

**REGIONAL HOMELESSNESS PREVENTION NETWORK
HOMELESSNESS PREVENTION PLATFORM
DONATION, USER PARTICIPATION, DATA SHARING AND CONFIDENTIALITY
AGREEMENT**

Bay Area Community Services, Inc. (“BACS”), a California Public Benefit Corporation, and the City and County of San Francisco, represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development (“City” or “HPP User”), enter into this Donation, User Participation, Data Sharing and Confidentiality Agreement (“Agreement”), effective _____, 2021 (“Effective Date”).

WHEREAS, BACS provides homeless housing, homelessness prevention and low-income health services across multiple Bay Area counties, and is also a lead participant in the development and implementation of the Regional Homelessness Prevention Network in the Bay Area; and

WHEREAS, BACS has developed and implemented a Homelessness Prevention Platform (“HPP”) that provides for electronic submission and maintenance of client information, data generation, as well as payment process functions that support multi-party and regional homelessness preventions programs, and

WHEREAS, the City, through the Mayor’s Office of Housing and Community Development (“MOHCD”) and its non-profit grantees, will receive grant funding from the United States Department of Treasury to provide emergency rental assistance and other financial assistance to low-income tenants to prevent evictions and homelessness and to stabilize housing due to the financial impacts of COVID-19 (the “Project”); and

WHEREAS City seeks a donation of technology and related volunteer technical assistance services to support the implementation of the Project (“Donor Services”), and BACS desires to provide the Donor Services to the City free of charge as a gift-in-kind; and

WHEREAS, HPP User wishes to access the HPP to create reports and assess use of grant funding, facilitate the use of the HPP by San Francisco non-profit grantees who will contribute homelessness prevention client data, which includes, without limitation, Confidential Information (defined below), and all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement, including data resulting from the Donor Services (collectively “City Data”), and receive permission to access the City Data provided by other users in the same jurisdiction of the HPP, as part of HPP User’s participation in the Regional Homelessness Prevention Network led by All Home (“All Home”), an independent project of Tides, a California Public Benefit Corporation;

NOW, THEREFORE, BACS and HPP User agree to enter this Agreement as follows:

1. Purpose of Agreement; Donation.

(a) Purpose of Agreement. As part of its ongoing participation in community homelessness prevention programs, BACS has developed and implemented an HPP that is

designed to provide a simple, efficient solution for multi-party efforts to partner in efficient, data-driven programs for the prevention of homelessness. BACS has agreed, in partnership with All Home, to make its HPP available to all participating entities in the Regional Homelessness Prevention Network at no cost. This Agreement defines the respective rights and responsibilities of BACS on the one hand, and participating entities, on the other hand in the use of the HPP.

(b) **Donation.** Pursuant to the terms of this Agreement, BACS will provide access to HPP to the City for free and provide free consulting services related to HPP on a volunteer basis to the City. The monetary value of the donation is \$_____. MOHCD hereby agrees to accept such services, and will use its discretion in deciding how to deploy or implement such services. The parties acknowledge and agree that the donation of services is for the benefit and use of the City without restriction, except as set forth in this Agreement.

(c) **Government Procurement Requirements.** The parties agree that this Agreement will not be used for MOHCD's general acquisition of goods and services otherwise subject to the requirements of the San Francisco Administrative Code. Nothing in this Agreement will prohibit BACS from participating in a competitive solicitation or otherwise contracting with City to provide City with goods or services if done in compliance with all applicable City procurement and solicitation rules, regulations, policies, and procedures and all applicable conflict-of-interest laws. If BACS is instrumental in developing the scope of work for a future procurement, then BACS is prohibited from bidding on that future procurement. BACS acknowledges and agrees that under certain laws, including California Government Code section 1090, involvement in preparing for a procurement may disqualify BACS from participating in a later competitive bid process or from having any direct communication with or receiving any compensation or other benefit from a bidder, contractor, or vendor with respect to a resulting procurement.

