



HMIS AGENCY PARTICIPATION AGREEMENT

The Homeless Management Information System (“HMIS”) is a database and case management system that collects and maintains information on the characteristics and service needs of clients. The system is necessary because it helps to provide more effective and streamlined services to clients, collects valuable data to present to the funders of services, and creates information for communities to determine the use and effectiveness of services. HMIS participating agencies work together to provide services to Indiana persons and families in need.

Ultimately, when used correctly and faithfully, the HMIS will benefit multiple stakeholders, including provider agencies, persons who are homeless, funders of homeless services and providers, as well as Indiana communities, through improved knowledge about people who are homeless and their service needs. As a result of this system, Indiana agencies will enjoy a more effective and efficient service delivery system.

_____ (“Agency”) has elected to participate in the HMIS administered by Indiana Housing and Community Development Authority (“IHCDA”) and is therefore considered a “Participating Agency.” In consideration of their mutual undertakings and covenants, the Agency and IHCDA agree as follows:

1. General Understandings:

A. Definitions. In this Agreement, the following terms will have the following meanings:

- (i) “Agency staff” refers to employees, volunteers, contractors, or any other agents of the Agency.
- (ii) “Client” refers to a consumer of services provided by the Agency.
- (iii) “De-identified Information” (also referred to as “non-identifying” information) refers to data that has specific Client demographic information removed, allowing use of the data *without identifying* a specific Client.
- (iv) “Enter(ing)” or “entry” refers to the entry of any Client information into the HMIS.
- (v) “HMIS” refers to the Homeless Management Information System.
- (vi) “HMIS staff” refers to the employees, contractors, or agents of IHCDA assigned to administer the HMIS, as well as to analyze, review and report on the data contained in HMIS.
- (vii) “IHCDA” refers to the Indiana Housing and Community Development Authority, which is a grantee under a grant from the United States Department of Housing and Urban Development (“HUD”) pursuant to the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301, *et seq.*
- (viii) “Identified information” (also referred to as “confidential” data or information) refers to Client data that can be used to identify a specific Client or the Client’s characteristics.
- (ix) “Agency” or “Participating Agency” refers generally to any service provider or organization signing this document that is participating in the HMIS.
- (x) “Share(ing),” or “information share(ing)” refers to the access by another Participating Agency to information which has been entered in the HMIS.

(xi) “HMIS Advisory Committee” refers to an advisory body that serves in a consultative and counseling role for IHCDA as the HMIS system administrator. A list of the current members of the HMIS Advisory Committee may be obtained from IHCDA.

(xi) “User” refers to Agency employees authorized to have, and having, access to the HMIS.

B. Use and Disclosure. Whenever Agency enters information into HMIS, such Identified Information will be available to the HMIS staff who may use it to: administer HMIS, conduct analysis, coordinate services, and prepare reports to be submitted to others in de-identified form. HMIS Identified Information may also be shared with other Participating Agencies in compliance with this Agreement to provide coordinated services to Clients. HMIS staff and Participating Agencies may use and disclose HMIS Identified Information only in accordance with HMIS Data Use and Disclosure Policies, Standard Operating Procedures, and Notice of Privacy Practices that exist currently, or as amended from time to time in IHCDA’s discretion (hereafter “Privacy Practices”). The HMIS Privacy Practices are incorporated herein by reference.

C. License. Agency grants to IHCDA and IHCDA’s agents or subcontractors a perpetual, fully-paid, worldwide, nonexclusive, royalty-free right and license (i) to access and otherwise permit others to access through the HMIS all Identified Information provided by the Agency in accordance with this Agreement; and (ii) to use such Identified Information to carry out IHCDA’s and its agents’ or subcontractors’ duties under this Agreement, including without limitation HMIS administration, testing, problem identification and resolution, management of the HMIS database, data aggregation and analysis activities, as permitted by applicable state and federal laws and regulations, when IHCDA determines it necessary and appropriate to comply with and carry out its obligations under all applicable laws and regulations.

