



Homeward Community Information System (HCIS) Agency Participation and Business Associate Agreement

This HCIS Agency Participation Agreement is entered into as of _____ between Homeward, Inc. ("Homeward"), with its principal place of business at 1125 Commerce Rd., Richmond, VA 23224, and _____ (the "Agency"), with its principal place of business at _____.

WHEREAS, Homeward is the administrator of a homeless management information system ("HMIS") provided, under contract, by Bowman Systems International ("Bowman");

WHEREAS, the HMIS administered by Homeward is also referred to as the Homeward Community Information ("HCIS");

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") requires that all communities receiving HUD funding participate in an HMIS;

WHEREAS, Agency is a participant in the HCIS and through such participation, Agency shall have access to a common set of tools, and agrees to uphold standards of privacy and confidentiality as a condition of continued use. Staff of Partner Agencies may enter data on clients and services, case plans and client goals, follow-up actions, and referrals to other agencies, including the Agency;

WHEREAS, this document contains the specific obligations that Agency and Homeward must follow in order to participate in the HCIS and the terms and conditions of the Agency's usage of the HCIS; and

WHEREAS, both Agency and Homeward may receive access to Protected Health Information (PHI) created or maintained by Partner Agencies who are Covered Entities as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") at 45 C.F.R. § 160.103, both Agency and Homeward agree to abide by the requirements set forth in the HIPAA Rules (the "Privacy, Security, Breach Notification, and Enforcement Rules" at 45 C.F.R. §§ 160 & 164) and the Business Associate Provisions below.

Agency represents that it is _____ or is not _____ (initial one option) a Covered Entity as defined by HIPAA at 45 C.F.R. § 160.103.

Definitions

In this Agency Participation and Business Associate Agreement (the "Agreement"), "Partner Agencies" are all agencies participating in the HCIS; and "Client" is a consumer of services at a Partner Agency.

1) Participation Requirements

- a) The Executive Director of the Agency will designate an Agency Administrator to function as lead staff on HCIS matters and serve as primary point of contact;



- b) The Agency will uphold Federal and State Confidentiality regulations that protect client records and privacy as referenced in 45 C.F.R. §§ 160 & 164, Health Insurance Portability and Accountability Act (HIPAA), and 42 C.F.R. § 2;
- c) The Agency will maintain an Internet Connection and Onsite Computer Equipment as specified in the "Maintenance of Onsite Computer Equipment" section of the HCIS Policies and Procedures Manual;
- d) The Agency shall utilize the HCIS for legitimate business purposes only, and will use Client information only as permitted by this Agreement.
- e) The Agency shall consistently enter information into the HCIS and endeavor to keep information up to date;
- f) The Agency will participate in evaluation efforts requested by Homeward to improve and refine the HCIS;
- g) The Agency shall not use the HCIS in a manner reasonably likely to defraud federal, state or local governments, individuals or entities, or to conduct any illegal activity;
- h) The Agency will only share Client information in HCIS upon receipt of a verbal or written Release of Information from the Client;
- i) The Agency agrees to enter no less than the minimum data elements as outlined by HMIS Data and Technical Standards Final Notice for each Client entered;
- j) The Agency shall ensure that any person issued a user ID and password for the HCIS receive appropriate client confidentiality training and have signed a User Policy and Statement of Ethics.
- k) The Agency shall follow, comply with, and enforce the User Policy and Statement of Ethics and HCIS Policies and Procedures Manual.
- l) If the Agency is also a HIPAA Covered Entity as defined at 45 C.F.R. § 160, the Agency requests Homeward as Business Associate to perform services with the condition that Homeward agrees to abide by the requirements set forth in the HIPAA Rules and Business Associate Provisions below. With regard to the use and/or disclosure of Protected Health Information (PHI), the Agency shall:
 - 1. Inform Homeward of any changes in the form of notice of privacy practices that the Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520 and provide the Business Associate a copy of the notice currently in use, if any;
 - 2. Inform Homeward of any changes in, or withdrawal of, the consent or authorization provided to the Covered Entity by individuals whose PHI may be used and/or disclosed by Business Associates under this Agreement pursuant to 45 C.F.R. §164.506 or §164.508; and
 - 3. Notify Homeward, in writing and in a timely manner, of any restrictions on the use and/or disclosure of PHI agreed to by the Covered Entity as provided for in 45 C.F.R. §164.522.



4. The Covered Entity shall have the right to terminate the Agreement if it determines, in its sole discretion that a violation of any provision of the HIPAA Rules or this Agreement has occurred. Covered Entity may exercise this right by providing written notice to Homeward of termination, with such notice stating the violation that provides the basis for the termination. Any such termination shall be effective immediately or at such other date specified by Covered Entity in such notice.

