



## **PARTICIPATION AGREEMENT FOR VICTIM SERVICES PROVIDERS**

\_\_\_\_\_ (the “Victim Services Provider”) has elected to participate in the Client Track database, administered by the Indiana Housing and Community Development Authority (“IHCDA”) and therefore is entering into this Participation Agreement for Victim Services Providers (the “Agreement”). Client Track is a database and case management system that collects and maintains information on the characteristics and service needs of clients. The Client Track database is comparable to a Homeless Management Information System, except it is a closed system. The system collects and stores client –level data that can be utilized to generate unduplicated and aggregate reports that can be utilized to determine the use and effectiveness of the services being provided by Victim Services Providers. A Victim Services Provider is a nonprofit or nongovernmental organization, including rape crisis centers, battered women’s shelters, domestic violence transitional housing programs, and other programs whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. Victim Services Providers that participate in Client Track work to provide victim services to domestic violence, sexual assault and stalking victims in Indiana and their families.

In consideration of their mutual undertakings and covenants, the Victim Services Provider and IHCDA agree as follows:

### **1. General Understandings:**

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

- (i) “Victim Services Provider staff” refers to employees, volunteers, contractors, or any other agents of the Victim Services Provider.
- (ii) “Client” refers to a recipient of services provided by the Victim Services Provider.
- (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 Client Track.
- (v) “Client Track staff” refers to the employees, contractors, or agents of IHCDA assigned to administer the Client Track, as well as to analyze, review and report the data contained in Client Track.
- (vi) “IHCDA” refers to the Indiana Housing and Community Development Authority, which administers programs for the homeless throughout the balance of the State of Indiana with funding from the United States Department of Housing and Urban Development (“HUD”).
- (vii) “Personally Identifying Information” (also referred to as “confidential” data or information) refers to individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or staking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected including (a) a first and last name; (b) a home or other physical address; (c) contact information (including a postal, e-mail, Internet protocol address, or telephone or facsimile

number); (d) a social security number, driver license number, passport number, or student identification number; and (e) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual. Client data that can be used to identify a specific Client or the Client's characteristics.

(viii) "Victim Services Provider" or "Participating Victim Services Provider" refers generally to any Victim Services Provider signing this document that is participating in Client Track.

(ix) "Data Collection & Evaluation Committee under the Indiana Balance of State Continuum of Care ("CoC") refers to an advisory body that serves in a consultative and counseling role for IHCD as the Client Track system administrator. A list of the current members of the Data Collection and Evaluation Committee Advisory Committee may be obtained from IHCD.

(x) "User" refers to Victim Services Provider employees authorized to have access to the Client Track.

- B. Use and Disclosure. Whenever Victim Services Provider enters information into Client Track, such Personally Identifying Information will be accessible to the Client Track staff who may use it to administer Client Track, conduct analysis, coordinate services, and prepare reports to be submitted to others in a de-identified form. Client Track staff may use Client Track Personally Identifying Information only in accordance with Client Track Data Use and Disclosure Policies, Standard Operating Procedures, and the Notice of Privacy Practices that exist currently, or as amended from time to time at IHCD's discretion (hereafter "Privacy Practices"). The Client Track Privacy Practices are incorporated herein by reference. Notwithstanding the foregoing, any disclosure of Personally Identifying Information regarding a Client would require the Client's consent unless the Victim Services Provider is compelled by state law or a court order.
- C. License. Victim Services Provider grants to IHCD and IHCD'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 Client Track all Personally Identifying Information provided by the Victim Services Provider in accordance with this Agreement; and (ii) to use such Personally Identifying Information to carry out IHCD's and its agents' or subcontractors' duties under this Agreement, including without limitation Client Track administration, testing, problem identification and resolution, management of the Client Track database, data aggregation and analysis activities, as permitted by applicable state and federal laws and regulations, when IHCD determines it necessary and appropriate.

## 2. Confidentiality:

A. A. Victim Services Provider shall not:

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

(ii) disclose information that the Victim Services Provider is not authorized to disclose, under any relevant federal, state, or local confidentiality laws, regulations or other restrictions applicable to Client information. By entering information into the Client Track, Victim Services Provider represents that it has the authority to enter such information into the Client Track. To the best of Victim Services Provider's knowledge, entering information into the Client Track does not violate any rights, including copyrights, of third parties.