2. Confidentiality:

A. Agency shall not:

(i) enter information into the HMIS which it is not authorized to enter, or

(ii) designate information for sharing that Agency is not authorized to share,

under any relevant federal, state, or local confidentiality laws, regulations or other restrictions applicable to Client information. By entering information into the HMIS or designating it for sharing, Agency represents that it has the authority to enter such information into the HMIS or to designate it for sharing. To the best of Agency’s knowledge, entering information into the HMIS does not violate any rights, including copyrights, of third parties.

B. Agency represents that: (*check applicable items*)

(i) it is _____; is not _____ a “covered entity” whose disclosures are restricted under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”);

(ii) it is _____; is not _____ a program whose disclosures are restricted under the Federal Drug and Alcohol Confidentiality Regulations, 42 CFR Part 2 (“Confidentiality Regulations”);

(iii) if Agency is subject to HIPAA or the Confidentiality Regulations, a fully executed Business Associate or Business Associate/Qualified Service Organization Agreement must be attached to this Agreement before information may be entered into the HMIS. Sharing of information will not be permitted otherwise.

(iv) if Agency is subject to any laws or requirements which restrict Agency’s ability either to enter or to authorize sharing of information, Agency will ensure that any entry it makes in the HMIS and all designations for sharing fully comply with all applicable laws or other restrictions.

C. To the extent that information entered by Agency into the HMIS is or becomes subject to additional restrictions, Agency will immediately inform IHCDA in writing of such restrictions.

3. Display of Notice:

Pursuant to the notice published by the Department of Housing and Urban Development (“HUD”) on July 30, 2004, Agency will prominently display at each intake desk (or comparable location) the *HMIS Notice of Privacy Practices* provided by IHCD, that explains generally the reasons for collecting identified information in the HMIS and the Client rights associated with providing Agency staff with identified data. Agency will ensure Clients’ understanding of their rights. Additionally, if Agency maintains a public webpage, the current version of the *HMIS Notice of Privacy Practices* must be posted on the webpage. The current form of *HMIS Notice of Privacy Practices*, which may be modified from time to time at IHCD’s discretion, is attached to and incorporated into this Agreement by reference, and is available from IHCD or on its website, www.indianahousing.org.

4. Information Collection, Release and Sharing Consent:

A. Collection of Identified Information. Agency may collect Identified Information only when appropriate to the purposes for which the information is obtained or when required by law. Agency must collect Client information by lawful and fair means and, where appropriate, with the knowledge or consent of the Client.

B. Obtaining Client Consent. Agency shall post the *HMIS Notice of Privacy Practices* document prominently at each intake desk (or comparable location). The Client’s consent for data collection may be inferred from the circumstances of the collection and this posting. If at the time of collection, a Client withdraws or revokes consent for sharing Identified Information, Agency is responsible for immediately making appropriate data entries in the HMIS to ensure that Client’s Identified Information will not be shared with or visible to other Participating Agencies.

C. Designation for Sharing. Prior to designating any information for sharing, Agency will provide the Client with a copy of the *HMIS Client Consent to Release Information* form (“*Consent*”). The current form is incorporated into this Agreement by reference, may be modified from time to time by IHCD, and is located at www.indianahousing.org. Following an explanation of the data use, the Agency will obtain the informed consent of the Client by having the Client sign the *Consent* form.

(i) If a Client does not sign the *Consent* form, information may not be shared with other Participating Agencies. It is the responsibility of Agency entering information about a Client to determine whether consent has been obtained; to make appropriate entries in the HMIS either to designate the information as appropriate for sharing or to prohibit information sharing; to implement any restrictions on information sharing; and to implement any revocation of consent to information sharing.

(ii) Agency shall keep all copies of the signed *Consent* form for a period of six years after the Client last received services at or from the Agency. Such forms shall be available for inspection and copying by IHCD at any time.

D. Refusal of Services. Agency may not refuse or decline services to a Client or potential Client if that person:

(i) objects to entry of Client information in the HMIS (except if Agency policy requires entry or if collection of the information is required as a condition of a provider Agreement); or

(ii) refuses to share his or her personal information with other Participating Agencies via the HMIS.

