

SERVICEPOINT® DATA SERVICES AGREEMENT

This Data Services Agreement ("Agreement") is entered into this ____ day of _____, 20__ (the "Effective Date") by and between _____ (the "Participating Agency") and Lake County ("LC"), individually (a "Party") and jointly (the "Parties").

WHEREAS, the ServicePoint® Referral Network ("ServicePoint") is an information system that helps improve service delivery and evaluate the effectiveness of services provided;

WHEREAS, LC uses ServicePoint® as its Homeless Management Information System (HMIS). All programs funded under US Department of Housing and Urban Development McKinney-Vento Act as amended by the HEARTH Act or the Emergency Solutions Grant are required to participate in HMIS as a condition of their funding. While HUD does not require providers that do not receive HUD funds to participate in ServicePoint®, LC works closely with non-funded agencies to articulate the benefits of ServicePoint® and strongly encourages their participation in order to achieve a comprehensive and accurate understanding of homelessness and other social service needs in Lake County; and

WHEREAS, Participating Agency and other participating agencies and programs ("Participating Agencies") will be required to comply with all applicable operating procedures and must agree to execute and comply with provisions in this Agreement, regardless of their status as mandatory or voluntary.

THEREFORE, in consideration of the foregoing, the Parties agree to the terms and conditions of the Agreement as set forth below:

1. Definitions. Except as otherwise expressly provided, terms used in this Agreement shall be defined as follows. If not otherwise defined, terms shall have the meaning as defined under HIPAA.

Authorization: The federal and state laws that apply to the requirements of a legal document that allows an individual's health information to be used or disclosed to a third party, the minimum standards are (a) those set forth in the HIPAA Privacy Rule, (b) as modified or superseded by the minimum requirements of applicable federal and state laws applicable to the type of health information to be used or disclosed including, but not limited to, state laws that apply to mental health or Human Immunodeficiency Virus. A template Authorization for use by Participating Agencies is attached hereto as **Exhibit A**.

Confidential Information: Any information, other than Protected Health Information, regarding the business, personnel and operations of a Party or its affiliates, if applicable, and their respective trustees, officers, employees, and volunteers accessed, collected, or obtained as part of this arrangement that is not otherwise publicly known, and may include, but is not limited to, data and information concerning financial operations, service area markets, customer population characteristics, types and numbers of services offered, quality assurance, utilization review, risk management, research, procurement, contracting, trade secrets, intellectual property, proprietary information and other operational information that may provide either (i) the other Party, or (ii) other Participating Agencies, its officers, directors, or employees, a competitive advantage in its relevant markets.

Data Privacy Standards: The federal and state laws and standards, including, but not limited to HIPAA and state laws that apply to mental health or HIV/AIDS.

Data Security Standards: The federal and state laws and standards, including, but not limited to HIPAA and NIST standards.

HIPAA: The Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and all implementing regulations, including the HIPAA Privacy Rule and HIPAA Security Rule, as may be amended from time to time.

Participating Agencies: Institutions and organizations that have received official approval by the ServicePoint® Coordinating Council (or its designee) to exchange information within ServicePoint® by entering into this or a substantially similar Data Services Agreement with LC.

Participating Agency Information: Information obtained from, created by or for, or disclosed by a Participating Agency that includes Protected Health Information and is exchanged utilizing ServicePoint®

ServicePoint Coordinating Council: The governing body that acts of behalf of Participating Agencies for purposes of operating ServicePoint®.

2. ServicePoint Terms

LC shall enter into Data Services Agreements, substantially similar in terms and conditions as this Agreement with Participating Agencies. The Parties agree that any proposed changes to the terms of the ServicePoint® Data Services Agreement entered into with proposed Participating Agencies must be approved by the ServicePoint® Coordinating Council. Participating Agency understands that each of the other Participating Agencies are third party beneficiaries to this Agreement. LC represents that Participating Agency is a third-party beneficiary to each ServicePoint® Data Services Agreement.

3. ServicePoint® Minimum Data Structure, Communication, & Administrative Requirements

Participating Agency shall comply with and implement the data model utilized by ServicePoint®. LC will notify Participating Agency of any updates or changes to the data model. If Participating Agency Information is in a format that is not consistent with the data model, LC will notify Participating Agency and the Parties will discuss and work collaboratively and in good faith to resolve any discrepancies.

