

**THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE COUNTY OF
SANTA CLARA AND BITFOCUS INC. REGARDING THE HOMELESSNESS
MANAGEMENT INFORMATION SYSTEM**

This is the Third Amendment to the Agreement between the County of Santa Clara (“County”) and Bitfocus, Inc. (“Service Provider” or “Contractor”) entered into in May 2016, in order to establish roles, rights, and responsibilities related to the Homeless Management Information System (“HMIS”) services. County and Contractor are collectively referred to herein as the “Parties.”

The Parties agree that the Agreement shall be amended as follows:

1. Section **2.1 TERM** is revised to read:

Unless this Agreement is extended or terminated earlier in accordance with the terms set forth herein, this Agreement shall commence on the Effective Date and continue until June 30, 2020.

2. Section **5. INVOICING AND PAYMENT** is revised to read:

County shall be responsible for and shall pay to Service Provider the fees as further described in Exhibit A, subject to the terms and conditions contained therein. However, the maximum compensation to be paid to the Service Provider under this Amendment shall not exceed \$296,000.

3. Revise Section 14.16 **COMPLIANCE WITH NON-DISCRIMINATION AND EQUAL OPPORTUNITY LAWS** to read:

14.16 COMPLIANCE WITH ALL LAWS, INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

(1) Compliance with All Laws. Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County’s policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing,

Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(4) Definitions: For purposes of this section, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality Assurance.

(5) Prior Judgments, Decisions or Orders against Contractor: By signing this Agreement, Contractor affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that Contractor violated an applicable wage and hour law or pay equity law. Contractor further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.

(6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Contractor receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting

Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this section, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance notice.

(8) Pay Equity Notification: Contractor shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Contractor for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Contractor's Employees and Job Applicants.

(9) Material Breach: Failure to comply with any part of this section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions: (i) Suspend or terminate any or all parts of this Agreement. (ii) Withhold payment to Contractor until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law. (iii) Offer Contractor an opportunity to cure the breach.

(10) Subcontractors: Contractor shall impose all of the requirements set forth in this section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

4. Add Section 14.18 **MINOR BUDGET ADJUSTMENTS** to read:

The Administration has the authority to make minor budget adjustments that do not increase nor decrease the total amount of this agreement, and further, that do not alter the

agreed-to service description and expected outcome (scope of service). Minor budget adjustments must not exceed 40% of the total amount of this agreement and must be approved by the Contractor, County Agency/Department Manager (Contract Monitor) and the County Agency/Department Fiscal Officer. The budget adjustment must be submitted on a budget template, or in excel format, and must be signed by all approvers and attached to the contract.


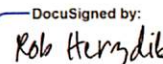
5. **EXHIBIT A SERVICE FEES AND RATES** is revised to read:
July 1, 2019-June 30, 2020

Item and Description	Billing Schedule	Maximum Amount
Ongoing Charges		
700 Clarity Enterprise Seats <ul style="list-style-type: none"> Includes access and operation at the Enterprise level per each seat \$20 per seat per month 	\$14,000 per month	\$168,000
70 Clarity Manager Seats <ul style="list-style-type: none"> Includes Enterprise level access and operation, with the addition of ability to customize agency preferences, including services and programs of the selected agency. \$50 per seat per month 	\$3,500 per month	\$42,000
18 Clarity Administrator Seats <ul style="list-style-type: none"> Includes Enterprise and Manager level access and operation with the addition of System Administration management functions. Includes 30 Hours of Advanced Technical Assistance per year. \$150 per seat per month 	\$2,700 per month	\$32,400
Santa Clara County Training Site License <ul style="list-style-type: none"> Clarity Training Web Site provides a Santa Clara County-specific site for training purposes and is an important part of any Clarity installation. This service provides optional ongoing training site operation, including software updates in concert with the production site. 	\$500 per month	\$6,000
Virtual Private Network Maintenance and Support <ul style="list-style-type: none"> Virtual Private Network (VPN) is a Clarity premium service for clients seeking a secured connection to their database for sophisticated reporting purposes. Includes 4 hours of customer support per year. 	\$33.33 per month	\$400
Replica Database Access and Support	\$600 per month	\$7,200

<ul style="list-style-type: none"> Includes a unique VPN for direct access, given at direction of the County, to a live-time replica of the SCC HMIS database 		
Additional Clarity Seats <ul style="list-style-type: none"> Enterprise, Manager, and Administrator seating capacity to expand utilization as system utilization expands at Seat rate. 	Invoiced upon activation and monthly forward.	\$40,000
Total (Maximum Amount)		\$296,000

All other terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between the Agreement and this Third Amendment, this Third Amendment controls.

IN WITNESS THEREOF, the parties have caused this Third Amendment to be entered into as of the day and year of execution of this Third Amendment,

<p>County of Santa Clara</p>  <p>SEP 24 2019</p> <p>_____ S. JOSEPH SIMITIAN Date President, Board of Supervisors</p>	<p>Bitfocus Inc.</p> <p>DocuSigned by: </p> <p>8/19/2019</p> <p>_____ ROBERT HERZDIK Date President/CEO</p>
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Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest:



SEP 24 2019

MEGAN DOYLE Date
Clerk of the Board of Supervisors

Approved as to form and legality:

DocuSigned by:


8/19/2019

TONY LOPRESTI Date
Deputy County Counsel