5. HMIS Policies and Standard Operating Procedures:

Notwithstanding any other provision of this Agreement, Agency’s use of and participation in the HMIS, and the use, disclosure, and submission of data to and from the HMIS shall, at all times, be governed by the HMIS Policies and Standard Operating Procedures existing and revised from time to time, at the sole discretion of IHCD. Such HMIS Policies and Standard Operating Procedures are incorporated in this Agreement by reference and are located at www.indianahousing.org. In the event of a conflict between this Agreement and the HMIS Policies and Standard Operating Procedures, the latter shall control.

6. Disclosure to Third Parties:

Agency shall not release any Client Identifying Information received from the HMIS to any other person or organization without the written informed consent of the Client, unless such disclosure is required by law.

7. Client Inspection/Correction:

Upon written request by a Client, Agency shall allow the Client to inspect and obtain a copy of his or her own personal information during regular business hours. Agency is not required to provide a Client access to information (a) compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding; (b) about another individual; (c) obtained under a promise of confidentiality if disclosure would reveal the source of the information; and (d) which, if disclosed, would be reasonably likely to endanger the life or physical safety of any individual. Agency must allow a Client to correct information that is inaccurate or incomplete; provided, however, that prior to correcting such information, Agency shall consult with IHCDA. Such consultation is necessary to ensure proper coordination between the Agency's response and the capabilities of the HMIS system, unless the requested correction is a routine correction of a common data element for which a field exists in HMIS (e.g., date of birth, prior residence, social security number, etc.). Agency is not required to remove any information as a result of a correction, but may, in the alternative, mark information as inaccurate or incomplete and may supplement it with additional information.

8. Security:

Agency shall maintain the security and confidentiality of information in the HMIS and is responsible for the actions of its employees, contractors, volunteers, or agents and their proper training and supervision. Agency agrees to follow the *HMIS Policy and Standard Operating Procedure* on security (hereafter "Security Rule"), which by this reference is incorporated herein and which may be modified from time to time in IHCDA's discretion. At its discretion, IHCDA may conduct periodic assessments of Agency to monitor its compliance with the Security Rule. The steps Agency must take to maintain security and confidentiality include, but are not limited to:

A. Access. Agency will permit password-protected access to the HMIS or information obtained from it only to authorized Agency staff who need access to the HMIS for legitimate business purposes (such as to provide services to the Client, to conduct evaluation or research, to administer the program, or to comply with regulatory requirements). Agency will limit the access of such staff to only those records that are immediately relevant to their work assignments.

B. User Code of Ethics. Prior to permitting any User to access HMIS, Agency will require the User to sign an *HMIS User Code of Ethics* ("User Code of Ethics"), which is incorporated herein by this reference and which may be amended from time to time in IHCDA's discretion. Agency will comply with and enforce the User Code of Ethics and will inform IHCDA immediately in writing of any breaches of the User Code of Ethics.

(i) Any staff, volunteer or other person who has been granted a User ID and password and is found to have committed a breach of system security and/or Client confidentiality may have his or her access to the database revoked immediately.

(ii) In the event of a breach of system security or Client confidentiality, the Agency Director shall notify IHCDA within twenty-four (24) hours. Any Agency that is found to have had breaches of system security and/or Client confidentiality shall enter a period of probation, during which technical assistance shall be provided to help the Agency prevent further breaches.

Probation shall remain in effect until IHCDA has evaluated the Agency's security and confidentiality measures and found them compliant with the policies stated in this Agreement and the User Code of

Ethics. Subsequent violations of system security may result in suspension from the HMIS.