2. Ownership of Data and Intellectual Property

(a) HPP User and/or HPP User's clients will transmit into the HPP confidential information including "Personal Information" of HPP User's clients and other third parties. Personal Information includes any information that can be used to identify a specific individual or information from which a specific individual may be identified, contacted or located, such as an individual's name, address, social security number, housing status, financial status, health/disability status, etc. Personal Information also includes information pertaining to HPP User's personnel, directors, officers, agents, suppliers, contractors, investors or customers and all "nonpublic personal information," as defined under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.), "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d), and "Personal Data" as that term is defined in EU Data Protection Directive (Directive 95/46/EEC) on the protection of individuals with regard to processing of personal data and the free movement of such data, and all rules and regulations issued under any of the foregoing. All such confidential Personal Information shall remain the sole property of the HPP User entering the data in the HPP. The use of such Personal Information shall be strictly limited to the goals and services of the

Regional Homelessness Prevention Network, subject to the confidentiality requirements set forth below, and applied to all participants who use the HPP as well as BACS.

(b) Ownership of HPP User Data. HPP User Data means any and all information, data, materials, works, expressions, or other content, including any that are uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available on the HPP by or on behalf of an HPP User, including a HPP User client (“HPP User Data”). Subject to Section 2(c), all output, copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, derived from, or otherwise using any HPP User Data are themselves also HPP User Data. For the avoidance of doubt, HPP User Data includes all Personal Information but does not include any BACS materials. The City shall have the unrestricted right to use the Project Data provided as a Deliverable under this Agreement.

(c) The HPP will provide data dashboards and reports derived from HPP User Data and is designed to support the region-wide strategies and evaluation of the Regional Homelessness Prevention Network. Dashboards, aggregate data, and reports that do not specifically identify or disclose confidential Personal Information of any HPP User shall be deemed the joint property of BACS and All Home and shall be available for HPP Users’ use subject to the confidentiality obligations contained in this Agreement.

(d) HPP User and BACS agree that BACS owns all intellectual property rights in the HPP, including the exclusive copyright in the HPP code, as well as all (i) patents, patent disclosures and inventions (whether patentable or not); (ii) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (iii) authorship rights, copyrights and copyrightable works (including computer programs) and rights in data and databases (except with respect to HPP User Data); (iv) trade secrets, know-how and other related confidential information; and (v) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world. BACS hereby grants to HPP User, exercisable by and through their authorized users, a nonexclusive, royalty-free, irrevocable (except as provided herein) and, as set forth in this Agreement, transferable and sublicensable, right and license during the term of this Agreement, and any additional period, if any, as BACS is required to perform services under this Agreement to access the HPP, generate, print, copy, upload, download, store and otherwise process data, reports, inputs and outputs that HPP User is entitled to access pursuant to this Agreement. HPP User will not rent, lease, sell, sublicense, or assign its right to access the HPP except as specifically provided for in this Agreement.

3. BACS Operation and Maintenance of HPP

(a) BACS shall be responsible for the technical aspects of maintaining and operating the HPP, including but not limited to, designing and implementing the computer source code and

user interfaces that meet Gov Sec 508 and WCAG 2.0 accessibility guidelines, providing and operating the data storage resources, establishing encryption and data security infrastructure to protect both the transmission of HPP User Data and its secure storage. BACS will implement data backup technology and retain IT service capability sufficient to minimize system down time and prevent data loss due to technical issues and will develop and implement a disaster recovery plan. BACS shall be authorized to utilize a contract-based IT service to aid with its operational responsibilities provided that the IT service will be required to sign and comply with a data confidentiality agreement that includes all the protections for HPP User's information contained in this Agreement.

(b) If applicable, all City equipment, devices, materials, supplies, furnishings (e.g., photocopiers, telephones, computers, printers, vehicles, stationary, fax machines) must be used only to conduct City business. Use of City property for personal, political, or other non-City business is strictly prohibited and could lead to the City's rejection of further Donor Services from the BACS.

(c) **Security.** BACS shall ensure that all electronic transmission or exchange of City Data will be encrypted in transit and at rest using current industry standards. BACS shall also ensure that all data exchanged shall be used expressly and solely for the purposes stated in the Agreement. City Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of BACS not involved in administration of this Agreement, unless otherwise permitted in this Agreement. Remote access to view City data by BACS for development and technical support purposes from outside the United States is allowed as long as City Data remains hosted solely on systems residing in the continental United States.

- i. For information disclosed in electronic form, BACS agrees that appropriate safeguards include electronic barriers (e.g., most current industry standard encryption for transport and storage, such as the National Institute of Standards and Technology's Internal Report 7977) and secure authentication (e.g., password protected) access to the City's Confidential Information and hosted City Data.
- ii. City Data shall be encrypted at rest and in transit with controlled access.
- iii. BACS will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices, and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.
- iv. BACS warrants to the City compliance, in performing its obligations hereunder, with the following (as periodically amended or updated) as applicable: The

California Information Practices Act/California Consumer Privacy Act (Civil Code §§ 1798 et seq)

(d) **Access.** BACS shall provide Authorized Users 24/7 access to the SaaS Application(s), except during planned or emergency maintenance. BACS shall provide uptime to the SaaS Application and Hosted Service to achieve a 99% Service Level Availability.

