

**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**

This Interagency Agreement is entered into by and between the New York State Department of Labor, Harriman State Office Campus, Building 12, Albany, New York 12240 ("DOL") and the New York State Office of Mental Health, 44 Holland Avenue, Albany, New York 12229 ("OMH"), on behalf of itself and the Participating New York State agencies identified herein, regarding the creation of a new computer employment support system (here after referred to as the NYS DOL / OMH Employment Support System) which will use the existing One Stop Operating System (OSOS) owned and operated by DOL and a data warehouse owned and operated by the OMH.

**WHEREAS**, OSOS serves as the repository for job listings for the NYS public labor exchange system and the case management and reporting system for DOL funded employment and training programs and the statewide One Stop Career Center system operated pursuant to the Workforce Investment Act (WIA). As such, OSOS is designed to facilitate the labor exchange process of matching qualified jobseekers to job postings and to maintain a record of case notes, employment and training related services and outcomes for both business and individual job seeker customers.

**WHEREAS**, OMH operates a data warehouse / web-portal system that allows the creation of business intelligence solutions to assist agencies, providers and staff in their ability to effectively deliver, manage and evaluate a variety of services that will support employment, training and other supports enhancing the efforts of DOL and the one stop agencies; and

**WHEREAS**, OMH, and Participating New York State agencies provide employment, training and support to specialized populations via large provider networks (more than 2000 providers) across the state specializing in supporting employment outcomes for the specific populations for which each state agency is charged. This provider network working collaboratively with the DOL will greatly enhance the employment outcomes for both DOL, OMH, and the other participating State agencies, better serving New Yorkers and creating the ability to coordinate employment supports and services across state agencies and funding streams; and

**WHEREAS**, OMH is the recipient of funding under a Medicaid Infrastructure Grant (MIG) from the Centers for Medicare and Medicaid Services and plans to invest significant MIG resources into the NYS DOL / OMH Employment Support System in order to facilitate changes to allow for the system's use by providers of services of people with disabilities and thereby significantly improve DOL's, OMH's and each state

agency's ability to connect job seeking New Yorkers with employers and create a workforce that helps New York compete in today's global economy; and

**WHEREAS**, OMH promotes the mental health and well-being of all New Yorkers and, in connection therewith, enables and encourages people to be engaged in work; and

**WHEREAS**, OMH plans to replace its New York Interagency Supported Employment Report system (NYISER) and utilize the NYS DOL / OMH Employment Support System as its authorized employment services system (e.g., tracking of employment-related activity such as employment training); and

**WHEREAS**, OMH represents other State agencies who also plan to use the NYS DOL / OMH Employment Support System as their integrated authorized employment activities system for employment services in order to enable these State agencies to communicate collectively and facilitate the more effective and efficient delivery of employment and training services designed to assist their customers to obtain and maintain employment and become more self sufficient; and

**WHEREAS**, individual customer information contained in OSOS is confidential and privileged and includes unemployment insurance information which is confidential pursuant to Labor Law §537 and State Directory of New Hire information obtained by DOL from the New York State Department of Taxation and Finance for state employment purposes which is confidential pursuant to Tax Law §697(e); and

**WHEREAS**, confidential OSOS data, including unemployment insurance information, will be stored in the OMH Data Warehouse in order to generate reports for program performance measurement purposes; and

**WHEREAS**, DOL, pursuant to the terms of its agreement with the United States Secretary of Labor for the operation of New York's unemployment insurance program, must conform to the confidentiality requirements set forth in 20 CFR Part 603 with regard to any disclosure of unemployment insurance information to OMH or the other entities which propose to use OSOS and their use of such information;

**WHEREAS**, OMH, its providers, contractors and participating New York State agencies maintain individually identifiable health information protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"). Pursuant to HIPAA and HITECH, OMH, its providers, contractors, consultants and other participating State agencies maintain individual customer information which is considered protected health information (PHI) and must be kept confidential and meet a variety of restrictions identified by the Acts, and include civil and criminal penalties for violations; and

**WHEREAS**, DOL and OMH wish to set forth the terms of the Agreement between the parties that will provide the authority under which DOL and OMH will jointly operate the NYS DOL / OMH Employment Support System allowing participating New York State agencies as identified herein to utilize the NYS DOL / OMH Employment Support

System as their authorized employment activities system for employment services and to access and exchange information for program performance measurement and reporting through the OMH Data Warehouse; and

