



MSCCoC_MIS END USER AGREEMENT

HOMELESS MANAGEMENT INFORMATION SYSTEM

IMPORTANT-READ CAREFULLY:

This End-User Agreement (“EULA”) is a legal agreement between you (either an individual or a single entity, “CLIENT”), and Bowman Systems /CAFTH (Bowman/CAFTH) for use of ServicePoint (“Software Product”). The Software Product includes programming code and associated online documentation. By using the Software Product, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, Bowman/CAFTH is unwilling to license the Software Product to you. In such an event, you may not use or copy the Software Product, and you should promptly contact Community Alliance MIS Department for instructions on uninstalling and return of unused product for a refund.

SOFTWARE PRODUCT LICENSE

The Software Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software Product is licensed, not sold.

NOW, THEREFORE, in consideration of the premises and in further consideration of the performance of the terms and provisions herein contained, Bowman/CAFTH and CLIENT do hereby contract and agree as follows:

1. **TERM.** CLIENT agrees to the contract for the length of the terms stated in the written and signed contract between CLIENT and Bowman/CAFTH, beginning upon acceptance of this agreement by signature. This agreement will automatically renew for successive 12-month periods unless cancelled or modified within thirty (30) days of the end of the term. Any modifications must be submitted in writing to the other party and agreed to by the other party.
2. **GRANT OF LICENSE.** This EULA grants you the following rights:
 - You may use one copy of the Software Product User licenses must be obtained for each individual person using the Software Product.
 - Sharing of user licenses is expressly prohibited.
3. **WARRANTIES.** In the event of loss of data due to errors and or negligence on the part of Bowman/CAFTH, Bowman/CAFTH will correct program error in a timely fashion at no additional cost to CLIENT. Other than herein above described, Bowman/CAFTH makes no express or implied warranties and makes no implied warranty of merchantability or fitness for a particular purpose. In no event shall Bowman/CAFTH be liable for indirect, consequential, punitive or special damages. Bowman/CAFTH shall not be responsible for loss of data resulting from delays, non-deliveries, miss-deliveries, service interruptions, or other interruptions caused by CLIENT or any other person or entity.
4. **TRADE SECRET.** CLIENT hereby acknowledges that the source code, graphics, and html related to services and products provided by Bowman/CAFTH under this Agreement constitutes a trade secret of Bowman/CAFTH, and as such is protected by civil and criminal law, is very valuable to Bowman/CAFTH, and that its use must be carefully and continuously controlled. CLIENT agrees to use the highest standard



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of diligence to ensure the confidentiality of the source code, and will prohibit the unauthorized access to, use or duplication of any of the source code. CLIENT agrees to provide all source codes the same security as CLIENT provides for its most confidential materials. CLIENT will not cause, permit, nor allow the code or materials provided by Bowman/CAFTH to be copied, modified, duplicated, transcribed, sold to, revealed to, or used by any other person, firm or company without prior written consent of Bowman/CAFTH. CLIENT agrees to notify Bowman/CAFTH immediately of the unauthorized possession, use or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use or knowledge, and will cooperate fully with Bowman/CAFTH in any litigation against third parties deemed necessary by Bowman/CAFTH to protect its proprietary rights. CLIENT's compliance with the above shall not be construed in any way as a waiver of Bowman/CAFTH's right to recover damages or obtain other relief against CLIENT for its negligent or intentional harm to Bowman/CAFTH's proprietary rights or for breach of contractual rights. If CLIENT attempts or allows others to attempt to use, copy, duplicate, transcribe, or convey the items supplied by Bowman/CAFTH pursuant to this Agreement, in a manner contrary to the terms of this Agreement or in derogation of Bowman/CAFTH proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, Bowman/CAFTH shall have, in addition to any other remedies available to it at law or equity, the right to injunctive relief enjoining such actions, CLIENT hereby acknowledges that irreparable harm will occur to Bowman/CAFTH and that other remedies are inadequate.

5. **COMPLIANCE WITH LAWS.** CLIENT assumes all responsibility in assuring compliance with all regulations relating to CLIENT's use of the product and services.
6. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software Product and documentation are provided with Restricted Rights. Use, duplication, or disclosure by the Government is subject to restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Bowman/CAFTH Systems L.L.C. / 333 Texas Street, Suite 300 / Shreveport, LA 71101.
7. **CONFIDENTIALITY. BOWMAN/CAFTH AND CLIENT.** Each agree that all information pertaining to the terms and conditions of this Agreement and CLIENT Proposal, whether before the effective date or during the term of this Agreement, shall be received in strict confidence, and that no such information shall be disclosed by the recipient party, its agents or employees without prior written consent of the other party, unless such information is publicly available from other than a breach of these provisions. Each party agrees to take all reasonable precautions to prevent the disclosure to outside parties of such information, except as may be necessary by reason of legal, accounting or regulatory requirement beyond the reasonable control of Bowman/CAFTH and CLIENT.
8. **USE OF SERVER FOR HOSTED APPLICATION CLIENT'S.** CLIENT will host CLIENT's application outside of Bowman/CAFTH's data center. Should CLIENT ever require that Bowman/CAFTH host the application on a server on Bowman/CAFTH's network, CLIENT understands that the server, its components, and its software are property of Bowman/CAFTH. Data input by CLIENT is property of