(e) **No Click-Wrap Disclaimer.** No “click to accept” agreement that may be required for the City and/or Authorized Users’ access to the Donor Services or BACS’s Website and no “terms of use” or “privacy policy” referenced therein or conditioned for use of the Donor Services or BACS’s Website shall apply. Only the provisions of this Agreement as amended from time to time shall apply to City and/or Authorized Users for access thereto and use thereof. The Parties acknowledge that City and/or each Authorized User may be required to click “Accept” as a condition of access to the Donor Services through BACS’s Website, but the provisions of such “click to accept” agreement and other terms (including Terms of Use and Privacy Policy) referenced therein shall be null and void for City and/or each such Authorized User.

(f) **Data Transmission.** BACS shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g. HTTPS or SFTP or most current industry standard established by NIST). BACS shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of BACS. BACS shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. BACS is prohibited from accessing City Data from outside the continental United States.

4. HPP Security and Breach Remediation

(a) BACS will ensure that use, storage and access to HPP User Data shall be performed with the degree of skill, care, and judgment customarily accepted as sound, quality and professional practices. BACS shall implement and maintain security and access protocols necessary to ensure the confidentiality, availability, and integrity of HPP User Data, and shall implement and maintain any safeguards required by applicable state, federal and local laws. Safeguards shall include: (i) controls reasonably necessary to prevent breach, (ii) encryption and security protocols necessary to secure data in transit, (iii) measures to limit access to the HPP to authorized users, (iv) monitoring and auditing of login records, and (v) password requirements that meet legal standards and best practices, including periodic password changes. BACS shall implement controls reasonably necessary to prevent unauthorized use, disclosure, loss, acquisition of, and/or access to HPP User Data.

(b) If BACS becomes aware that HPP User Data may have been accessed, disclosed, or acquired without proper authorization and/or in a manner contrary to the terms of this Agreement, BACS will alert HPP User of the breach within 24 hours and shall identify the nature of the breach, what information was affected, who caused the breach, and what immediate and follow-up actions are being taken. BACS shall immediately take all reasonably necessary steps to correct any breach, and participate in any disclosures required by state or federal law. BACS will provide HPP User with information about all steps taken to mitigate the negative effects of any unauthorized use or disclosure of HPP User Data.

(c) BACS's responsibility will be limited to the technical aspects of the platform including data storage security and ensuring encryption of the user interface. HPP User is responsible for ensuring that only authorized employees of HPP User shall be permitted access to the data sharing functions of the system, that authorized employees will not share usernames or passwords or otherwise impermissibly share system information with any unauthorized third party. To the extent HPP User's clients are authorized to enter data into the HPP, HPP User shall be responsible for supervising that access and ensuring that clients' access is limited to the client data function. HPP User shall further be responsible for ensuring that any platform data that is downloaded or printed is kept secure at all times, and no unauthorized access to that data is permitted. BACS will not be responsible for HPP User's use of insecure mobile and computer devices and wifi networks. HPP User shall defend and indemnify BACS, and BACS employees, directors, officers and agents from any claims or lawsuits based on HPP's failure to satisfy the data security obligations in this Section 4(c).

5. Confidentiality of Information.

(a) Definition of Confidential Information. In this Agreement, "Confidential Information" refers to any of BACS's or HPP User's information disclosed to the other party, in any form or medium (orally, in writing, electronically or otherwise) that the disclosing party considers confidential or proprietary, including any of the following: (i) technical information, including patent, copyright, trade secret, and other proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of BACS or HPP User; (ii) non-technical information relating to BACS or HPP User's services, including without limitation program models, staffing structures and plans, techniques, strategies, funder communications and negotiations, program documents and templates, pricing, margins, finances, financial and accounting data and information, suppliers, confidential client information, Personnel Information, purchasing data, marketing plans, future business and strategy plans and any other information which is proprietary and confidential to BACS or HPP User respectively; and (iii) third party information including HPP User Data, which includes any confidential client information that is entered directly into the HPP by a client of any participating agency or entity and any other client information, of any other entity using the HPP that has executed a User Participation, Data Sharing and Confidentiality Agreements in conjunction with that entity's participation in the Regional Homelessness

Prevention Network.