C. Public Key Infrastructure (“PKI”): PKI is an electronic checkpoint that permits the workstations used by an Agency to securely access the HMIS server. The HMIS server simply verifies that a PKI certificate is in place, and then allows the User to proceed. Therefore, every computer that is used to access the HMIS server is required to have a PKI Certificate installed on the computer's hard drive. The certificate is obtained from IHCDA. It is the responsibility of the Agency to manage and keep their PKI certificates secure. It is also the responsibility of the Agency to retrieve the PKI Certificate from workstations outside the workplace or from a workstation that no longer has access to the server. PKI does not verify the User; it is the responsibility of the Agency to continue to delete usernames and passwords when a User no longer has access to the HMIS. Notwithstanding the foregoing, this subsection 8(C) shall not be effective until the effective date of guidance or regulations issued by the United States Department of Housing and Urban Development relating to the implementation of PKI.

D. Computers: Security for data maintained in the HMIS depends on a secure computing environment. Computer security is adapted from relevant provisions of the Department of Housing and Urban Development’s (“HUD”) “Homeless Management Information Systems (HMIS); Data and Technical Standards Final Notice” (Docket No. FR 4848-N-02), 69 Fed. Reg. 45887 (July 30, 2004) (*see* <http://www.hud.gov/offices/cpd/homeless/hmis>). Agencies are encouraged to directly consult that document for complete documentation of HUD’s standards relating to HMIS. Agency will allow access to the HMIS only from computers which are:

- (i) approved by Agency for the purpose of accessing and working with the HMIS;
- (ii) protected from viruses by commercially available virus protection software (a) that includes, at a minimum, automated scanning of files as they are accessed by Users on the system on which the HMIS application is accessed and (b) with virus definitions that are regularly updated from the software vendor;
- (iii) protected with a secure software or hardware firewall between, at least, the workstation and any systems (including the internet and other computer networks) located outside of the Agency;
- (iv) maintained to ensure that the computer operating system running the computer used for the HMIS is kept up to date in terms of security and other operating system patches, updates, and fixes;
- (v) accessed through web browsers with 128-bit encryption (*e.g.*, Internet Explorer, version 6.0). Some browsers have the capacity to remember passwords, so that the User does not need to type in the password when returning to password-protected sites. This default shall *not* be used with respect to the HMIS; the end-user is expected to physically enter the password each time he or she logs on to the system; and
- (vi) staffed at all times when in public areas. When computers are not in use and staff are not present, steps should be taken to ensure that the computers and data are secure and not usable by unauthorized individuals. These steps should minimally include (a) logging off the data entry system, (b) physically locking the computer in a secure area, (c) shutting down the computer entirely, or (d) using a password protected screen saver.

E. User Authentication: Agency will permit access to HMIS only with use of a User authentication system consisting of a username and a password which the User may not share with others. Written information pertaining to User access (*e.g.*, username and password) shall not be stored or displayed in any publicly accessible location. Passwords shall be between eight and twelve characters long and include both letters and numbers. Passwords shall not be, or include the username, the HMIS vendor’s name, the HMIS name, the Agency's name, or consist entirely of any word found in the common

dictionary or any of the forenamed words spelled backwards. The use of default passwords on initial entry into the HMIS application is allowed so long as the User changes the default password on first use. Individual Users must not be able to log on to more than one workstation at a time, or be able to log on to the network at more than one location at a time. Passwords and usernames shall be consistent with guidelines issued from time to time by HUD and IHCDA. Passwords and usernames shall not be exchanged electronically without IHCDA's approval.

F. Hard Copies: The Agency must secure any paper or other hard copy containing Identified Information that is generated either by or for the HMIS, including, but not limited to reports, data entry forms and signed consent forms. Any paper or other hard copy generated by or for the HMIS that contains such information must be supervised at all times when it is in a public area. If Agency staff is not present, the information must be secured in areas that are not publicly accessible. Agencies wishing to dispose of hard copies containing Identified Information must do so by shredding the documents or by other equivalent means with approval by IHCDA. Written information specifically pertaining to User access (*e.g.*, username and password) must not be stored or displayed in any publicly accessible location.

