\_\_\_  
Name

**Secretary**  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT A**

**CONTACT NAMES**

<b>CoC Representative</b>	<b>BCSH Representative</b>
<b>Name:</b>	<b>Name:</b> Ali Sutton
<b>Phone Number:</b>	<b>Phone Number:</b> 916-653-4090
<b>Email:</b>	<b>Email:</b> Alicia.sutton@bcsh.ca.gov

<b>Custodian(s) for BCSH</b>	<b>CoC Data Provider</b>
<b>Name:</b> Jill Leufgen	<b>Name:</b>
<b>Phone Number:</b> 916-651-6474	<b>Phone Number:</b>
<b>Email:</b> Jill.leufgen@bcsh.ca.gov	<b>Email:</b>