(b) Exclusions. Confidential Information does not include information that is: (i) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the disclosing party; (ii) learned or developed by the party receiving the information through legitimate means other than from the party who owns the information; or (iii) is disclosed by either party with the other party's prior written approval. Notwithstanding the foregoing, none of these exclusions apply to HPP User Data, whether provided by or on behalf of HPP User or BACS regardless of whether such HPP User Data has become publicly available or otherwise qualifies for exclusion under any other provision of this Section 5(b).

(c) Obligations. Each party, and the party's owners, officers, directors, employees and agents shall hold and maintain the Confidential Information, including third party entity Confidential Information, in strictest confidence for the sole and exclusive benefit of the other party and shall not, without prior written approval of other party, use for the party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the other party. These obligations and restrictions shall not prevent or prohibit the sharing of program information, including HPP User Data, with other participating entities in the Regional Homelessness Prevention Network provided that those other entities have executed User Participation, Data Sharing and Confidentiality Agreements.

(d) Return of Confidential Information. Within five business days after either party's written request at any time and subject to any contrary obligations under applicable law, the other party will at the requesting party's direction return to the requesting party or its designee from all systems it directly or indirectly uses or controls all originals and copies of all documents, materials and other embodiments and expressions in any form or medium that contain, reflect, or incorporate the requesting party's Confidential Information. Upon the return of such information, the receiving party will be responsible for its compliance with any record retention requirement applicable to such party. During the transition period, SaaS and City Data access shall continue to be made available to City without alteration. Once BACS has received written confirmation from City that City's Data has been successfully transferred to City, BACS shall within thirty (30) calendar days clear, purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such clear or purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

(e) Individual User Agreements. HPP User shall be responsible for identifying all staff members that HPP User wishes to have access to the HPP, and will notify BACS of the identity of those staff members. Each such staff member shall sign and agree to comply with an HPP Individual User Agreement in the form attached as Exhibit B, and shall set up and use a unique user name and password in the HPP. HPP User shall notify BACS of any HPP User employee that has been terminated or no longer should have access to the HPP so that BACS can process the termination of the user's access credentials. BACS will terminate individual users'

access to the HPP under this Agreement immediately upon HPP User's request. HPP User shall transmit to BACS a copy of the signed HPP Individual User Agreement for any HPP User staff accessing the HPP.

(f) If this Agreement requires City to disclose "Private Information" to Donor within the meaning of San Francisco Administrative Code Chapter 12M, Donor and Donor's employees shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Donor Services. Donor is subject to the enforcement and penalty provisions in Chapter 12M.

(g) In the performance of Donor Services, BACS may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to BACS, such information must be held by BACS in confidence and used only in performing the Agreement. BACS shall exercise the same standard of care to protect such information as a reasonably prudent business entity would use to protect its own proprietary or confidential information.

(h) The City or MOHCD shall not make available to BACS access to City information system networks that are not available to the public without the consultation (and approval) of the City's Chief Information Security Officer.

(i) The City or MOHCD shall not make available to BACS Protected Health Information ("PHI"), which means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an company; the provision of health care to an company; and (ii) that identifies the company or with respect to where there is a reasonable basis to believe the information can be used to identify the company, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information (45 C.F.R. Sections 160.103, 164.501). In the event that PHI is inadvertently produced to BACS, BACS shall immediately return the PHI and shall not use or disclose the PHI in any manner.

(j) Nondisclosure. BACS agrees and acknowledges that it shall have no proprietary interest in any proprietary or Confidential Information and will not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by the disclosing Party, any of the Confidential Information it produces, receives, acquires or obtains from the disclosing Party.

6. Required Insurance Coverages

Without in any way limiting BACS's liability pursuant to the "Indemnification" section of this Agreement, BACS must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Technology Errors and Omissions Liability coverage, with limits of \$2,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

- i. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and
- ii. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.
- iii. Cyber and Privacy Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

7. Indemnification.

(a) BACS will defend, indemnify and hold harmless the City, its officers, employees and agents, from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of acts or omissions of BACS in the performance of the Donor Services to be provided under this Agreement, except those arising by reason of the gross negligence or willful misconduct of the City, its officers, employees and agents.