G. Training/Assistance: Agency will conduct ongoing basic confidentiality training for all persons with access to the HMIS and will train all persons who may receive information produced from the HMIS on the confidentiality of such information. Agency will participate in such training as is provided from time to time by IHCDA. Representatives of IHCDA will be reasonably available during IHCDA's defined weekday business hours for technical assistance (*e.g.*, troubleshooting and report generation).

9. Information Entry Standards:

A. Information entered into HMIS by Agency will be truthful, accurate, complete and timely to the best of Agency's knowledge.

B. Agency will *not* solicit from Clients or enter information about Clients into the HMIS database unless the information is required for a legitimate business purpose such as to provide services to the Client, to conduct evaluation or research, to administer the program, or to comply with regulatory requirements.

C. Agency will only enter information into the HMIS database with respect to individuals which it serves or intends to serve, including through referral.

D. Agency will enter information into the HMIS database within fourteen (14) days of data collection.

E. Agency will not alter or over-write information entered by another Agency.

IHCDA reserves the right to, in its sole discretion, delete or segregate information entered into the HMIS by an Agency, or take any other appropriate measures, to maintain the accuracy and integrity of the HMIS or to avoid compromising the HMIS' goal of maintaining unduplicated counts of Clients.

10. Use of the HMIS:

A. Agency will not access Identified Information for any individual for whom services are neither sought nor provided by the Agency. Agency may access Identified Information of the Clients it serves and may request, in writing addressed to IHCDA's authorized officer shown on the signature page of this Agreement, access to statistical, non-identifying information on both the Clients it serves and Clients served by other HMIS Participating Agencies.

B. Agency may report non-identifying information to other entities for funding or planning purposes. Such non-identifying information shall not directly identify individual Clients.

C. Agency and IHCDA will report only non-identifying information in response to requests for information from the HMIS.

D. Agency will use the HMIS for its legitimate business purposes only.

E. Agency will not use the HMIS in violation of any federal or state law, including, but not limited to,

copyright, trademark and trade secret laws, and laws prohibiting the transmission of material which is threatening, harassing, or obscene. Without limiting the foregoing covenant, Agency agrees that the data and information related to the Foothold Technology System (“FTS”), AWARDS, and related documentation and support services, may be confidential and proprietary information (“Confidential Information”) of Foothold Technology, Inc. (“Supplier”) and agrees to use such Confidential Information only in connection with Agency’s authorized use of the FTS and Support Services and further agrees not to disclose such Confidential Information to any third party, other than as required by law. Notwithstanding the foregoing, except as may otherwise be required by law, the Supplier may disclose the Agency’s Identified Information to any other Participating Agency unless Agency provides the Supplier with sufficient prior written notice to the contrary. These obligations shall continue in perpetuity. Furthermore, Agency acknowledges and agrees that the Supplier will retain all right, title, interest and ownership in and to the FTS and AWARDS, including any customization or modification thereof, and Agency will not copy any documentation related to FTS or AWARDS other than for internal business purposes, nor shall Agency disassemble, decompose or reverse engineer FTS or AWARDS or, except as otherwise provided herein, use FTS or AWARDS on behalf or for the benefit of any other person or entity or otherwise infringe upon any of the Supplier’s trademarks, trade secrets, copyrights, patents or other intellectual property rights. Agency shall include all Supplier copyright and other proprietary notices on any copy of the documentation related to FTS and/or AWARDS reproduced, used, or made available by Agency.

F. Agency will not use the HMIS to defraud federal, state or local governments, individuals or entities, or conduct any illegal activity.

G. Agency shall not use the HMIS to aggregate data to compare the performance of other Agencies, without the express written consent of IHCDA and each of the Agencies being compared.

H. Notwithstanding any other Section of this Agreement, the Parties may use or disclose for any lawful purpose Information that: (a) is in the possession of the Party prior to the time of the disclosure to the Party through the HMIS and was not acquired, directly or indirectly, from the HMIS; or (b) is made available to the Party by a third party who has the legal right to do so.

