

Professional Services Agreement

This Professional Services Agreement (this "Agreement") is made effective as of February 1, 2012 (the "Effective Date"), by and between _____ ("Provider"), with offices at _____ and Research Foundation for Mental Hygiene, Inc., a not-for-profit corporation with offices at Riverview Center, 150 Broadway, Suite 301, Menands, NY 12204 ("RFMH"), (collectively, the "Parties").

Whereas the RFMH received a Blanket Purchase Agreement Number (BPA) SS00-12-E2667 from the Social Security Administration ("SSA") entitled "Employment Networks for the Ticket to Work and Self Sufficiency Program" ("Ticket to Work" or the "Program") and is administering the Program on behalf of the New York State Department of Labor (DOL) and the New York State Office of Mental Health ("OMH"); and

Whereas the Provider has agreed to participate in the New York Employment Services System ("NYESS") and has agreed to be bound by the terms and conditions articulated in the *Interagency Agreement for the Creation of an Integrated Employment Support Computer System between the New York State Department of Labor and the New York State Office of Mental Health* (the "Interagency Agreement"); and

Whereas the Provider has executed a Confidentiality and Non-Disclosure Agreement ("CNDA") with OMH;¹ and

Whereas DOL and OMH have formed a DOL/OMH Joint Management Committee which will collaboratively establish policy, guidelines, training and systems for this program;

NOW, THEREFORE, the Parties agree as follows:

1. Services.

- a. Provider will provide employment network support services to SSA beneficiaries ("Beneficiaries"):
 - i. subject to the terms and conditions and as more fully described in:
 1. the application to SSA dated January 20, 2012, as approved by the SSA (the "Approved Application"),
 2. the Interagency Agreement as agreed to by Provider, and
 3. the CNDA, and

¹ The Interagency Agreement and CDNA can be found on the NYESS website at www.nyess.ny.gov.

- ii.. in accordance with such other policies and procedures as are established by the DOL/OMH Joint Management Committee and made available to Provider on the NYESS website www.nyess.ny.gov. (the "Policies and Procedures"). Such Policies and Procedures will require Providers to submit a plan detailing how they will use payments from RFMH hereunder solely to enhance employment services and supports for Beneficiaries to the DOL/OMH Joint Management Committee for review and approval prior to their receipt of such payments.

The Approved Application, Interagency Agreement, CNDA and NYESS Policies and Procedures are incorporated herein by reference.

- b. Provider shall perform such services with care, skill and diligence, in accordance with generally accepted industry standards, practices and principles and in accordance with all applicable laws and regulations.

2. Compensation.

- a. Payments to Providers will be made only after funds are received by RFMH from SSA and their required plan to use such funds to enhance employment services and supports for Beneficiaries has been approved by the DOL/OMH Joint Management Committee.
- b, RFMH shall pay Provider based on the payment schedule established by the DOL/OMH Joint Management Committee and published on the NYESS website and the percentage of actual time documented by the Provider as spent providing eligible services to the Beneficiary.
- c. Payments to Providers shall be considered final, unless RFMH in its sole discretion believes a recalculation is warranted.

3. Use of Funds. Provider agrees that payments will be used solely to enhance employment services and supports for Beneficiaries in accordance with its approved plan.

4. Independent Contractor. Provider agrees that it is an independent contractor when performing the services under this Agreement and that the relationship between RFMH and Provider shall not constitute a partnership, joint venture or agency.

5. Subcontracts and Assignments. Provider shall not enter into any subcontracts for the performance of the obligations contained herein or assign this Agreement, or any rights or obligations hereunder, unless it has received the prior written approval of RFMH and the DOL/OMH Joint Management Committee.

6. Safeguards for Services.

- a. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional nondiscrimination provisions, the Provider will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.
- b. Services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
- c. Funds provided pursuant to this Agreement shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

7. Term. This Agreement shall commence on the Effective Date and terminate on January 31, 2013. The Agreement shall be automatically renewed for consecutive one year terms unless RFMH provides thirty (30) days prior written notice to the Provider of its intention not to renew.