**NOW, THEREFORE**, the parties agree as follows:

DOL and OMH hereby authorize the creation of a new computer employment support system adapting, developing and creating necessary components of the DOL OSOS system and the OMH data warehouse / web portal systems to accommodate the mutual use by DOL, OMH and participating New York State agencies as an authorized employment activities system and to gather, access and analyze information in furtherance of their authorized employment service activities as well as employment service program reporting and performance purposes (hereafter referred to as the NYS DOL / OMH Employment Support System). This expanded OSOS system is hereinafter referred to as OSOS. OMH acknowledges and agrees that individually identifiable health information protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPPA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”) shall not be included in the OSOS portion of the system.

### **JOINT MANAGEMENT COMMITTEE**

DOL and OMH further authorize the creation of a joint management committee (hereafter referred to as the DOL/OMH Joint Management Committee) made up of an equal number of program, information technology and legal representatives of each agency to be appointed by each agency’s commissioner. This DOL/OMH Joint Management Committee will be responsible for the joint operation and oversight of the multiple components that make up the NYS DOL / OMH Employment Support System. The DOL/OMH Joint Management Committee will be co-chaired by a program representative of each agency and will collaboratively establish policy, guidelines and training necessary for implementation of the new system. The DOL/OMH Joint Management Committee will establish and regularly review the functioning of the system, establishing necessary revisions, enhancements, policies, guidelines, training, security, system sustainability, and / or audit for the mutual benefit of the participating agencies. Resolution of issues that are not able to be resolved in the DOL/OMH Joint Management Committee will be referred to the DOL and OMH Executive Deputy Commissioners. The DOL/OMH Joint Management Committee shall meet at least monthly to address the operational issues associated with the NYS DOL / OMH Employment Support System. Before the OMH authorized agencies first use the NYS DOL / OMH Employment Support System the DOL/OMH Joint Management Committee will identify and implement policies, procedures and processes to monitor the use of the system. These policies, procedures and processes will continuously be assessed and refined based on information learned from system monitoring, available security technology/software and continuously evolving local, state and federal security standards. The DOL/OMH Joint Management Committee shall keep minutes of their meetings documenting deliberations, decisions and system oversight responsibilities. The DOL/OMH Joint Management Committee shall utilize the toll free OMH telephone line to permit individuals to report concerns about system use. Annually the DOL/OMH Joint Management Committee will produce an internal advisory report for counsel in

anticipation of state and/or federal control agencies requests for compliance documentation.

The parties agree that OMH will grant access to the NYS DOL / OMH Employment Support System to mutually agreed-upon OMH Authorized Agencies in phases as described in Exhibit A and approved by the DOL/OMH Joint Management Committee.

Access to the NYS DOL / OMH Employment Support System shall be subject to all the requirements and responsibilities as set forth in this Agreement including any provisions as may be established by the DOL/OMH Joint Management Committee for the ongoing operation of the system. The parties agree that "Information" as used in this Agreement includes information residing in OSOS as well information residing in the OMH Data Warehouse for reporting/program performance measurement as described herein.

All confidentiality provisions set forth in this Agreement shall be read to also include respective agents and contractors/service providers unless the context clearly indicates otherwise.

## **I. RESPONSIBILITIES OF OMH**

- A. OMH acknowledges and understands that individual customer information derived from the DOL's administration of the unemployment insurance system and State Directory of New Hire data contained in OSOS is confidential and privileged and may only be disclosed to OMH for the purpose of operating an integrated authorized employment activities system for employment services and for providing access to information that may be used by OMH for reporting on program performance. OMH shall ensure that all use of such confidential information shared with OMH pursuant to this Agreement shall be consistent with such purposes.

Access to the OMH Data-Warehouse shall be subject, at a minimum, to the security protocols set forth in Exhibit B.

OMH shall ensure, and shall require all OMH Authorized Agencies to ensure compliance with all applicable federal and state privacy laws and regulations governing information shared pursuant to this Agreement. OMH shall ensure that all disclosure of confidential information made to OMH Authorized Agencies shall be subject to the terms of a fully executed Data Sharing Agreement that requires the OMH Authorized Agency to comply with the limitations on data use, access, disclosure, privacy, and security set forth in this Agreement. The terms of such Data Sharing Agreement shall be jointly developed and approved by the DOL/OMH Joint Management Committee and, at a minimum, shall incorporate by reference the data confidentiality and security requirements set forth in this Agreement. The DOL/OMH Joint Management Committee shall identify and implement policies, procedures and processes to monitor the use of the system. These policies, procedures and processes will continuously be assessed and refined based on information learned from system monitoring, available security technology/software and continuously evolving local, state and federal security standards. Authorized Agencies will be continuously monitored in complying with these requirements.