11. Fees and Costs:

Agency shall remit to IHCDA the fees set forth on the *HMIS Rate Card*. All fees and costs due hereunder shall be due within thirty (30) days of Agency's receipt of IHCDA's request for payment. Failure to make a payment within the time period set forth above shall result in a service charge to be imposed in IHCDA's sole discretion. This service charge will be at the rate of one and one-half percent (1.5%) per month on all amounts past due. In addition, IHCDA reserves the right to withhold all services to Agency related to the HMIS until all past due amounts are paid. Terminating, transferring, and canceling User licenses, and billing issues, shall be governed by the *HMIS User License Billing Policy and Standard Operating Procedure* which are incorporated herein by reference and which may be modified from time to time in IHCDA's discretion. Agency shall be responsible, at its own cost, for supplying and maintaining all computer hardware, internet connections, and other necessary items to submit information to the HMIS and to otherwise interact with the HMIS.

12. Proprietary Rights of the HMIS:

A. Agency or HMIS Staff shall assign passwords and access codes for all Agency Staff that meet other privacy, training and conditions contained within this Agreement.

B. Agency or HMIS Staff shall not assign passwords or access codes to any other person not directly connected to or working for their own Agency.

C. Agency shall be solely responsible for all acts and omissions of its Users, and all other individuals who access the HMIS either through the Agency or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from the Agency or any of the Agency's Authorized Users, with respect to the HMIS and/or any confidential and/or other information accessed in

connection therewith, and all such acts and omissions shall be deemed to be the acts and omissions of the Agency. Each Agency shall certify:

- (i) That its Users have received training regarding the confidentiality of HMIS information under all applicable federal, state, and local laws and agree to protect the Information in compliance with such laws and this Agreement;
- (ii) That its Users shall only access the HMIS for purposes approved by the Agency and that are consistent with this Agreement;
- (iii) That its Users have agreed to hold any passwords, or other means for accessing the HMIS, in a confidential manner and to release them to no other individual. Agency shall ensure that all Users understand that sharing passwords and other means for accessing the HMIS is expressly prohibited;
- (iv) That its Users agree and understand that their failure to comply with the terms of this Agreement may result in their exclusion from the HMIS and may constitute cause for disciplinary action by the Agency; and
- (v) That it has restricted access to the HMIS only to the Users that the Agency has identified pursuant to this Section.

D. Agency shall terminate the rights of a User immediately upon the User's termination from his or her position. In the alternative, Agency must immediately notify HMIS staff of the User's termination to allow HMIS staff to terminate the User's access rights. If a staff person is to go on leave for a period of longer than forty-five (45) days, the staff person's password should be inactivated immediately upon the start of that leave. The Agency is responsible for removing Users from the system. It shall be the responsibility of the Agency to routinely ensure that usernames and passwords are current and to immediately notify HMIS staff in the event that usernames and passwords are not current.

E. Agency shall be diligent not to cause in any manner or way, corruption of the HMIS, and Agency agrees to be responsible for any damage it may cause.

13. HMIS Advisory Committee:

IHCDA and HMIS staff will consult with the HMIS Advisory Committee from time to time regarding issues such as revision to the form of this Agreement. Written Agency complaints that are not resolved may be forwarded to the HMIS Advisory Committee, which will try to reach a voluntary resolution of the complaint.

14. Limitation of Liability and Indemnification:

A. Except as provided in this Section, no party to this Agreement shall assume any additional liability of any kind due to its execution of this Agreement or its participation in the HMIS system. It is the intent of the parties that each party shall remain liable, to the extent provided by law, regarding its own acts and omissions; but that no party shall assume additional liability on its own behalf or liability for the acts of any other person or entity through participation in HMIS except for the acts and omissions of its own employees, volunteers, agents or contractors. The parties specifically agree that this Agreement is for the benefit of the parties only and creates no rights in any third party.

B. Agency agrees to indemnify, defend and hold harmless IHCDA, including its directors, officers, employees, representatives, and agents from and against any and all claims and liabilities (including, without limitation, all damages, costs, and expenses, including legal fees and disbursements paid or incurred) arising from the intentional acts or omissions, negligence, or strict liability of Agency, its directors, officers, employees, representatives, or agents, or Agency's breach of this Agreement. This Section shall survive the termination of this Agreement for any reason.

