

AGREEMENT

This AGREEMENT is made and entered into on this 30th day of March 2016 by and between KENTUCKY HOUSING CORPORATION (hereinafter referred to as "KHC"), a de jure municipal corporation and political subdivision of the Commonwealth of Kentucky, whose mailing address is 1231 Louisville Road, Frankfort, Kentucky 40601, and LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (hereinafter referred to as "LFUCG"), an urban county government of the Commonwealth of Kentucky created pursuant to KRS Chapter 67A, whose mailing address is 200 East Main Street, Lexington, Kentucky 40507, through its OFFICE OF HOMELESSNESS PREVENTION AND INTERVENTION (hereinafter referred to as "OHPI").

WITNESSETH

WHEREAS, KHC and OHPI share a common interest in adequately and efficiently serving the homeless population, thereby reducing homelessness throughout the Commonwealth of Kentucky; and

WHEREAS, the Kentucky Homelessness Management Information System (hereinafter referred to as "KYHMIS") will enable community service providers to collect uniform client information over time which will increase coordination between agencies, informed advocacy efforts and policies that will result in targeted service for the client population; and

WHEREAS, the data and its analysis, through the utilization of KYHMIS is critical to accurately portraying the characteristics and trends of the client population, as well as, providing streamlined client services, plans and advocacy; and

WHEREAS, the purpose of this MOU is to set forth the standards for deployment, training, maintenance, sustainability, and operation of the KYHMIS to ensure the operation of and the consistent participation in the KYHMIS for the purpose of future planning and funding decisions needed for the client population.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, KHC and LFUCG, through OHPI, agree as follows:

I. DEFINITIONS

- a. **Partner Agency** refers to agencies participating in KYHMIS.
- b. **System Administrator** refers to an end user that has administrative access to the KYHMIS and is responsible for setting up Lexington/Fayette County Continuum of Care Partner Agency security structure, assigning and maintaining lists of passwords and end users, all data and data management, and the End User License Agreement and Participation Agreement management, execution, and issuance.
- c. **Agency End User** (also known as end user) refers to personnel of a partner agency who have access to the KYHMIS to enter or to manage data.
- d. **End User License Agreement** (also known as "EULA") refers to the end user license agreement to which KHC must ensure that all End Users consent prior to

using or prior to accessing the KYHMIS. Such agreement is a “click-wrap” license.

- e. **Fees** refers to all fees, charges, costs, and expenses due to KHC from Lexington-Fayette County Continuum of Care pursuant to this MOU and any and all Riders.
- f. **Modification** refers to as any derivative code from the original source code of the KYHMIS software owned by Bowman Systems, LLC, and standards as they pertain to implementation, security, policies, procedures, data quality plans, and all other originating standards set forth by KHC in reference to the KYHMIS.
- g. **Services** refers to the professional, consulting, implementation, training, and support services of KHC and/or Bowman Systems, LLC, obtained by OHPI and performed by KHC and/or Bowman Systems, LLC.
- h. **KYHMIS** refers to the Kentucky Homeless Management Information System, which is a world wide web-based portal software product developed and owned by Bowman Systems, LLC, for the purposes of data collection.
- i. **User Fees** refers to the monetary cost for each end user access license for twelve (12) calendar months at a rate to be determined in June each year of renewal.
- j. **Client** refers to any person receiving services from a partner agency.
- k. **Lexington-Fayette County Continuum of Care** refers to the Collaborative Applicant which is Lexington-Fayette Urban County Government’s Office of Homelessness Prevention & Intervention.

II. GENERAL ROLES OF PARTIES.

- a. KHC is the lead agency responsible for administering KYHMIS for the Commonwealth of Kentucky. KHC will enter into a License and Hosting Agreement with Bowman Systems LLC (hereinafter referred to as the “vendor”), for the purpose of specifying terms (including roles, responsibilities and liabilities) that grants KHC the right to use the portal software product, KYHMIS, and administer the software for the Commonwealth of Kentucky. Additionally, KHC will actively participate in the Lexington-Fayette County Continuum of Care on the KYHMIS Committee and shall identify two representatives to serve on the KYHMIS Advisory Committee.
- b. Lexington-Fayette County Continuum of Care shall identify two (2) representatives to serve on the KYHMIS Advisory Committee and will actively participate with the Louisville-Jefferson County Continuum of Care.