2) Homeward's Role

- a) Homeward shall offer training to Agency staff upon adoption of the system, and on an ongoing basis thereafter; provided that Homeward shall develop and administer training in its sole discretion and only upon the execution by the Agency of a separate agreement. Training sessions will be scheduled regionally, and Agency staff may attend other regional trainings space permitting.
- b) Homeward will use commercially reasonable efforts to provide technical assistance and support to the Agency during Homeward's normal business hours, and attempt to accommodate other reasonable requests for support as necessary;
- c) Homeward will perform services for Covered Entities as primary Business Associate and agrees to abide by the requirements set forth in the HIPAA Rules and Business Associate Provisions below;
- d) Report to the executive director or designated privacy officer of any Covered Entity, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Homeward, as primary Business Associate, becomes aware, including breaches of unsecured protected health information as required at 45 C.F.R. § 164.410 and any security incident of which it becomes aware, within fifteen (15) days of Homeward's discovery of such unauthorized use and/or disclosure.

3) Terms and Conditions

- a) Homeward at its sole discretion will provide HCIS access, training, and system maintenance to the Agency as agreed upon for as long as the Agency abides by the terms of this agreement and funds remain available. Any additional or unusual expenses that arise outside of the normal scope of responsibility will be outlined in a separate written agreement on a case by case basis.
- b) The HCIS Program Director employed by Homeward will be the primary contact for Homeward regarding this Agreement.



- c) The Executive Director or CEO for the Agency or his or her designee (provided written notice of such designation is provided to Homeward) will be the primary contact for the Agency regarding this Agreement.
- d) The Agency will be responsible for coordinating the local training to be provided by Homeward (only after execution of a separate agreement).
- e) Agency staff will participate in HCIS training provided by Homeward, the Agency, or Bowman before being granted access to the system.
- f) At least one staff representative from the Agency will attend announced HCIS user group meetings as held by the Systems Administrator. Participation can be via teleconference.
- g) The Agency will provide reasonable access to Subject Matter Experts for Homeward to work with in planning and implementing the HCIS.
- h) Homeward and the Agency will each abide by the terms of the HCIS Policies and Procedures Manual, incorporated by reference into this document.
- i) This agreement becomes effective upon the date of execution and will automatically renew annually, unless written notification is received by the other party thirty (30) days in advance of the renewal date (except where revocation is by a Covered Entity due to a perceived violation of the HIPAA Rules or this Agreement.)
- j) Agency may not transfer or assign any rights or obligations without the prior written consent of Homeward.
- k) This Agreement shall be in force, provided funding is available, until revoked in writing, upon 30 days notice, by either party (except where revocation is by a Covered Entity due to a perceived violation of the HIPAA Rules or this Agreement.)
- l) In the event that funding becomes unavailable for the program(s) offered by Homeward, Homeward may terminate this Agreement upon written notice to Agency.
- m) Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon provision of such notification, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such



PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

- n) The respective rights and obligations of Business Associate and Covered entity under these provisions shall survive the termination of this Agreement indefinitely.

4) Business Associate Provisions

a) Permitted Uses and Disclosures

1. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
2. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
3. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation and Analysis services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
4. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

b) Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

1. Use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise required by law and to the minimum necessary;
2. Report to the executive director or designated privacy officer of Homeward, the primary Business Associate, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, including breaches of unsecured protected health information as required at 45 C.F.R. § 164.410 and any security incident of which it becomes aware, within fifteen (15) days of the Business Associate's discovery of such unauthorized use and/or disclosure;



3. Develop and use reasonable and appropriate administrative, technical and physical safeguards to ensure and protect against reasonably anticipated threats or hazards to the security or integrity of PHI, to protect against reasonably anticipated unauthorized use or disclosure of PHI, and to reasonably safeguard PHI from any intentional or unintentional use or disclosure in violation of this Agreement;
4. To document disclosures of PHI and related information as necessary to respond to a request by an individual for an accounting of PHI disclosures in accordance with 45 C.F.R. § 164.528;
5. Require all of its employees, representatives, subcontractors, or agents that receive or use or have access to PHI under this Agreement to agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply herein, including the obligation to return or destroy the PHI as provided herein.
6. Make available all records, books, agreements, policies, and procedures relating to the use and/or disclosure of PHI to the Secretary of HHS for purposes of determining a Covered Entity's compliance with the HIPAA Rules.
7. Upon request by a Covered Entity, make available during normal business hours at Business Associate's offices all records, books, agreements, policies, and procedures relating to the use and/or disclosure of PHI to the Covered Entity within five (5) business days for purposes of enabling the Covered Entity to determine the Business Associate's compliance with the terms of this Agreement;
8. Make PHI in a designated recordset available in accordance with 45 C.F.R. § 164.524.
9. Within ten (10) days of receiving a written request from a Covered Entity, provide to the Covered Entity such information as is requested to permit the Covered Entity to respond to a request by the subject individual for amendment and accounting purposes of the disclosures of the individual's protected PHI in accordance with 45 C.F.R. § 164.526 & § 164.528;
10. Return to a Covered Entity or destroy, as requested by the Covered Entity, within fifteen (15) days of the termination of this Agreement, the PHI in Business Associate's possession and retain no copies or back-up tapes;
11. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by