C. Without limiting any other provision of this Agreement, Agency and its Users shall be solely

responsible for all decisions and actions taken or not taken involving services, treatment, patient care, utilization management, and quality management for their respective patients and Clients resulting from or in any way related to the use of the HMIS or the Information made available thereby. Agency and Users shall have no recourse against, and hereby waive, any claims against IHCDA for any loss, damage, claim or cost relating to or resulting from its own use or misuse of the HMIS.

D. HMIS uses available technology to match Client identities with their records in the HMIS to provide Agencies with Client information. Because Client information is maintained in multiple places and because not all Client information is kept in a standard fashion, it is possible that false matches may occur or that there may be errors or omissions in the information provided to Agency. To that end, it is incumbent upon the Agency and its Users to verify the Client's information before the Information is relied upon in providing services to a Client. Neither IHCDA nor the HMIS in general independently verifies or reviews the information transmitted through the HMIS for accuracy or completeness. Further, neither IHCDA nor the HMIS in general make any representations or promises regarding the continued participation of any particular Agency in the HMIS. Agencies may be added to or deleted from the HMIS at any time and such changes may be beyond the control of IHCDA or the HMIS and may occur without prior notice to Agency.

E. Agency acknowledges and agrees that the HMIS is an information management tool only and that it contemplates and requires the involvement of qualified Agencies and Users. Agency further acknowledges and agrees that IHCDA has not represented its services as having the ability to perform any tasks that constitute the practice of medicine or of other professional or academic disciplines. IHCDA shall not be responsible for any errors, misstatements, inaccuracies, or omissions regarding the content of the HMIS, although every effort has been made to ensure its quality and accuracy. Agency assumes all risk for selection and use of the content in the HMIS.

F. All data to which access is made through the HMIS originates from Participating Agencies, and not from IHCDA. All such data is subject to change arising from numerous factors, including without limitation, changes to Client information made at the request of the Client, changes in the Client's condition, the passage of time and other factors. IHCDA neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of this Agreement, IHCDA shall have no responsibility for or liability related to the accuracy, content, currency, completeness, content or delivery of any data either provided by Agency, or used by Agency, pursuant to this Agreement.

G. Access to the HMIS and the information obtained by Agency pursuant to the use of those services are provided "as is" and "as available." Agency is solely responsible for any and all acts or omissions taken or made in reliance on the HMIS or the information in the HMIS, including inaccurate or incomplete information. It is expressly agreed that in no event shall IHCDA be liable for any special, indirect, consequential, or exemplary damages, including but not limited to, loss of profits or revenues, loss of use, or loss of information or data, whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if IHCDA has been apprised of the possibility or likelihood of such damages occurring. IHCDA disclaims any and all liability for erroneous transmissions and loss of service resulting from communication failures by telecommunication service providers or the HMIS.

15. Limitation of Liability:

IHCDA shall not be held liable to any Agency for any cessation, delay or interruption of services, nor for any malfunction of hardware, software or equipment.

16. Disclaimer of Warranties:

IHCDA makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose, to any Agency or any other person or entity as to the services of the HMIS or as to any other matter.

17. Additional Terms and Conditions:

A. Agency will abide by such guidelines as are promulgated by HUD and IHCDA from time to time regarding administration of the HMIS.

B. Agency and IHCDA intend to abide by applicable law. Should any term of this Agreement be inconsistent with applicable law, or should additional terms be required by applicable law, Agency and IHCDA agree to modify the terms of this Agreement so as to comply with applicable law.

C. Neither IHCDA nor Agency will transfer or assign any rights or obligations regarding the HMIS without the written consent of the other party.

