

MARCH 31 2009

MINER NEVADA STATE HMIS MEMORANDUM OF UNDERSTANDING





**Miner (Homeless Management Information System)
Agreement Between
Bitfocus, Inc.
and**

This agreement is entered into on _____ (m/d/y) between Bitfocus, Inc., hereafter known as Bitfocus, and (agency name) _____, hereafter known as "Agency," regarding access and use of the Miner Homeless Management Information System, hereafter known as the "HMIS."

I. Introduction

The HMIS is a shared homeless database that allows authorized personnel at participating agencies throughout Nevada to share information on common clients.

Subject to the direction of the HMIS Working Group, Bitfocus is the HMIS Program Administrator and has assumed responsibility for overall project administration and monitoring, hosting of the Miner HMIS and limiting access to the database to participating agencies.

II. Confidentiality

A. The Agency will use its reasonable best efforts to uphold relevant Federal and State confidentiality regulations and laws that protect client records, and the Agency will only release confidential client records with written consent by the client, or the client's guardian, unless otherwise provided for in the regulations or laws. A client is anyone who receives services from the Agency and a guardian is one legally in charge of the affairs of a minor or of a person deemed incompetent. For convenience of reference, future references in this Agreement to a client include reference to any guardians of a client.

1. The Agency will use its reasonable best efforts to comply with Federal confidentiality regulations as contained in the Code of Federal Regulations, 42 CFR Part 2, regarding disclosure of alcohol and/or drug abuse records. The Agency understands that Federal

Address:

9101 W. Sahara Ave #105-158
Las Vegas, NV 89117

telephone: (702) 614-6690

fax: (702) 666-9102

email: info@bitfocus.com

web: www.bitfocus.com

laws and regulations restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patients.

2. The Agency will use its reasonable best efforts to comply with the Health Insurance Privacy Portability and Accountability Act of 1996 and corresponding regulations adopted by the U.S. Department of Health and Human Services.
 3. The Agency will use its reasonable best efforts to comply with laws of the State of Nevada regarding substance abuse and medical records.
 4. The Agency will use its reasonable best efforts to provide a written explanation of the Miner HMIS to all clients and will provide all forms in English and Spanish.
 5. The Agency will use its reasonable best efforts not to input information from clients into the Miner HMIS unless it is essential to provide services or conduct evaluation or research.
 6. The Agency will use its reasonable best efforts not to divulge any confidential information received from the Miner HMIS to any participating agency, outside organizations or individuals without proper written consent by the client unless otherwise permitted by relevant regulations or laws.
 7. The Agency is encouraged to seek its own legal advice in the event that a non-participating agency requests identifying confidential client information.
- B. The Agency agrees to use its reasonable best efforts to maintain appropriate documentation of client consent to participate in the Miner HMIS.
1. If a client does not grant authorization to share basic identifying information and non-confidential service data via the Miner HMIS, then such information should not be provided to HMIS.
 2. The Agency will use its reasonable best efforts to incorporate a Miner HMIS Clause into one or more existing Agency Authorization for Release of Information Form(s). Bitfocus and/or its contractors may conduct periodic audits to enforce informed consent standards, but the primary oversight of this function is between agencies.

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3. The Agency will use its reasonable best efforts to modify its client grievance procedures to incorporate the HMIS Client Grievance Procedures, or to add the HMIS Procedures as an addendum.
 4. The Agency will use its reasonable best efforts to modify its Privacy Notice, which describes the protocols taken by Agency staff to protect the protected personal information of clients to include the HMIS Privacy Notice.
 5. The Agency understands that provision of services by the Agency is not and will never be contingent upon a client's participation in the Miner HMIS, and that Bitfocus does not require or imply otherwise.
- C. The Agency and Bitfocus understand that the Miner HMIS, and Bitfocus as administrator, are custodians of data and not owners of data.
1. If this Agreement is terminated, Bitfocus and the remaining participating agencies will maintain their right to the use of all client data previously entered by the former participating agency, subject to all of the other provisions of this Agreement.
 2. The Agency will receive one export copy of all data entered by the agency into the system up to the date of termination. Fees paid will not be refunded.

III. **Data Entry and/or Regular Use**

- A. The Agency will use its reasonable best efforts to comply with and enforce the then current HMIS Standard Operating Procedures (SOP) and the HMIS Responsibility Statement and Code of Ethics.
- B. If a client has previously given permission to multiple agencies to have access to her/his information and then chooses to eliminate one or more of those agencies, the agency to which such choice is expressed will use its reasonable best efforts to notify the affected agencies that the information will no longer be available at the client's request. Participating agencies understand that at no time should they penalize or threaten to penalize clients for requesting that their information be held in strict confidence.
- C. The Agency is responsible for setting the sharing parameters for files that the Agency enters or updates.