Authorized Agencies shall monitor the performance of their employees, agents, and contractors/service providers in complying with these requirements and maintain documentation of such efforts subject to audit. Such monitoring shall, at a minimum, comply with the provisions of Exhibit C, attached hereto, but may also include such additional provisions and protections as the Authorized Agency shall determine will further ensure the confidential handling of the information shared hereunder.

- B. OMH shall limit, and shall require all OMH Authorized Agencies to limit access to information governed by this Agreement to their respective employees, agents, and contractors/service providers who are administering employment services to their respective clients. The level of access granted to an individual user shall be in accordance with security requirements and established permissions as provided by the DOL/OMH Joint Management Committee and the DOL / OMH respective security officers.
- C. OMH shall ensure that all personnel, including its employees, agents, and contractors/service providers and those of Authorized Agencies (hereinafter collectively referred to as "Employees") authorized to access the NYS DOL / OMH Employment Support System, as well as their supervisors, have been fully advised of the confidential nature of the information contained therein, the safeguards required to protect the information, and the civil and criminal sanctions for noncompliance contained in applicable state and federal laws. Such information shall be made available to Employees through successful completion of unemployment insurance confidentiality training, and HIPAA / HITECH training within the prior twelve-month period. Such training shall consist of courses regularly used by DOL and OMH to address Unemployment Insurance and HIPAA/HITECH training or be new courses jointly approved by the DOL/OMH Joint Management Committee.
- D. Each participating Agency shall annually sign an agency non-disclosure acknowledgement (Exhibit D) that its Employees have been so advised and that such Employees will adhere to the confidentiality disclosure requirements set forth herein and shall report fully and promptly any infraction of such requirements to the DOL/OMH Joint Management Committee. The DOL/OMH Joint Management Committee shall develop a guideline for the frequency of security reminders, security notifications and completion of annual acknowledgement forms.
- E. All Employees, as well as those of Authorized Agencies, shall sign an individual employee non-disclosure acknowledgment prior to being granted access, using the form of Acknowledgment attached hereto as Exhibit E, to the NYS DOL / OMH Employment Support System. Acknowledgement forms will be automated into the user sign on process and the DOL/OMH Joint Management Committee shall have the authority to make modifications to this form as appropriate. Access shall be granted by issuance of a user name and a password. Employees shall not be permitted to disclose the password for any purpose. All Employees, as well as those of Authorized Agencies, must also agree to be bound by the secrecy provisions of the Tax Law and the Internal Revenue Code and to have each individual user sign the New York State Department of Taxation and Finance Secrecy Agreement attached hereto as Exhibit F prior to being granted access.

During the initial roll out of the NYS DOL / OMH Employment Support System, DOL and OMH shall accept the confidentiality agreements that DOL contractors and employees have signed as grandfathered in to initially meet the agreements required under this document. By January 2012, DOL will work with its contractors and employees to sign all of the confidentiality agreements as identified herein. Access to the web/portal will require execution of a new data sharing agreement.

- F. DOL shall execute a signed Business Associate Agreement (Exhibit G) with OMH to cover both entities in the event that protected health information is used or disclosed in the course of responsibilities with this agreement. The parties have agreed that no data stored in the OSOS portion of the system will be PHI as defined by HIPAA.

When an individual user leaves the employment of DOL, OMH or an Authorized Agency, or an agent or contractor/service provider of such Agency, or no longer serves in an appropriate position, OMH and DOL shall ensure that access to the NYS DOL / OMH Employment Support System is immediately terminated. Access to the NYS DOL / OMH Employment Support System may also be terminated for any individual who violates any terms of this Agreement under policy, guidelines or after review by the DOL/OMH Joint Management Committee.