D. This Agreement will be in force until terminated by either party. Either party may terminate this Agreement at will with 20 days written notice. Either party may terminate this Agreement immediately upon a material breach of this Agreement by the other party, including but not limited to a breach of the HMIS Policies and Standard Operating Procedures by Agency. Upon termination of this Agreement, Agency shall remain liable for (and nothing in this Agreement shall prevent IHCDA from recovering) any fees, costs, or expenses that have been incurred prior to the termination of this Agreement.

E.. If this Agreement is terminated, Agency will no longer have access to the HMIS. IHCDA and the remaining Participating Agencies will maintain their rights to use all of the Client information previously entered by Agency except to the extent a restriction is imposed by the Client or applicable law.

F. Copies of Agency data will be provided to the Agency upon termination of this Agreement at the Agency's written request to IHCDA made within sixty (60) days after the termination of this Agreement. Data will be provided on CDs or other mutually agreed upon media. Unless otherwise specified in writing, copies of data will be delivered to Agency within sixty (60) calendar days of receipt of written requests for data copies. IHCDA reserves the right to charge Agency IHCDA's actual costs for providing such data to Agency.

G. Except as otherwise provided, no action taken by either Party, or its officers, employees or agents, pursuant to this Agreement, shall be deemed to constitute an action of the other Party, or shall be construed to place the Parties in a relationship of partners, joint venturers, principal and agent, or employer and employee, or shall be deemed to confer upon either Party any express or implied power, right or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of the other Party except as expressly provided herein. IHCDA and Agency intend and agree that they and their respective agents or employees shall serve as independent contractors and not as employees of the other Party, and this Agreement shall not be considered a hiring by either Party or a contract of employment.

H. During the term of this Agreement, Agency shall not (without the written consent of IHCDA) directly or indirectly, hire, employ or attempt to hire or employ any person who is an employee of IHCDA, or who was within the preceding twelve (12) month period an employee of IHCDA, or in any way solicit, induce, bring about, influence, promote, facilitate, encourage, cause or assist or attempt to cause or assist any current employee of IHCDA to leave his or her employment with IHCDA.

I. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions of this Agreement may be waived, only by a written instrument executed by the Parties, or in the case of a waiver, by the Party waiving compliance.

J. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any such condition or breach of any other condition or the breach of any other provision, term, covenant, representation, or warranty of this Agreement.

K. Neither Party shall assign its rights or delegate its duties hereunder without the prior written consent of the other, which consent will not be unreasonably withheld. All of the terms, provisions, covenants, conditions and obligations of this Agreement shall be binding on and inure to the benefit of the successors

and assigns of the Parties hereto.

L. Any notice required or permitted to be given under this Agreement shall be conclusively deemed to have been received by a Party to this Agreement on the day it is delivered to such Party at the address indicated in the signature block below, or at such other address as such Party shall specify to the other Party in writing, or if sent by registered or certified mail, on the third business day after the date on which it is mailed to such Party at said address.

M. This Agreement sets forth the entire understanding between the Parties with respect to the matters contemplated by this Agreement and supersedes and replaces all prior and contemporaneous agreements and understandings, oral or written, with regard to these matters.

N. If any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provisions of this Agreement that can be given effect without the invalid or unenforceable provisions, and all unaffected provisions of this Agreement shall remain in full force and effect as if this Agreement had been executed without such invalid or unenforceable provisions.

O. The Parties affirm that this Agreement has been entered into in the State of Indiana and will be governed by and construed in accordance with the laws of the State of Indiana, notwithstanding any state's choice of law rules to the contrary. Any action to enforce, challenge or construe the terms or making of this Agreement or to recover for its breach shall be litigated exclusively in a state or federal court located in the State of Indiana.

Agency Name _____

By _____ Date _____

Signature of Authorized Officer

Title of Authorized Officer

Street Address: _____

Mailing Address (if different): _____

Telephone: _____

Facsimile: _____

Email: _____

Indiana Housing and Community Development Authority

By _____ Date _____

Signature of Authorized Officer

Title of Authorized Officer

30 S. Meridian St., Suite 1000

Indianapolis, Indiana 46204

(317) 232-7777 phone

(317) 233-7778 fax