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CLIENT. Bowman/CAFTH's server may not be used for illegal purposes, or in support of illegal activities. Activities which are prohibited include, but are not limited to unauthorized copying of material, transmittal of chain letters, threatening bodily harm or property damage of individual groups, making fraudulent offers of products, items, or services originating from CLIENT's account, attempting to access the accounts of others or attempting to penetrate Bowman/CAFTH's systems whether or not the intrusion results in loss of data, or distributing viruses or bulk e-mail through the Bowman/CAFTH System.

9. **MODIFICATION.** CLIENT may not modify source code without written consent of Bowman/CAFTH.
10. **LIMITATION OF ACTIONS.** No action arising out of this Agreement may be brought by CLIENT or Bowman/CAFTH more than two (2) years after the cause of action has occurred.
11. **HEADINGS.** The headings of each paragraph contained herein are provided only for convenience and shall not be deemed controlling.
12. **BINDING.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective assigns and successors.
13. **ASSIGNABILITY.** This Agreement shall not be transferable or assignable by CLIENT or Bowman/CAFTH without the prior written consent of the other party, which consent shall not be unreasonably withheld. CLIENT acknowledges that Bowman/CAFTH may require any assignee of CLIENT to renegotiate the terms of this Agreement.
14. **GOVERNING LAW.** This Agreement shall be governed by, construed and enforced under, and subject to, the laws of the State of Louisiana. If any of the provisions of this Agreement are invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted. Such omission does not change the intent or binding nature of any or all of the rest of this Agreement, which shall be in full force and effect.
15. **ARBITRATION.** ANY DISPUTE BETWEEN OR AMONG THE PARTIES REGARDING THE VALIDITY OF THIS AGREEMENT, THE INTERPRETATION OF THIS AGREEMENT, OR ANY PARTY'S RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT, SHALL BE SUBMITTED TO, DETERMINED AND SETTLED BY FORMAL ARBITRATION IN SHREVEPORT, LA., PURSUANT TO THE LAWS OF THE STATE OF LOUISIANA AND THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") GOVERNING COMMERCIAL DISPUTES AS THE SAME MAY BE IN EFFECT FROM TIME TO TIME. THE PARTIES AGREE TO BE BOUND AND TO ABIDE BY THE DECISION OF THE ARBITRATOR, WHICH SHALL BE FINAL. THE PARTIES SHALL PROCEED DILIGENTLY AND IN GOOD FAITH IN ORDER THAT THE ARBITRAL AWARD SHALL BE MADE AS PROMPTLY AS POSSIBLE. THE ABSENCE OR DEFAULT OF A PARTY SHALL NOT PREVENT OR HINDER THE ARBITRATION PROCEEDING AT ANY OR ALL OF ITS STAGES. EACH PARTY SHALL BEAR ITS OWN