- a. Either Party reserves the right to terminate this Agreement upon thirty (30) days prior written notice.
- b. The RFMH reserves the right to terminate this Agreement immediately in the event that SSA terminates funding or in the event that RFMH, OMH or the NYSDOL/OMH Joint Management Committee has determined that Provider has violated the terms of this Agreement, the NYESS terms or the CNDA with OMH.
- c. This Agreement shall automatically terminate if the Provider's authorization to access the NYESS system is withdrawn by OMH and/or DOL.
- d. If the Agreement is terminated, RFMH shall pay Provider for services rendered up until the effective termination date.

8. Liability to Third Parties. Provider shall indemnify and hold harmless RFMH, OMH, DOL and the State of New York, their directors, officers, agents, subcontractors and employees against any actions, suits, proceedings, liabilities and damages to the extent that they arise from or are related to the performance or failure to perform of Provider's directors, officers, agents, subcontractors or employees pursuant to this Agreement.

9. Insurance Requirements. Provider shall not commence work under this Agreement unless it has the following insurance in place and shall provide proof of insurance coverage on an annual basis to the RFMH:

- a. Workers' Compensation and Employers' Liability Insurance as required by New York State law.
- b. Disability insurance for all employees of Provider engaged in performing work under this Agreement, as required by New York State laws.
- c. General and Professional Liability Insurance with a combined personal injury, bodily injury (including death) and property damage limit of at least \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.

10. Code of Conduct. Providers shall prohibit its directors, officers, agents, subcontractors and employees from using their positions or engaging in any activity in a manner that gives rise to an actual conflict of interest (personal or organizational) or the appearance of such a conflict.

11. Audit.

- a. Provider shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Agreement (the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years after. Provider agrees to cooperate fully with any audit RFMH, OMH, DOL/OMH Joint Management Committee, SSA or any agent of theirs may conduct and to provide access during normal business hours to any and all information and personnel necessary to perform its audit or investigation.
- b. RFMH or its designee shall have the right to audit and review the Provider's performance and operations as related to this Agreement and/or to retain the services of qualified independent auditors or investigators to perform such audit and review on its behalf. If the review indicates that the Provider has violated or is in non-compliance with any of the terms of the Agreement, or has abused or misused the funds paid to the Provider, the Provider agrees to reimburse RFMH any costs associated with the review.
- c. If the review indicates that the Provider is in non-compliance with any of the terms of the Agreement, or has abused or misused the funds paid to the Provider, the rights of RFMH shall include, but not be limited to:
 - i. recovery of any funds expended in violation of the Agreement;
 - ii. suspension of payments;

- iii. termination of the Agreement; and/or
- iv. employment of another entity to fulfill the requirements of the Agreement.

12. Confidentiality. Provider understands that the information obtained or collected during the conduct of this Agreement may be sensitive in nature. Information relating to individuals who may receive services pursuant to this Agreement shall be maintained and used only for the purposes intended under this Agreement and in conformity with applicable provisions of laws and regulations, including the CNDA between Provider and OMH.

13. Reporting.

- a. Provider shall prepare and submit all reports and documents as may be required under this Agreement to OMH, DOL/OMH Joint Management Committee or other entity designated by RFMH. These reports shall be in such substance, form, and frequency as required by RFMH and as necessary to meet State and Federal requirements. OMH shall notify the Provider as to the substance, form, and frequency of any and all reports and documents required to be submitted.
- b. OMH may require that the Provider submit a final report or other documentation summarizing the conduct of the program and indicating the total number of Beneficiaries participating in each of the components for the entire term of the Agreement.

14. Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by the laws of the State of New York, without regard to any choice of law principle that would dictate the application of the law of another jurisdiction.

15. Notices. All notices permitted or required hereunder shall be in writing and shall be transmitted by mail, express mail, facsimile transmission or email to the individual noted below.

If to Provider:

If to RFMH:

Managing Director
Research Foundation for Mental Hygiene, Inc.
150 Broadway, Suite 301

Menands, NY 12204
(518) 474-5661 fax

16. Validity of Terms and Conditions. If any term, provision or condition of this Agreement or its application to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term, provision, and condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. Entire Agreement. This Agreement, including the CNDA and applicable DOL/OMH Joint Management Committee policies and guidelines, set forth and constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and all prior agreements, understandings, promises and representations, whether written or oral.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date indicated below.

Research Foundation for Mental Hygiene, Provider
Inc.

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____