- G. The DOL/OMH Joint Management Committee will establish, and shall ensure that Authorized Agencies establish internal management systems, protocols, and security procedures to ensure that information sharing activities by their respective Employees are in compliance with this Agreement prior to being granted access. It shall be understood that DOL and OMH shall each maintain primary responsibility for the users that each has authorized to access the NYS DOL / OMH Employment Support System. Such protocols and procedures shall also require the designation of a security officer within each Authorized Agency and its agents and contractors/service providers who shall be responsible for monitoring the use of the NYS DOL / OMH Employment Support System by its Employees.
- H. OMH shall require its Employees, and shall also require the Employees of Authorized Agencies, to obtain signed informed consent forms (Exhibit H or as modified and accepted by the DOL/OMH Joint Management Committee) from their respective clients, or their legal representative where applicable, authorizing DOL to disclose to such Employees any unemployment insurance information pertaining to them that may reside in OSOS in connection with the client's receipt of employment services from OMH or one of its Authorized Agencies. The identity of persons executing such informed consent forms shall be subject to verification in accordance with the identity validation procedure set forth in Exhibit I.
- I. All Authorized Agencies shall monitor, the use of the NYS DOL / OMH Employment Support System by their Employees to ensure that the data and information covered by the terms of this Agreement are accessed and provided solely in accordance with authorized employment service program activities, and shall take appropriate, immediate remedial action for any unauthorized use. The DOL/OMH Joint Management Committee shall ensure that the frequency and content of the

compliance monitoring is sufficient to ensure that there is no misuse, misappropriation, or unauthorized disclosure of information contained in the new system. The DOL/OMH Joint Management Committee shall reserve the right to audit any agency or provider to ensure compliance. At a minimum, monitoring shall be conducted in accordance with Generally Accepted Accounting Practices through the use of the protocol set forth in Exhibit C, although any entities covered by this Agreement, either as signatories to this Agreement or signatories to an Agreement that incorporates the terms of this Agreement by reference, may elect to engage in additional monitoring that will further protect the confidentiality of data and information exchanged hereunder.

- J. All Authorized Agencies will ensure that any data, records, or information obtained from the NYS DOL / OMH Employment Support System will be stored in an area that is physically safe from access by unauthorized persons during duty hours as well as non-duty hours. Information obtained from the NYS DOL / OMH Employment Support System that is maintained in an electronic format must be stored and processed such that unauthorized persons cannot obtain the information by any means. All Authorized Agencies shall store data on equipment using security methods, including encryption following OFT data security standards. Violation of this prohibition shall be grounds for immediate termination of this Agreement.
- K. All Authorized Agencies shall notify the DOL/OMH Joint Management Committee immediately upon discovering any breach or suspected breach of security, or any unauthorized disclosure or use of the confidential information provided under this Agreement.
- L. OMH will retain, or use, the records or information provided by DOL for which OMH did not have previous access hereunder for only so long as necessary to complete the purpose for which access was granted as specified herein (including any applicable state or federal record retention period, e.g., record retention for purposes of data element validation). Likewise DOL will retain, or use, the records or information provided by OMH for which DOL did not have previous access hereunder for only so long as necessary to complete the purpose for which access was granted as specified herein (including any applicable state or federal record retention period, e.g., record retention for purposes of data element validation). Upon such completion, DOL and OMH shall destroy or return the respective data. If either chooses to destroy the data, they must provide the other with a certified statement attesting that the destruction of the data has been completed and the date and method of such destruction. DOL and OMH will not retain or use the records or information provided hereunder beyond completion of the purposes specified herein without written permission from the other party. All Authorized Agencies must also comply with these requirements.
- M. OMH acknowledges that it is responsible to monitor the OMH Authorized Agency compliance with the terms and conditions of OMH Authorized Agency access to the NYS DOL / OMH Employment Support System as described herein and the separate Agreements between OMH and the OMH Authorized Agency. Compliance audits of Authorized Agencies may be required by the DOL/OMH Joint Management

Committee to meet operational and security demands. Participating agencies shall require all of their vendors' contracts include a provision that, upon the unilateral expression of concern by a DOL or OMH, the vendor may be required to engage an accounting or auditing firm to conduct an audit under standards set forth by the DOL/OMH Joint Management Committee to ensure that Authorized Agencies have in place procedures and protocols to monitor use of the NYS DOL / OMH Employment Support System by their respective Employees and that the Authorized Agencies are complying with these procedures and protocols. Copies of audits shall be made available to the DOL/OMH Joint Management Committee upon request. The DOL/OMH Joint Management Committee will have the right to approve the choice of auditor but in any case will allow the vendor's own accountant or auditor to submit a preliminary audit before the DOL/OMH Joint Management Committee requires the engagement of another outside auditor or accountant.