B. Victim Services Provider 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");

(i) it is \_\_\_\_\_; is not \_\_\_\_\_ a program whose disclosures are restricted under the Federal Drug and Alcohol Confidentiality Regulations, 42 CFR Part 2 ("Confidentiality Regulations");

(ii) If the Victim Services Provider is a “covered entity” it must make disclosures of protected health information in a manner that fully complies with the HIPAA privacy and security rules. The HIPAA Privacy Rule, 45 CFR Part 160 and Subparts A and E of Part 164, requires covered entities to have safeguards in place to ensure the privacy of protected health information and sets forth the circumstances under which covered entities may use or disclose an individual’s protected health information, and gives individuals rights with respect to their protected health information, including rights to examine and obtain a copy of their health records and to request corrections. Covered entities that engage business associates to work on their behalf must have contracts or other arrangements in place with their business associates to ensure that the business associates safeguard protected health information, and use and disclose the information only as permitted or required by the HIPAA Privacy Rule.

(iii) If Victim Services Provider is subject to any laws or requirements which restrict Victim Services Provider’s ability either to enter or to authorize disclosure of information, Victim Services Provider will ensure that any entry it makes in the Client Track, and any disclosure fully complies with all applicable laws or other restrictions.

- C. To the extent that information entered by Victim Services Provider into the Client Track is or becomes subject to additional restrictions, Victim Services Provider will immediately inform IHCDCA in writing of such restrictions.

### **3. Display of Notice:**

Pursuant to the notice published by HUD on March 29, 2010, Victim Services Provider will prominently display at each intake desk (or comparable location) the Client Track Notice of Privacy Practices provided by IHCDCA, that generally explains the reasons for collecting Personally Identifying Information in the Client Track and the Client’s rights associated with providing Victim Services Provider staff with Personally Identifying Information. Victim Services Provider will ensure that Clients understand their rights. Additionally, if the Victim Services Provider maintains a public webpage, the current version of the Client Track Notice of Privacy Practices must be posted on its webpage. The current form of **Client Track Notice of Privacy Practices**, which may be modified from time to time at IHCDCA’s discretion, is attached to and incorporated into this Agreement by reference, and is available from IHCDCA or on its website, <http://www.in.gov/myihcda/>.

### **4. Information Collection, Release Consent:**

- A. Collection of Personally Identifying Information. Victim Services Provider may collect Personally Identifying Information only when appropriate for the purposes for which the information is obtained or when required by law. Victim Services Provider must collect Client information by lawful and fair means and with the knowledge or consent of the Client.
- B. Obtaining Client Consent. The Victim Services Provider shall post the **Client Track Notice of Privacy Practices** document prominently at each intake desk (or comparable location). The Client’s consent must be obtained for data collection. If at the time of collection, a Client withdraws or revokes consent for providing Personally Identifying Information, Victim Services Provider is responsible for immediately making appropriate data entries into the Client Track.
- C. Retention. Victim Services Provider shall keep all copies of the signed **Consent** form for a period of six (6) years after the Client last received services at or from the Victim Services Provider. Such forms must be made available for inspection and copying by IHCDCA at any time.

- D. Refusal of Service. Victim Services Provider may not refuse or decline services to a Client or potential Client if that person refuses or is unable to provide information; however, some information may be required by to determine eligibility for housing or services, to assess needed services, or to fulfill reporting requirements.

#### **5. Client Track Policies and Standard Operating Procedures:**

Notwithstanding any other provision of this Agreement, Victim Services Provider's use of and participation in the Client Track, and the use, disclosure, and submission of data to and from the Client Track shall, at all times, be governed by Client Track Policies and Standard Operating Procedures as revised from time to time, at the sole discretion of IHCD. Such Client Track Policies and Standard Operating Procedures are incorporated in this Agreement by reference and are located at <http://www.in.gov/myihcda/>. In the event of a conflict between this Agreement and the Client Track Polices and Standard Operating Procedures, the latter shall control.

#### **6. Disclosure to Third Parties:**

Victim Services Provider shall not release any Personally Identifying Information received from the Client Track 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, Victim Services Provider shall allow the Client to inspect and obtain a copy of his or her own personal information during regular business hours. Victim Services Provider is not allowed 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. Victim Services Provider must allow a Client to correct information that is inaccurate or incomplete; provided, however, that prior to correcting such information, Victim Services Provider shall consult with IHCD. Such consultation is necessary to ensure proper coordination between the Victim Services Provider's response and the capabilities of the Client Track system, unless the requested correction is a routine correction of a common data element for which a field exists in Client Track (e.g., date of birth, prior residence, social security number, etc.). Victim Services Provider 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:**