(b) If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of HPP infringes a patent, copyright, or any right of a third-party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), BACS will hold City, its officers, employees and agents harmless and defend such action at its own expense. BACS will pay the costs and damages awarded in any such action or the cost of settling such action, provided that BACS shall have sole control of the defense of any such action and all negotiations or its settlement or compromise, only if BACS accepts the defense and hold harmless requirements without reservation, and provided, however, that BACS shall not agree to any injunctive relief or settlement that obligates the City to perform

any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of HPP and/or Donor Services constitutes Infringement, BACS will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that BACS shall have sole control of the resolution of any such claim and all negotiations for its settlement, only if BACS accepts the defense and hold harmless requirements without reservation, and provided, however, that BACS shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. In the event a final injunction is obtained against City's use of HPP and the Donor Services by reason of Infringement, or in BACS's opinion City's use of HPP and Services is likely to become the subject of Infringement, BACS may at its option and expense: (a) procure for City the right to continue to use HPP and Donor Services as contemplated hereunder, (b) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute HPP and Donor Services, or (c) suitably modify the HPP and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the HPP and Donor Services. If none of these options is reasonably available to BACS, then Agreement may be terminated at the option of either Party hereto and BACS shall refund to City all amounts paid under this Agreement for the license of such infringing HPP and/or Donor Services. Any unauthorized modification or attempted modification of the HPP and Donor Services by City or any failure by City to implement any improvements or updates to the HPP and Donor Services, as supplied by BACS, shall void this indemnity unless City has obtained prior written authorization from BACS permitting such modification, attempted modification or failure to implement. BACS shall have no liability for any claim of Infringement based on City's use or combination of the HPP and Donor Services with products or data of the type for which the HPP and Donor Services was neither designed nor intended to be used, unless City has obtained prior written authorization from BACS permitting such use.

(c) City will defend, indemnify and hold harmless BACS from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of acts or omissions of City in its obligations under this Agreement, except those arising by reason of the gross negligence or willful misconduct of BACS.

(d) In the event of concurrent negligence of City, its officers, employees and agents, and BACS, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

8. Term and Termination.

This Agreement will commence on the Effective Date and terminate one year from the Effective Date, unless this Agreement is extended by mutual written consent of the parties. Either party may terminate this Agreement upon 60 days' written notice to the other party.

9. No Employment Relationship; Independent Contractor.

(a) No Employment Relationship. BACS acknowledges and agrees that providing Donor Services for the City does not create any employment relationship or expectation of a future employment relationship between the BACS and the City. BACS acknowledges and agrees that the City may, in its sole discretion, provide BACS with access to certain City resources but that the provision of such access shall in no way be construed as creating, or giving rise to, any employment relationship. The City may reject BACS's services at any time without notice or hearing or cause. The City or MOHCD will not provide any compensation of any kind to BACS for the Donor Services provided under this Agreement, and no expenses of any kind will be reimbursed. BACS will not represent or hold him or herself out to be an employee of the City at any time. At the written request of MOHCD, BACS will execute an acknowledgement, in a form acceptable to the City, that its employees are not an employee of the City.

(b) Independent Contractor. HPP User and BACS shall remain throughout the term of this Agreement, as an independent contractor of the other. Nothing in this Agreement is intended to create nor shall it be construed to create between HPP User and BACS a relationship of principal, agent, employee, partnership, joint venture or association. Neither HPP User nor BACS has authorization to enter into any contracts, assume any obligations or make any warranties or representations on behalf of the other. No individual through whom either party performs any obligation under this Agreement shall be entitled to or shall receive from the other party any compensation for employment, employee welfare and pension benefits, fringe benefits, or workers' compensation, life or disability insurance or any other benefits of employment, in connection with such performance.

(c) BACS acknowledges and agrees that the City is not obligated to and does not carry any insurance for BACS, and any condition, illness or injury that BACS suffers in the performance of the Donor Services shall be covered by the BACS's insurance.

10. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and there are no restrictions, promises, representations, warranties, covenants, or undertakings with respect to the subject matter hereof or thereof, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements, letters of intent, memoranda, and understandings between the parties hereto with respect to the subject matter hereof.

(b) Survival. Any provisions of this Agreement that by their terms, are intended to survive, shall survive the expiration or early termination of this Agreement and shall continue to be binding on the parties and their respective heirs, successors or permitted assigns until they expire by their terms.