III. RIGHTS AND RESPONSIBILITIES

- a. KHC shall:
 - i. Beginning July 1, 2016, KHC will collect fees for partner agency user licenses issued for use in Lexington-Fayette County. This fee shall be an annual fee not to exceed **Two Hundred Fifty and 00/100 Dollars**

(\$250.00) per license. KHC shall collect this fee directly from the Lexington-Fayette County partner agency users.

- ii. As defined by the KYHMIS Advisory Committee, oversee the operation and management of the KYHMIS, including continual monitoring of data system compliance with all HUD Data and Technical Standards;
- iii. Except for KHC designated holidays, serve as the KYHMIS Help-Desk back-up during vacation of the approved OHPI Help Desk support person;
- iv. Enter into a Licensing and Hosting Agreement with the vendor for the purpose of maintaining and insuring hardware security , and make reasonable efforts to ensure availability to the agency end users;
- v. Deny access to the KYHMIS while investigating suspicion of a confidentiality breach;
- vi. Serve as the official vendor liaison for the entire Commonwealth of Kentucky;
- vii. In conjunction, with the KYHMIS Advisory Committee develop the policy for fees associated with the KYHMIS, modifications to the software source code, implementation standards, data quality standards, and all other standards set forth by the KYHMIS Advisory Committee in reference to the implementation and operation of the KYHMIS;
- viii. Invoice Lexington-Fayette County Partner Agencies for KYHMIS fees approved by the KYHMIS Advisory Board;
- ix. Notify the vendor and OHPI within four (4) hours of notification of difficulty with system software, access to the KYHMIS, or related software, network, or access problems;
- x. Convene a minimum of four (4) meetings of the KYHMIS Committee annually;
- xi. Reserve the right to immediately suspend all access to the KYHMIS by the OHPI and/or Partner Agencies when any term of this Agreement is violated or suspected of being violated.

b. LFUCG, through OHPI, acting on behalf of Lexington-Fayette County Continuum of Care, shall:

- i. Pay KHC a one-time fee in an amount not to exceed **Eleven Thousand Six Hundred Twenty-Eight and 00/100 Dollars (\$11,628.00)** for KYMIS user licenses for Lexington-Fayette County partner agencies. This cost is for user licenses for the period of January 1, 2016 through June 30, 2016.
- ii. Beginning July 1, 2016, LFUCG, through OHPI will pay KHC an amount not to exceed **One Hundred Eighty-Two and 00/100 Dollars (\$182.00)**, per partner agency user license issued for use in Lexington-Fayette County. This fee is an annual, reoccurring fee.
- iii. Via participation on the KYHMIS Committee designate the HMIS Lead Agency, the software to be used for HMIS, and approve any changes to the HMIS Lead Agency or software;