Victim Services Provider shall maintain the security and confidentiality of information in the Client Track and is responsible for the actions of its employees, contractors, volunteers, or agents and their proper training and supervision. Victim Services Provider agrees to follow the **Client Track 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 at IHCD's discretion. At its discretion, IHCD may conduct periodic assessments of Victim Services Provider to monitor its compliance with the Security Rule. The steps Victim Services Provider must take to maintain security and confidentiality include, but are not limited to:

- A. Access. Victim Services Provider will permit password-protected access to the Client Track or information obtained from it only to trained, authorized Victim Services Provider staff who need access to the Client Track 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). Victim Services Provider will limit the access of Victim Services Provider staff to only those records that are necessary for their work assignments.

- B. User Code of Ethics. Prior to permitting any User to access Client Track, Victim Services Provider will require the User to sign a **Client Track User Code of Ethics** (“User Code of Ethics”), which is incorporated herein by this reference and which may be amended from time to time at IHCD’s discretion. Victim Services Provider will comply with and enforce the User Code of Ethics and will inform IHCD 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 will have his/her access to the database revoked immediately.

(ii) In the event of a breach of system security or Client confidentiality, the Victim Services Provider Director shall notify IHCD within twenty-four (24) hours. Any Victim Services Provider 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 Victim Services Provider prevent further breaches. Probation shall remain in effect until IHCD has evaluated the Victim Services Provider’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 Client Track.

(iii) The Victim Services Provider agrees to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) or personal information (as defined in IC 4-1-11-3) is/are disclosed by Victim Services Provider, Victim Services Provider agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Agreement.

- C. Computers: Security for data maintained in the Client Track 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 Proposed Rule” (Docket No. FR 5475-P-01- Fed. Reg. Vol 76, No. 237 (December 9, 2011/Proposed Rules). Agencies are encouraged to directly consult that document for complete documentation of HUD’s standards relating to HMIS. Victim Services Provider will allow access to the Client Track only from computers which are:

(i) approved by Victim Services Provider for the purpose of accessing and working with the Client Track;

(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 Client Track 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 Victim Services Provider;

(iv) maintained to ensure that the computer operating system running the computer used for the Client Track 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 or higher). 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 Client Track; 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 Victim Services Provider staff is 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.

- D. User Authentication: Victim Services Provider will permit access to Client Track 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 Client Track vendor's name, the Client Track name, the Victim Services Provider'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 Client Track 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.
- E. Hard Copies: The Victim Services Provider must secure any paper or other hard copy containing Personally Identifying Information that is generated either by or for the Client Track, including, but not limited to reports, data entry forms and signed consent forms. Any paper or other hard copy generated by or for the Client Track that contains such information must be supervised at all times when it is in a public area. If Victim Services Provider staff is not present, the information must be secured in areas that are not publicly accessible. Agencies wishing to dispose of hard copies containing Personally Identifying Information must do so by shredding the documents or by other equivalent means with the approval of IHCDA. Written information specifically pertaining to User access (*e.g.*, username and password) must not be stored or displayed in any publicly accessible location.
- F. Training/Assistance: Victim Services Provider will conduct ongoing basic confidentiality training for all persons with access to the Client Track and will train all persons who may receive information produced from the Client Track on the confidentiality of such information. Victim Services Provider 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 Client Track by Victim Services Provider will be truthful, accurate, complete and timely to the best of Victim Services Provider's knowledge.

- B. Victim Services Provider will *not* solicit from Clients or enter information about Clients into the Client Track 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. Victim Services Provider will only enter information into the Client Track database with respect to Clients that it serves or intends to serve, including through referral .
- D. Victim Services Provider will enter information into the Client Track database within fourteen (14) days of data collection.

IHCDA reserves the right to, at its sole discretion, delete or segregate information entered into the Client Track by a Victim Services Provider, or take any other appropriate measures, to maintain the accuracy and integrity of the Client Track or to avoid compromising the Client Track goal of maintaining unduplicated counts of Clients.