4. Uses, Disclosures, Maintenance, Access, and Storage by Participating Agency.

Participating Agency warrants and shall ensure its uses, disclosures, maintenance, access, and storage of Participating Agency Information and other data derived from Participating Agency Information to or from LC and through ServicePoint® are based on the appropriate permissions and approvals or are otherwise allowed by law. Participating Agency shall be responsible for its own uses, disclosures, maintenance, access, and storage of Participating Agency Information and its other data derived from Participating Agency Information. Participating Agency acknowledges and agrees that LC is relying upon Participating Agency's representation herein that it will ensure compliance with all federal and state laws applicable to the use, disclosure, maintenance, access, and storage of Participating Agency Information. Participating Agency shall defend, indemnify, and hold LC harmless from any damages, claims, demands, or actions arising out of or related to Participating Agency's failure to comply with applicable law. In addition to this Agreement, Participating Agency and LC shall enter into the Business Associate Agreement in the form set forth as **Exhibit B**.

5. Security Notification.

Participating Agency shall notify LC of any event of an attempted or successful unauthorized access, use, disclosure, modification, destruction, or alteration of the data within Participating Agency's facility or network, purported HIPAA violation or breach, or other incident of technical intrusion or suspected malicious operational disruption that could potentially impact ServicePoint®, LC, or other Participating Agencies as soon as possible (and no later than 10 days) after discovery. Participating Agency agrees to cooperate with LC's and other Participating Agencies' reasonable requests in response to each incident, violation, or breach.

6. Participating Agency Information Use Requirements

Participating Agency and LC each represent it has, and will continue to, adopt, follow, and/or enforce (as applicable) Data Privacy and Data Security Standards in accordance with applicable law. Participating Agency will ensure its workforce is trained on the appropriate use and disclosure of protected health information on at least an annual basis. Participating Agency will ensure that any Notice of Privacy Practices utilized for individuals receiving services within ServicePoint includes and complies with the terms and conditions set forth in this Agreement. Participating Agency shall provide reasonable access to LC in the event that LC is required by applicable law to carry out security audits and reviews of ServicePoint®.

LC agrees to use appropriate safeguards to prevent use or disclosure of Participating Agency Information or information derived from Participating Agency Information other than as permitted under this Agreement.

7. LC Security Notification.

LC shall notify Participating Agency of any attempted or successful unauthorized access, use, disclosure, modification, destruction, or alteration of unsecured Participating Agency Information, purported HIPAA violation or breach, or other incident of technical intrusion or suspected malicious operational disruption. LC shall notify Participating Agency of the incident as soon as possible (and no later than 10 days) after discovery. LC agrees to cooperate with Participating Agency's reasonable requests in response to each incident.

8. Use of Participating Agency Information.

LC is only permitted to request, receive, store, and use Participating Agency Information and other data derived from Participating Agency Information pursuant to this Agreement and LC shall not use such information for any other purposes unless allowed by law. To further the purposes of ServicePoint, LC may store Participating Agency Information in a secure data warehouse integrated with ServicePoint in accordance with Data Privacy Standards, Data Security Standards, and applicable law.

9. User Policy, Responsibility Statement & Code of Ethics.

Participating Agency will comply with the terms and conditions and ensure that each member of its workforce complies with the terms and conditions of the User Policy, Responsibility Statement & Code of Ethics, attached hereto as Exhibit C.

10. Disclosures Required by Law.

If disclosure of Participating Agency Information is required by law, court order, subpoena, administrative process, or other similar requirement, then LC shall provide maximum practical advanced notice to Participating Agency to allow it to obtain a protective order or otherwise limit the dissemination of Participating Agency Information, at Participating Agency's sole expense. In circumstances involving a disclosure by LC of Participating Agency Information for public health reporting purposes, LC is not obligated to provide such advance notice to Participating Agency and Participating Agency agrees that such disclosures may take place without notice or opportunity to object, in accordance with state and federal law.

11. Term and Termination.

The term of this Agreement shall commence as of the Effective Date and continue for four (4) years (the "Term"), unless earlier terminated as follows:

- A. Mutual agreement of the Parties in writing to terminate this Agreement,
- B. Upon sixty (60) days' advance written notice of termination by either Party, with or without cause,
- C. Upon thirty (30) days' advance written notice of breach of this Agreement by either Party describing the alleged breach with sufficient information to identify it, if the other Party fails to cure the breach.