- iv. Request revision to any HMIS operational agreement, policy or procedure developed by the HMIS Lead Agency and approved by the KYHMIS Advisory Committee
- v. Conduct outreach to homeless assistance agencies not using KYHMIS, and encourage these agencies and other mainstream programs serving homeless people to participate in KYHMIS;
- vi. Work to inform elected officials, government agencies, the nonprofit community, and the public about the role and importance of KYHMIS and KYHMIS data;
- vii. Promote the effective use of KYHMIS data, including its use to measure the extent and nature of homelessness, the utilization and effectiveness of services and homeless programs over time;
- viii. Provide all local information as necessary for compilation of the Continuum of Care Housing Inventory Count and the Annual Homeless Assessment Report (AHAR);
- ix. Direct all questions concerning the KYHMIS software to the KHC system administrators prior to contacting the vendor directly;
- x. Strictly adhere to all policies and procedures documented in the KYHMIS External Policies and Procedures Manual, as adopted by the KYHMIS Advisory Committee, including all modifications and amendments;
- xi. Strictly enforce and monitor all KYHMIS External Policies and Procedures and OHPI Internal Policies and Procedures with partner agencies. A copy of OHPI internal policies and procedures shall be reviewed and approved annually, or as changes occur, by the KYHMIS Advisory Committee;
- xii. Set and maintain data security for partner agencies in Lexington-Fayette County Continuum of Care;
- xiii. Consult and receive written approval from KHC System Administrators and the KYHMIS Committee prior to modifications as defined in the Definitions section above;
- xiv. Abide by all federal and state laws and regulations and all KYHMIS External Policies and Procedures related to the collection, storage, retrieval and dissemination of client information;
- xv. Notify both the vendor and the KHC System Administrators within four hours of OHPI's notification of difficulty with system software; access to the KYHMIS; or related software, network, or access problems;
- xvi. Issue all end user usernames and passwords for the KYHMIS users as they pertain to OHPI and the Lexington-Fayette County Continuum of Care, but only after OHPI has confirmed that (1) the agency has a current Agency Participation Agreement on record and has complied with the software security required to access the KYHMIS, and (2) the end user has signed all confidentiality agreements;
- xvii. Maintain and provide copies to KHC upon request of the Agency Participation Agreements, Agency Security Monitoring Forms, User

- Confidentiality Agreements, and Acknowledgment of the KYHMIS External Policies and Procedures as required in the KYHMIS External Policies and Procedures Manual;
- xviii. Permit KHC system administrators to monitor partner agencies' handling of confidential client data in connection with the KYHMIS, including but not limited to, their confidentiality procedures and documentation (client release of information, etc.)
 - xix. Address data corrections, data errors or inaccuracies resulting from a partner agency's end user;
 - xx. Ensure that partner agencies do not include any profanity, offensive language, malicious information or discriminatory comments based upon race, color, national origin, age, religion, disability, gender, actual or perceived sexual orientation or gender identity, or marital or familial status in the KYHMIS;
 - xxi. Ensure that both OHPI and partner agencies of the Lexington-Fayette County Continuum of Care do not transmit material in violation of any federal or state statues or regulations, including, but not limited to, copyrighted material, threatening or obscene material, and material protected by trade secret;
 - xxii. Prohibit KYHMIS access to unauthorized users and follow all protocols for establishing access levels for new users;
 - xxiii. Develop internal processes to address violations of client confidentiality and the KYHMIS security protocol and provide KHC a copy of such policies and procedures prior to access of the KYHMIS;
 - xxiv. Ensure all Partner Agency users comply with continuing education credits in accordance with the KYHMIS External Policies and Procedures and are properly trained and authorized to use the system in accordance with KYHMIS External Policies and Procedures.

IV. MISCELLANEOUS PROVISIONS

- a. **Term of Agreement, Termination.** This Agreement shall become effective upon the signature of the last party to sign this Agreement and shall remain in effect until June 30, 2017. Unless either party objects in writing, This Agreement shall automatically be renewed each July 1st, subject to annual modification to reflect current pricing structure and any other changes as may be necessary. Either party shall have the right to terminate this Agreement upon 30 days prior written notice to the other party. This Agreement terminates upon the earliest of (a) thirty (30) days written notice of cancellation by OHPI or KHC or (b) a breach or default by KHC or OHPI of any provision of this Agreement. Upon termination of this Agreement, all rights granted to OHPI under this Agreement shall forthwith terminate and revert immediately back to KHC. OHPI shall immediately discontinue all use of the KYHMIS and transmit all materials related to the KYHMIS. KHC will terminate all use of KYHMIS. Termination of this Agreement

shall not extinguish any of the parties' obligations hereunder that by their terms continue after the date of termination.