## **II. TERMINATION**

- A. This Agreement shall become effective upon execution, and continue during DOL and OMH's partnership in the NYS DOL / OMH Employment Support System, subject to the termination provisions set forth below.

DOL or OMH may suspend this Agreement and access to the NYS DOL / OMH Employment Support System hereunder:

1. Immediately, in the event that changes in or violations of either state or federal law, their regulations, or interpretations occur, which render performance hereunder illegal, impracticable, or impossible;
  2. The DOL/OMH Joint Management Committee shall meet as soon as practicable after a suspension to work (if possible) to resolve the issues that created the suspension, and, if appropriate, reinstate access to the NYS DOL / OMH Employment Support System.
- B. The DOL/OMH Joint Management Committee shall develop a policy regarding immediate suspension for particular violations of security which threaten the integrity of data in the system or violate state or federal law.
- C. The DOL/OMH Joint Management Committee shall review all other potential suspensions for consideration prior to issuance of the suspension:
- i. For violating the terms of the Software License Agreement;
  - ii. For failure to comply with any provisions of this Agreement.
- D. If suspension is based upon a violation of the Software License Agreement of any provision of this Agreement, the suspensions will end when the DOL/OMH Joint Management Committee is satisfied that corrective action has been taken and there will be no further breach. In the absence of prompt and satisfactory corrective action, either party may terminate the Agreement, provided, however, that if the necessary corrective action cannot reasonably be accomplished promptly, the

DOL/OMH Joint Management Committee shall not terminate the Agreement if the appropriate party has commenced corrective action, is proceeding diligently with the implementation thereof, and there is a mutually-agreed upon expectation that corrective action will be completed in a reasonable timeframe. If the suspension is based upon a change in either State or Federal law, regulations, or interpretations thereof that render performance under this Agreement illegal, impracticable, or impossible, the parties will immediately work to either amend the Agreement to conform to the needs of the parties and the relevant law or regulations, or if such amendments are not possible, maintain the suspension and work towards orderly termination of the Agreement. OMH and DOL may terminate the Agreement by mutual consent.

- E. The above termination provisions also apply to Authorized Agencies, their employees, agents, or contractors/service providers and the DOL/OMH Joint Management Committee may terminate their access in accordance therewith. Notwithstanding any other provision of this Agreement, however, the DOL/OMH Joint Management Committee may terminate the access of Authorized Agencies, their employees, agents or contractors/service providers at any time.
- F. Notice of termination of this Agreement shall be sent to DOL and OMH; notice of termination of access shall also be sent to any Authorized Agency, employee, agent or contractor /service provider involved.

### **III. GENERAL PROVISIONS**

- A. DOL, OMH and respective Agencies confidentiality, and/or related assurances and obligations hereunder shall survive termination of the Agreement.
- B. DOL and OMH shall require, and shall require Authorized Agencies to require their respective agents and contractors/service providers to hold DOL and OMH harmless from, and to indemnify DOL and OMH for, any and all claims, losses, expenses, and/or damages arising out of their unauthorized access or use of the material without limitation.
- C. DOL and OMH reserve the right to enter onto the premises to inspect the software, equipment, and records of Authorized Agencies, and their respective agents and contractors/service providers to ensure that all of the terms of this Agreement are fully complied with, provided reasonable notice is given.
- E. DOL and OMH's right to terminate this Agreement for breach thereof shall not limit the right of the DOL or OMH to undertake any other action under the Agreement, or State or Federal law, to enforce the Agreement and secure satisfactory corrective action or return of the data furnished hereunder, or to undertake other remedial actions permitted by State or Federal law to effect adherence to the requirements herein, including seeking damages, penalties, and restitution as permitted under such law.