(c) Binding on Assigns; No Assignability. This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided that, except as expressly provided herein, no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the written consent of the other party hereto. Neither

this Agreement nor any provision hereof shall be construed so as to confer any right or benefit upon any person other than the parties to this Agreement and their respective successors and permitted assigns. Notwithstanding the foregoing, the parties expressly agree that BACS may assign its rights and obligations under this Agreement to the separate non-profit corporate entity established by BACS for the exclusive purpose of owning and operating the HPP, BACS HPP Services, Inc. (“BHSI”). HPP User understands and agrees that once BHSI is fully authorized by state and federal tax and corporation authorities and appropriately insured, BACS will provide notice to HPP User and assign this Agreement to BHSI. Once assigned, BHSI will assume all of BACS’s rights and obligations under this Agreement.

(d) Notices. Any notices required or permitted by this Agreement shall be sent to the following addresses:

If to HPP User: Hugo Ramirez
Mayor’s Office of Housing and Community Development
1 South Van Ness Ave, 5th Floor
San Francisco, CA 94103
Email: hugo.ramirez@sfgov.org
Phone: xxx-xxx-xxxx

If to BACS: Bay Area Community Services, Inc.
390 40th Street
Oakland, CA 94609
Attention: Jamie Almanza, Chief Executive Officer

With a copy to: Bay Area Community Services, Inc.
390 40th Street
Oakland, CA 94609
Attention: Michael Ward, General Counsel

(e) Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California, without regard to the principles of California law governing conflicts of law.

(f) Construction of Agreement. This Agreement shall not be construed more strictly against one party than against the other party merely because it may have been prepared by counsel for one of the parties, it being recognized that each party has contributed substantially and materially to the preparation of this Agreement. The parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to obtain legal counsel of their choice.

(g) Enforceability. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of this Agreement, including any such provision, in any other jurisdiction, it being intended that all

rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

(h) Amendment. Neither this Agreement nor any term or provision hereof may be amended or waived except by an instrument in writing signed, in the case of an amendment, by the parties hereto or, in the case of a waiver, by the party against whom the enforcement of such waiver is sought.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. Any signature duly affixed to this Agreement and delivered by facsimile transmission or in PDF format shall be deemed to have the same legal effect as the actual signature of the person signing this Agreement. Any party receiving delivery of a facsimile or PDF copy of the signed Agreement may rely on such as having actually been signed.

Authorized Signatures:

Bay Area Community Services, Inc.

[Name of HPP User]

By _____

By _____

Jamie Almanza, CEO

Date: _____

Date: _____

Exhibit A – Payment Processing Protocol and Fee Schedule

Exhibit B
REGIONAL HOMELESSNESS PREVENTION NETWORK
HOMELESSNESS PREVENTION PLATFORM
INDIVIDUAL USER AGREEMENT

Name:

Position:

Employer:

In your role as an employee of the above-referenced organization or entity, you are authorized to access and use the Homelessness Prevention Platform (“HPP”) managed by Bay Area Community Services, Inc. in support of the Regional Homelessness Prevention Network led by All Home California. Access and use of the system are subject to your agreement and compliance with the terms of this Individual User Agreement.

1. Confidentiality of HPP Data

You understand and agree that all of the data accessible in the HPP that is not publicly available is Confidential Information, including but not limited to personal information of clients and third parties, and subject to state and federal laws protecting the information. You agree to hold and maintain the Confidential Information in strictest confidence and refrain from disclosing the information to any unauthorized third party outside of your employer organization or in the instances of case collaboration with other HPP Network organizations, and to refrain from using that information for any purpose other than the legitimate performance of your job duties for your employer.

2. Security Measures

You further agree as a condition of being granted access to the HPP to take all reasonably necessary steps to safeguard Confidential Information from theft, improper disclosure or misuse, including securing your work environment and safeguarding both paper and electronic forms of data as well as properly securing mobile devices. You will be required to establish a user name and password in order to access the HPP, and agree to maintain the security of your password, change the password when required by the system, and prevent anyone other than yourself from using your username and password to access the HPP. Any right to access the HPP shall terminate immediately upon the end of your employment with your employer, or in any other circumstance that your employer deems to be necessary, and you will not make any attempt to access the HPP after the termination of your employment.

3. Remedies

You understand and agree that any breach of your obligations under this Agreement shall result in immediate termination of your access to the HPP, will be reported to your employer, and may result in legal proceedings against you to recover any and all available legal remedies including injunctive relief and damages.

I understand and agree to the terms of this Individual User Agreement.

Employee Signature

Date: _____