Upon termination and the request of Participating Agency, LC will (i) return or destroy all Participating Agency Information except where such return or destruction is not feasible or to the extent necessary to comply with retention periods of this Agreement, including as they pertain to Participating Agency Information and (ii) cooperate with Participating Agency to transition any information that Participating Agency determines it must retain in support of its operations and research. In the event return or destruction of the Participating Agency Information is not feasible, then LC will extend the protections of this Agreement to the Participating Agency Information and limit further uses and disclosures to those purposes that make the return or destruction of the Participating Agency Information infeasible.

12. Fee Schedule.

Participating Agency shall pay to LC the user fees as set forth in Exhibit D.

13. Confidentiality.

No Confidential Information of a Party, in whatever form, accessed, collected, maintained, or used shall be disclosed by the other Party except as and only to the extent specifically permitted by this Agreement and to the extent permitted by law. If dissemination of Confidential Information is required by law, the Party required disclosing Confidential Information shall provide maximum practical advance notice to the other Party to allow it to obtain a protective order or otherwise limit the dissemination of their Confidential Information, at their sole expense.

The Parties agree that they will not use in any way the names, trademarks, logos, symbols, or a description of the business or activities of each other without in each instance obtaining prior written consent. These uses include, but are not limited to, promotional, informational, and marketing activities and materials. The existence of this Agreement shall not constitute an implied endorsement of any products or services offered by either Party.

14. LIMITATION OF LIABILITY.

ALL PARTICIPATING AGENCY INFORMATION OR ANY FORM OR DERIVATIVE THEREOF IS BEING PROVIDED BY PARTICIPATING AGENCY AND BY LC "AS IS," AND PARTICIPATING AGENCY, LC, AND EACH OF THEIR LICENSORS, EMPLOYEES AND AGENTS OR AFFILIATES EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, OTHER THAN WARRANTIES CONTAINED IN THIS AGREEMENT, WHETHER EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY CONTENT, DELIVERABLES OR SERVICES ARE ACCURATE OR RELIABLE, (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND (iii) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY PARTICIPATING AGENCY, LC, THEIR AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN.

NEITHER PARTICIPATING AGENCY OR ITS AFFILIATES, NOR LC, NOR THEIR RESPECTIVE AGENTS OR EMPLOYEES WILL BE LIABLE TO EACH OTHER FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY PUNITIVE, TREBLE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, STAFF TIME, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. Miscellaneous Terms.

A. The Parties will undertake reasonable procedures to ensure that employees and contractors have not been debarred, suspended, excluded, or otherwise become ineligible to participate in any government health care program, and that it is not excluded from any government health care program.

B. Neither Party may assign, subcontract, delegate or otherwise transfer any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its duties or obligations hereunder, without the other Party's prior written consent. Any attempt to take such action(s) without consent shall be void.

C. The Parties are independent contractors of each other. Nothing contained in this Agreement shall constitute, or be construed to create, a partnership, joint venture, agency or any other relationship other than that of independent contractors to this Agreement.

D. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and delivered or sent via nationally recognized overnight mail service, signature required, or Registered or Certified United States Mail, return receipt requested, postage prepaid:

If to Participating Agency:

If to LC:

E. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Illinois.

F. If any portion of this Agreement shall for any reason be invalid or unenforceable, such portion shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining portions shall remain valid and enforceable and in full force and effect.

G. This Agreement may be executed in any number of counterparts, each of which will be considered an original as against the Party whose signature appears thereon, but all of which taken together will constitute one and the same instrument.

H. This Agreement, including all attachments and exhibits hereto, sets forth the entire agreement between the Parties relative to the subject matter of this Agreement. Any representations, promises, or conditions, whether oral or written, not incorporated in this Agreement shall not be binding upon either Party.

IN WITNESS WHEREOF, the Parties have caused this ServicePoint® Data Services Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

PARTICIPATING AGENCY:

LC:

Lake County

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT A
AUTHORIZATION
(See Attached)

DRAFT

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

(See Attached)

DRAFT

EXHIBIT C

USER POLICY, RESPONSIBILITY STATEMENT & CODE OF ETHICS

(See Attached)

DRAFT

EXHIBIT D

FEE SCHEDULE

(See Attached)

DRAFT