Business Associate in violation of the requirements of this Agreement; and

12. To take all steps necessary to comply with the Notice of Privacy Practices required under 45 C.F.R. § 164.520.

5) Indemnification

- (a) Agency will indemnify and hold harmless Homeward, its current, future and former officers, directors, employees, successors, volunteers, agents and assigns (collectively, the "Homeward Indemnitees"), on demand, from and against any and all Losses incurred by any Homeward Indemnitee and shall defend the Homeward Indemnitees against all Claims arising from or in connection with Agency's acts or omissions hereunder.
- (b) For purposes of this Section 5: (i) "Losses" shall mean judgments, settlements, awards, losses, charges, liabilities, penalties, interest claims (including taxes and all related interest and penalties incurred directly with respect thereto), however described or denominated, and all related reasonable costs, expenses, and other charges (including all reasonable attorneys' fees and reasonable internal and external costs of investigations, litigation, hearings, proceedings, document and data productions and discovery, settlement, judgment, award, interest, and penalties), however described or denominated; and "Claims" means any civil, criminal, administrative, regulatory or investigative action or proceeding commenced or threatened by an individual or entity, including governmental authorities and regulatory agencies, however described or denominated.

6) Disclaimer of Warranties

The entire risk as to the results and performance of the HCIS is assumed by Agency. Except as otherwise expressly provided in this agreement, Homeward makes no warranties to any person or entity with respect to the HCIS and disclaims all implied warranties, including without limitation warranties of merchantability, fitness for a particular purpose and non-infringement. Homeward, its current, future, and former officers, directors, employees, successors, volunteers, agents, and assigns, shall have no liability, contingent or otherwise, to agency or to third parties, for the HCIS or for any systems or software interacting with the HCIS, or for interruptions or unavailability of the HCIS, or for errors or omissions on the part of agency or any third party, their software, equipment, or employees.

7) Limitation of Liability

Notwithstanding anything else in this agreement or otherwise, Homeward will not be liable with respect to any subject matter of this agreement under any contract, negligence, strict liability, or other legal or equitable theory. In addition, Homeward will not be liable to Agency for any incidental or consequential damages, lost profits, or lost



or inaccurate data, whether or not Agency was advised of the possibility of such damages. These limitations will apply notwithstanding any failure of essential purpose of any limited remedy.

8) Governing Law

All rights and obligations of the Parties relating to this Agreement shall be governed by and construed in accordance with the law of the [Commonwealth of Virginia] without giving effect to any choice-of-law provision or rule (whether of the [Commonwealth of Virginia] or any other jurisdiction) that would cause the application of the laws of any other jurisdiction; provided, however, the Uniform Computer Information Transactions Act whether now or hereafter enacted in Virginia ("UCITA"), shall not apply to the Agreement or any performance hereunder and the Parties expressly opt-out of the applicability of UCITA to the Agreement.

9) Amendment

This Agreement may not be modified or amended, except in writing as agreed to by each party. The parties agree to take such action as is necessary to amend the Agreement from time to time as is necessary for Covered Entities or Business Associates to comply with the requirements of the HIPAA Rules.

10) References

References herein to statutes and regulations shall be deemed to be references to those statutes and regulations as amended or recodified.

11) Force Majeure

Neither party shall be liable for any default or delay in the performance of its obligations hereunder, if and to the extent such delay is caused by circumstances beyond the reasonable control of such party.

12) Severability

If any provision herein shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and such provision shall be deemed to be restated to reflect the parties' original intentions as nearly as possible in accordance with applicable law(s).

13) Third Party Beneficiaries

The parties do not intend, nor will any Section hereof be interpreted, to create for any third party beneficiary rights with respect to either of the parties, except the third parties identified in Section 4 (Indemnification) will have the rights and benefits described in that Section.



14) Waiver

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof.

Agency Executive Director's signature

Date

Agency Executive Director's printed name

*Kelly King Horne
Executive Director
Homeward*

Date

HIPAA Covered Entities: The Agency has requested Homeward to perform services with the condition that Homeward agrees to abide by the requirements set forth in the Business Associate Provisions of this Agreement and the HIPAA Rules.

Agency Executive Director's signature

Date

*Kelly King Horne
Executive Director
Homeward*

Date