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- D. The Agency will use its reasonable best efforts to enter information concerning individuals in the Miner HMIS only if those individuals are currently clients under the Agency's jurisdiction.
- E. The Agency will use its reasonable best efforts not to make any misrepresentations concerning its clients in the Miner HMIS (i.e., the Agency will not purposefully enter inaccurate information on a new record or on a record entered by another agency).
- F. The Agency will use its reasonable best efforts to enter data into the Miner HMIS in a consistent manner.
- G. Discriminatory comments based on race, ethnicity, religion, national origin, ancestry, disability, age, gender, and sexual orientation are not permitted in the Miner HMIS.
- H. Offensive language and profanity are not permitted in the Miner HMIS.
- I. The Agency will utilize the Miner HMIS for business purposes only.
- J. Use of the Miner HMIS system or network to transmit any material in violation of any laws or regulations of the United States or any constituent state or territory is prohibited. This includes, but is not limited to, copyrighted material and threatening or obscene material.
- K. The Agency will not use the Miner HMIS with intent to defraud the any person or entity, including any governmental agencies, or to conduct any illegal activity.
- L. The Agency recognizes the HMIS Working Group to be the discussion and decision-making center regarding the Miner HMIS, including process updates, policy and practice guidelines, data analysis, and software/hardware upgrades. The Agency will designate an assigned staff member to attend Working Group meetings regularly, and understands that Bitfocus will be responsible for coordinating Working Group activities subject to the direction of the Working Group.

IV. **Reports**

- A. The Agency understands that it will have full access to all identifying and statistical data on the clients it serves.
- B. The Agency understands that access to data on those it does not serve will be limited or not available depending on the sharing agreement(s) maintained with other participating agencies.

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- C. Reports containing information not served by the Agency are limited to statistical and frequency reports that do not disclose identifying information.
- D. The Agency understands that before non-identifying system wide aggregate information collected by the Miner HMIS is disseminated to participating agencies or funding sources, it shall be authorized by the HMIS Working Group. If urgent requests from an authorized entity indicate that it is unreasonable and unnecessary to wait for approval, the Program Administrator and HMIS Working Group Chair must concur on such dissemination. Working Group members will be notified immediately of the Chair's decision, and a full written report will be provided by Bitfocus at the next Working Group meeting.
- E. The Agency will use its reasonable best efforts to provide a written report annually to the Working Group and Bitfocus listing up-to-date information of all authorized users, and a list of former end-users who no longer have authorization to access the Miner HMIS.
- F. Bitfocus will use its reasonable best efforts never to release proprietary information about agencies or their services, procedures or clients without written permission of the Agency.

V. **Insurance**

- A. Except as otherwise expressly provided in this Agreement, neither the Agency nor Bitfocus make any representations or warranties, express or implied. Each of the parties will obtain and keep in force insurance in such amounts and covering such risks for the benefit of the Working Group, Bitfocus and participating agencies as may reasonably be required by the HMIS Working Group from time to time. Neither of the parties shall be liable to the other or to any other person or entity for damages, losses, or injuries other than if and to the extent the same are the result of gross negligence or willful misconduct by the management of the Agency or Bitfocus.
- B. Agency and Bitfocus each agree to defend, indemnify and hold each other harmless for any claims or liability arising from the acts and omissions of the other, including any third party claims arising from the acts and omissions of any officers, employees, agents, representatives, licensees or clients of the other. Agency and Bitfocus each further agree to name the other as an additional insured on any general or specific liability policy of insurance required by this agreement or applicable law.

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VI. **Payment of Sums Due**

The Agency agrees to pay sums due to Bitfocus under this Agreement within thirty calendar days after the due date and receipt of an invoice from Bitfocus. Charges by Bitfocus may be revised in the fourth quarter of each calendar year with an estimate of costs for the pending July – June fiscal year that is forwarded to all participating agencies at least ninety days in advance of the effective date of the revisions.

VII. **Terms and Conditions**

- A. The parties hereto agree that this agreement is the complete and exclusive statement of the agreement between parties and supersedes all prior proposals and understandings, oral and written, relating to the subject matter of this agreement.
- B. Neither party shall have the right to transfer or assign any rights or obligations under this Agreement without the written consent of the other party.
- C. This Agreement shall remain in force until revoked in writing by either party, with 30 days advance written notice. Notwithstanding the foregoing, if there is credible evidence regarding possible or actual breach of this Agreement and the nature of the breach threatens the integrity of the Miner HMIS, the Working Group will have the right to suspend or limit access to the Miner HMIS by the alleged wrongdoer pending investigation and resolution of the matter to the extent reasonably required to protect the integrity of the system.
- D. This Agreement may be modified or amended only by a written agreement executed by both parties.
- E. Members of the HMIS Working Group will be elected from time to time by majority vote of all participating agencies. The qualifications and meetings of members of the HMIS Working Group and all other matters relating to the Working Group shall be provided in by-laws of the Working Group adopted or modified from time to time by majority vote of all of the participating agencies.
- F. This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of the Working Group, Bitfocus and the Participating Agency. It is made solely for the protection of the Working Group, Bitfocus and the Participating Agency and their respective heirs, personal representatives, successors and assigns. No

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other person or entity shall have any rights of any nature under this Agreement or by reason hereof. Without limiting the generality of the preceding sentence, no user of the HMIS system in his or her capacity as such and no current, former or prospective client of any agency shall have any rights of any nature under this Agreement or by reason hereof.

Authorized Representative Signature

Date (m/d/y)

Authorized Representative Printed Name

Title

Signature of Chair of Agency Board of Directors

Name and Address of Participating Agency:

Bitfocus, Inc.

By: _____
Robert Herdzik, President

Date (m/d/y)

Name and Address of Bitfocus:

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