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COSTS IN THE ARBITRATION EXCEPT THAT THEY SHALL EACH PAY ONE-HALF OF THE HOURLY FEE CHARGED BY THE ARBITRATOR. UPON THE FAILURE OF EITHER PARTY TO ABIDE BY AN ARBITRATION DECISION, ANY PARTY MAY FILE SUIT TO ENFORCE ANY ARBITRATION AWARD, AND, FOR THIS PURPOSE, THE PARTIES CONSENT TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN CADDO PARISH LA . THE ARBITRATOR SHALL HAVE AN UNDERSTANDING OF THE BUSINESS ENCOMPASSED BY THE TERMS OF THIS AGREEMENT, TO SUCH AN EXTENT THAT SUCH ARBITRATOR WILL HAVE AT LEAST A GENERAL BACKGROUND OF KNOWLEDGE AND EXPERIENCE IN THE PARTICULAR AREA OF THIS AGREEMENT WHICH MAY BE IN DISAGREEMENT. AT THE TIME A PARTY INITIATES AN ARBITRATION PROCEEDING, SUCH PARTY SHALL SUGGEST A MINIMUM OF FIVE (5) QUALIFIED ARBITRATORS. SUCH PROCEEDINGS SHALL NOT BE CONSIDERED EFFECTIVELY INITIATED UNTIL THE INITIATING PARTY HAS SO NAMED POTENTIAL ARBITRATORS. NO LATER THAN TEN (10) DAYS AFTER RECEIPT OF SUCH A REQUEST FOR ARBITRATION IN WRITING, INCLUDING THE NAME OF THE INITIATING PARTY'S LIST OF POTENTIAL ARBITRATORS, THE RESPONDING PARTY SHALL RESPOND TO THE INITIATING PARTY'S SUGGESTED LIST BY EITHER ACCEPTING ONE OF THE INITIATING PARTY'S SUGGESTED ARBITRATORS, IF ONE ON THE LIST IS ACCEPTABLE, OR BY SUGGESTING OTHER POTENTIAL ARBITRATORS. THE INITIATING PARTY MUST RESPOND TO THE RESPONDING PARTY'S POTENTIAL ARBITRATORS LIST NO LATER THAN TEN (10) DAYS AFTER RECEIPT OF SUCH LIST. IF THE PARTIES FAIL TO AGREE UPON AN ARBITRATOR WITHIN TEN (10) DAYS FROM THE DATE OF THE INITIATING PARTY'S RECEIPT OF RESPONDING PARTY'S ALTERNATE LIST, THE ARBITRATOR SHALL BE SELECTED BY THE AAA UPON THE APPLICATION OF THE INITIATING PARTY. THEREAFTER THE ARBITRATION PROCEEDING SHALL BE CONDUCTED PURSUANT TO AAA COMMERCIAL RULES. THE ARBITRATOR SHALL BASE HIS DECISION ON THE APPLICABLE LAW, INCLUDING ANY LAWS RELATED TO STATUTES OF LIMITATION. THE ARBITRATOR SHALL NOT HAVE THE AUTHORITY TO GRANT OR AWARD, AND SHALL NOT GRANT OR AWARD, ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, PUNITIVE DAMAGES, OR EXEMPLARY DAMAGES OR ANY FEES FOR ATTORNEYS, ACCOUNTANTS OR EXPERT WITNESSES, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT.

- 16. LIMITATION OF LIABILITY.** In the event of loss of data due to errors and or negligence on the part of Bowman/CAFTH, Bowman/CAFTH will correct the program error in a timely fashion at no additional cost to CLIENT. Other than as herein above described, Bowman/CAFTH shall in no event have any liability to CLIENT for losses sustained or liabilities incurred except as may result from gross negligence or willful misconduct. Further, any liability of Bowman/CAFTH for any loss, damages, or costs hereunder shall be limited to the actual direct damages incurred by CLIENT, but in no event shall the aggregate of liability exceed the total fees paid by CLIENT to Bowman/CAFTH under paragraph 3 above, nor shall any amount of liability include any indirect, consequential, punitive or special damages incurred by CLIENT. Bowman/CAFTH shall not be responsible for loss of data resulting from delays, non-deliveries, mis-deliveries, service interruptions, or other interruptions caused by CLIENT or any other person or entity.



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17. **FORCE MAJEURE.** Bowman/CAFTH shall not be liable to CLIENT or any other person or entity for any loss or damage for delay in performance, or for nonperformance, due to causes not reasonably within its control, such as, but not limited to, an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, public disaster, lightning, fire, storm, flood or other act of nature, explosion, judicial orders/decrees, governmental laws/regulations, governmental action, governmental delay, restrain or inaction, unavailability of equipment, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of Bowman/CAFTH.
18. **NOTICE.** Any notices under this Agreement shall be written and shall be deemed delivered when actually received, or three days after they are deposited with the United States Postal Services, certified mail return receipt requested when addressed to the other party at its above address, which may not be changed without written notice.
19. **TERMINATION.** Without prejudice to any other rights, Bowman/CAFTH may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such an event, you must destroy all copies of this Software Product and all of its component parts.
20. **TAXONOMY.** The structure of the Taxonomy index and definitions of the terms contained herein were originally published in A Taxonomy of Human Services: A Conceptual Framework with Standardized Terminology and Definitions for the Field by the Information and Referral federation of Los Angeles County, Inc., 3035 Tyler Ave, El Monte, CA 91731; Copyright 1983, 1987, 1991. No part of this listing of human services terms and definitions may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electrical, mechanical, photocopying, recording or otherwise without the prior written permission of the Information and Referral Federation of Los Angeles County, Inc.
21. **SEVERABILITY.** The invalidity of any one or more of the provisions of this Agreement shall not affect the remaining portions of this Agreement, and in case of any such invalidity, this Agreement shall be construed as if the invalid provisions had not been inserted.



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SIGNATURES:

End-User Signature

Date

End-User Project Supervisor

Date

Tanyce A. McCray-Davis
MIS Director/HMIS Administrator II
Community Alliance for the Homeless

Date

PLEASE SEND THE SIGNED ORIGINAL COPY OF THIS DOCUMENT BACK TO:

CAFTH, MIS DEPARTMENT DIRECTOR.

Tanyce A. McCray-Davis, MIS Director
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Memphis TN 38103
(901) 527-1302 Ext. 306
tanyce@cafth.org
msccocmis.org