- b. **Rights of Parties after Termination.** If this Agreement is terminated, KHC and the remaining Partner Agencies shall, consistent with state and federal privacy laws, retain their right to the use of all client data previously entered by the terminating OHPI. This use is subject to any restrictions requested by the client.
- c. **Termination of Services.** If, at the time of termination of the agreement, OHPI desires to obtain a copy of its image and files stored within the KYHMIS, it may do so. However, OHPI may not obtain a copy of partner agency images and files. All Lexington-Fayette County Continuum of Care partner agencies must make a written request to KHC. KHC shall transfer the images and files to a portable storage device that will be shipped to OHPI via FedEx, UPS, or a similar overnight courier service that will track the package. This service shall be commenced within fourteen (14) days of KHC receiving a written request from OHPI and an advance payment for the service, portable storage device, shipping expense and payment for any outstanding amounts due KHC via check or wire transfer. If, within thirty (30) days of termination of this Agreement, OHPI requests that Bowman Systems, LLC, assist it with moving or converting any files or images stored in the Software Products to a different system or file format, Bowman Systems, LLC, will do so if it has resources available and technical experience to do so in the time frame requested by KHC. If Bowman Systems, LLC, does provide any services to move files or images to a portable storage device or assist OHPI with converting the files to a different format or moving any files to another location, OHPI will pay Bowman Systems, LLC, at the current rate for such service.
- d. **No Waiver.** The waiver of any particular provision of this Agreement does not constitute a waiver of the entire Agreement, nor does the waiver of any particular provision in a specific instance guarantee future waivers of the same of similar provisions.
- e. **Expenses.** Except as otherwise provided in this Agreement, OHPI will be responsible and bear all of the respective fees (including legal and professional fees) and expenses incurred in connection with its role in the preparation, negotiation, execution and performance of this Agreement with KHC, along with the contemplated transactions, including all fees and expenses of their representatives.
- f. **Severability; Survivability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- g. **Successors, Assigns; Assignments.** This Agreement will inure to the benefit of and be binding upon the respective parties and their successors and assigns. KHC may freely assign this Agreement, but neither this Agreement, nor any right, benefit or advantage inuring to OHPI under this Agreement and no obligation

imposed on the OHPI hereunder may be assigned without the prior written approval KHC.

- h. **Governing Law.** Except to the extent superseded by federal law, this Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky without regard to conflicts of laws principles that would require the application of any other law.
- i. **Jurisdiction; Venue; Service of Process; WAIVER OF JURY TRIAL.** Any proceeding arising out of or relating to this Agreement or any contemplated transaction shall be brought in the courts of the Commonwealth of Kentucky, County of Franklin, or, by agreement of the parties, the county where the Project is located, or if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Kentucky, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement or any transaction contemplated hereby in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary, irrevocable and bargained-for agreement between the parties to waive any objection to venue or to convenience of forum. Process in any proceeding referred to in the first sentence of this Sub-section may be served on any party anywhere in the world. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, IRREVOCABLE AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.
- j. **Indemnification.** TO THE EXTENT PROVIDED BY LAW, parties agree to indemnify, defend, and hold each other harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses (including without limitation, reasonable attorneys' fees and litigation expenses), actions or causes arising out of or relating to any breach of any covenant or agreement or the incorrectness or inaccuracy of any representation and warranty of parties contained in this Agreement or in any document delivered to the parties, except for that which occurs as a result of either parties' gross negligence or misconduct.
- k. **Entire Agreement, Amendments.** This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and

supersedes any and all prior agreements or understandings of any kind. Any and all amendments to this Agreement shall be in writing and signed by both parties.

- I. **Notices.** All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (i) delivered to the appropriate last known address by hand or by nationally-recognized overnight courier service (costs prepaid); (ii) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (iii) received or rejected by the addressee, if sent by certified mail, return receipt requested, to those noted below

FOR KHC:

Kentucky Housing Corporation
1231 Louisville Road
Frankfort, Kentucky 40601
ATTN: Davey King _____

FOR LFUCG, OHPI:

LFUCG – Office of Homelessness Prevention and Intervention
Phoenix Building
101 East Vine Street, Ste 175
Lexington, KY 40507
ATTN: Charlie Lanter

- m. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.
- n. **Further Action.** Each party agrees to perform any and all further acts and to execute and deliver any and all additional documents that may be reasonably necessary to carry out the terms of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the day first written above.

KENTUCKY HOUSING CORPORATION

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

BY: _____

BY: _____

Name: _____

JIM GRAY, MAYOR

Title: _____