#### **10. Use of the Client Track:**

- A. Victim Services Provider will not access Personally Identifying Information for any individual for whom services are neither sought nor provided by the Victim Services Provider. Victim Services Provider may access the Personally Identifying Information of the Clients it serves and may request, in writing addressed to IHCDA's HMIS manager , access to statistical, non-identifying information on both the Clients it serves and Clients served by other Victim Services Providers participating in the Client Track.
- B. Victim Services Provider may report non-identifying information to other entities for funding or planning purposes. Such non-identifying information shall not directly identify individual Clients.
- C. Victim Services Provider and IHCDA will report only non-identifying information in response to requests for information from the Client Track.
- D. Victim Services Provider will use Client Track and the information contained in it only for legitimate business purposes of the Victim Services Provider.
- E. Victim Services Provider will not use Client Track in violation of any federal or state law, including, but not limited to, copyright, privacy, trademark and trade secret laws, and laws prohibiting the transmission of material which is threatening, harassing, or obscene. Without limiting the foregoing covenant, Victim Services Provider understands that the data and information related to Client Track and its documentation and support services, may be confidential and proprietary information ("Confidential Information") of Client Track, Inc. ("Supplier") and agrees to use such Confidential Information only in connection with Victim Services Provider's authorized use of the Client Track and support services and further agrees not to disclose such Confidential Information to any third party, other than as required by law. Furthermore, Victim Services Provider acknowledges and agrees that the Supplier will retain all right, title, interest and ownership in and to Client Track, including any customization or modification thereof, and Victim Services Provider will not copy any documentation related to Client Track other than for internal business purposes, nor shall Victim Services Provider disassemble, decompose or reverse engineer Client Track or, except as otherwise provided herein, use Client Track 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. Victim Services Provider shall include all Supplier copyright and other proprietary notices on any copy of documentation related to Client Track reproduced, used, or made available by Victim Services Provider.

- F. Victim Services Provider will not use the Client Track to defraud federal, state or local governments, individuals or entities, or conduct any illegal activity.
- G. Victim Services Provider shall not use the Client Track to aggregate data to compare the performance of other Victim Services Providers, without the express written consent of IHCD and each of the Victim Services Providers being compared.

#### **11. Fees and Costs:**

Victim Services Provider shall be responsible, at its own cost, for supplying and maintaining all computer hardware, internet connections, and other necessary items to enter information into the Client Track and to otherwise interact with the Client Track.

#### **12. Proprietary Rights of the Client Track:**

- A. Victim Services Provider or Client Track Staff shall assign passwords and access codes for all Victim Services Provider Staff that meet other privacy, training and conditions contained within this Agreement.
- B. Victim Services Provider or Client Track Staff shall not assign passwords or access codes to any other person not directly connected to or working for their own Victim Services Provider.
- C. Victim Services Provider shall be solely responsible for all acts and omissions of its Users, and all other individuals who access the Client Track either through the Victim Services Provider or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from the Victim Services Provider or any of the Victim Services Provider's Authorized Users, with respect to the Client Track 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 Victim Services Provider. The Victim Services Provider shall certify:
  - (i) That its Users have received training regarding the confidentiality of the information entered into Client Track 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 Client Track for purposes approved by the Victim Services Provider and that are consistent with this Agreement;
  - (iii) That its Users have agreed to hold any passwords, or other means for accessing the Client Track, in a confidential manner and to release them to no other individual. Victim Services Provider shall ensure that all Users understand that sharing passwords and other means for accessing the Client Track 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 Client Track and may constitute cause for disciplinary action by the Victim Services Provider; and
  - (v) That it has restricted access to the Client Track only to the Users that the Victim Services Provider has identified pursuant to this Section.



- D. Victim Services Provider shall terminate the rights of a User immediately upon the User's termination from his or her position. In the alternative, Victim Services Provider must immediately notify Client Track staff of the User's termination to allow Client Track staff to terminate the user's access rights. If a Victim Services Provider staff person is to go on leave for a period of longer than forty-five (45) days, the Victim Services Provider staff person's password should be inactivated immediately upon the start of that leave. The Victim Services Provider is responsible for removing users from the system. It shall be the responsibility of the Victim Services Provider to routinely ensure that usernames and passwords are current and to immediately notify Client Track staff in the event that usernames and passwords are not current.
- E. Victim Services Provider shall be diligent not to cause in any manner or way, corruption of the Client Track, and Victim Services Provider agrees to be responsible for any damage it may cause.

### **13. Data Collection & Evaluation Committee:**

IHCDA and Client Track staff will consult with the Client Track Data Collection and Evaluation Committee from time to time regarding issues such as revisions this Agreement. Written Victim Services Provider complaints that are not resolved may be forwarded to the Client Track Advisory Committee, which will try to reach a voluntary resolution of the complaint.

### **14. Limitation of Liability and Indemnification:**

- A. The parties acknowledge and agree that they are acting in an individual capacity and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. The parties will not assume liability for any injury, including death, to any person, or damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of the other party.
- B. Victim Services Provider 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 Victim Services Provider, its directors, officers, employees, representatives, or agents, or Victim Services Provider's breach of this Agreement. The IHCDA shall not provide such indemnification to the Victim Services Provider. This Section shall survive the termination of this Agreement for any reason.
- C. Without limiting any other provision of this Agreement, Victim Services Provider 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 Client Track or the information made available thereby. Victim Services Provider 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 Client Track.
- D. Client Track uses available technology to match Client identities with their records in the Client Track to provide the Victim Services Providers 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 Victim Services Provider. To that end, it is incumbent upon the Victim Services Provider

and its Users to verify the Client's information before the information is relied upon in providing services to a Client. Neither IHCDCA nor the Client Track in general independently verifies or reviews the information transmitted through the Client Track for accuracy or completeness. Further, neither IHCDCA nor the Client Track in general make any representations or promises regarding the continued participation of any particular Victim Services Provider in the Client Track. Other Victim Services Providers may be added to or deleted from the Client Track at any time and such changes may be beyond the control of IHCDCA or the Client Track and may occur without prior notice to Victim Services Provider the Victim Services Provider.

- E. Victim Services Provider The Victim Services Provider acknowledges and agrees that the Client Track is an information management tool only and that it contemplates and requires the involvement of qualified Victim Services Providers and Users. The Victim Services Providers further acknowledges and agrees that IHCDCA 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. IHCDCA shall not be responsible for any errors, misstatements, inaccuracies, or omissions regarding the content of the Client Track, although every effort has been made to ensure its quality and accuracy. The Victim Services Provider assumes all risk for selection and use of the content in the Client Track.
- F. All data to which access is made through the Client Track originates from Victim Services Providers, and not from IHCDCA. 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. IHCDCA neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of this Agreement, IHCDCA shall have no responsibility for or liability related to the accuracy, content, currency, completeness, content or delivery of any data either provided by Victim Services Provider, or used by Victim Services Provider, pursuant to this Agreement.
- G. Access to the Client Track and the information obtained by Victim Services Provider pursuant to the use of those services are provided "as is" and "as available." Victim Services Provider is solely responsible for any and all acts or omissions taken or made in reliance on the Client Track or the information in the Client Track, including inaccurate or incomplete information. It is expressly agreed that in no event shall IHCDCA 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 IHCDCA has been apprised of the possibility or likelihood of such damages occurring. IHCDCA disclaims any and all liability for erroneous transmissions and loss of services resulting from communication failures by telecommunication service providers or the Client Track.

#### **15. Limitation of Liability:**

IHCDCA shall not be held liable to any Victim Services Provider for any cessation, delay or interruption of services, nor for any malfunction of hardware, software or equipment.

#### **16. Disclaimer of Warranties:**

IHCDCA makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose, to any Victim Services Provider or any other person or entity regarding the Client Track.

**17. Additional Terms and Conditions:**

- A. Victim Services Provider will abide by such guidelines as are promulgated by HUD and IHCDA from time to time regarding administration of the Client Track.
- B. Victim Services Provider and IHCDA intend to abide by all applicable state, federal or local laws. Should any term of this Agreement be or become inconsistent with any applicable state, federal, or local laws, or should additional terms be required by amendments to applicable state and federal or local law, Victim Services Provider and IHCDA agree to modify the terms of this Agreement so as to comply with applicable laws or amendments to applicable laws.
- C. Neither IHCDA nor Victim Services Provider will transfer or assign any rights or obligations regarding this Agreement 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 thirty (30) 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 Client Track Policies and Standard Operating Procedures by Victim Services Provider. Notwithstanding the foregoing, IHCDA may terminate this Agreement immediately if it determines that such termination is in the best interest of IHCDA. Upon termination of this Agreement, the Victim Services Provider 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, Victim Services Provider will no longer have access to the Client Track. IHCDA will maintain its rights to use the Client information previously entered by Victim Services Provider except to the extent a restriction is imposed by the Client or applicable law.
- F. Copies of Victim Services Provider data will be provided to the Victim Services Provider upon termination of this Agreement at the Victim Services Provider'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 Victim Services Provider within sixty (60) calendar days of receipt of written requests for data copies. IHCDA reserves the right to charge Victim Services Provider IHCDA's actual costs for providing such data to Victim Services Provider.
- G. 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.
- H. 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.
- I. 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.

- J. 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.
- K. 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.
- L. 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.
- M. 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 Marion County, Indiana.

**In Witness Whereof,** Victim Services Provider and IHCD have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

**Victim Services Provider 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