- F. Unemployment insurance status and State Directory of New Hire information contained in a client's OSOS record is confidential under Labor Law §537 and Tax Law §697(e), respectively. In addition to the obligations to protect the confidential information provided hereunder, in the event any third party seeks access to OSOS records containing unemployment insurance status or other confidential unemployment insurance information or State Directory of New Hire information on clients accessible pursuant to this Agreement, OMH, the Authorized Agency, or their agents or contractors/service providers, as applicable, shall seek a protective order from an appropriate court to prevent disclosure of such information, and immediately forward a copy of the motion for a protective order to DOL. Unemployment Insurance information and records and State Directory of New Hire information shall only be provided to the extent allowed under Labor Law §537 and/or Tax Law §697(e).
- G. In the event of a breach of the security of a system used to provide the services described in this Agreement by an Authorized Agency, or one of their agents or contractors/service providers, and private information has been or is reasonably believed to have been acquired by a person without valid authorization, the Authorized Agency and/or their agent or contractor/service provider shall immediately notify their respective Information Security Officer and the DOL/OMH Joint Management Committee, commence information security incident response procedures including investigation to verify and determine the scope of the breach, determine the appropriate plan of action addressing applicable reporting and notification requirements, and restore the security of the system to prevent any further breaches. OMH, DOL and the Authorized Agency shall also notify the DOL/OMH Joint Management Committee of any such breach of the security of a system used to provide services under this Agreement immediately following discovery of such breach.
- H. This Agreement including any attachments hereto represents the entire Agreement between the parties, and supersedes and replaces any other understandings or agreements, whether written or oral, relating generally to the subject matter.
- I. No modification of this Agreement will be effective unless it is in writing and fully executed by the parties hereto. Any failure to enforce a provision of this Agreement shall not be construed as a waiver of any succeeding breach of such provision, or a waiver of the provision itself.
- J. OMH may not assign this Agreement, its obligations, or any interest hereunder. Any assignment of this Agreement shall be null and void.
- K. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**IV. PERSONS TO CONTACT**

A. DOL contact:

Karen Coleman  
Director, Division of Employment and Workforce Solutions  
NYS Department of Labor  
Building 12, Room 450  
W. Averell Harriman State Office Campus  
Albany, New York 12240  
518-457-0380

B. OMH contact:

John Allen  
Special Assistant to the Commissioner  
NYS Office of Mental Health  
44 Holland Avenue  
Albany, NY 12229  
518-473-6579

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT BY THEIR DULY AUTHORIZED OFFICIALS:**

\_\_\_\_\_  
NYS Department of Labor

\_\_\_\_\_  
NYS Office of Mental Health

Date \_\_\_\_\_

Date \_\_\_\_\_

## **EXHIBIT A**

### **AUTHORIZED AGENCIES\***

#### Phase I Agencies

1. Office for People with Developmental Disabilities (OPWDD)
2. Adult Career and Continuing Education Services – Vocational Rehabilitation (ACCES-VR)
3. Commission for the Blind and Visually Handicapped (CBVH)
4. Office of Alcoholism and Substance Abuse (OASAS)
5. Office for the Aging (OFA)
6. NYS Commission on National and Community Service

#### Phase II Agencies

7. To be determined

Authorized Agencies under this Agreement shall also include such other agencies as mutually agreed upon by the DOL/OMH Joint Management Committee.

\*In the event the employment related functions, powers, obligations, and duties of the Authorized Agencies named herein are transferred and assigned to a successor agency, the reference or designation of the Authorized Agency in this Agreement shall be deemed to refer to the appropriate successor agency or the appropriate office with the successor agency. OMH and DOL shall mutually agree upon the appropriate successor agency or appropriate office therein for purposes of continued access under this Agreement and shall work cooperatively as needed to continue such access.

## **EXHIBIT B**

### **DATA WAREHOUSE PROTOCOLS**

OMH will provide support and guidance to all local providers who use the OMH Data-Warehouse to ensure that federal, state, and OMH policies, established to protect recipient private health data in compliance with HIPAA requirements for privacy and security, are met. Security oversight of the OMH Data-Warehouse is an on-going process that is modified as business needs and technology requirements change. To accomplish this goal, OMH will utilize a number of tools. These include:

- Customized security group access within the OMH Data warehouse;
- Security access mechanisms such as RSA tokens and/or secure passwords;
- Security oversight reports which detail information such as user security roles, application login frequency, and productivity;
- Audit logs of all data entries and edits with before/after information as well as user id and date stamp.

More specifically, the OMH Data-Warehouse will be accessed through a secure web portal. Levels of access will be installed consistent with the need for information access and data security through the use of web portal technology. Users will be assigned a security role which provides access to data and information appropriate to each individual's responsibilities. Each security role will be developed to ensure that end users access only the data required to complete their required work duties. Security roles may range from general public access to broad aggregate data to individual clinicians who may access to patient specific records (if appropriate) to their role in providing services and supports. DOL will review the security roles to ensure that end users will not have access to data on DOL clients unless necessary to perform that end user's work responsibilities.

Additionally, OMH shall conduct random reviews of OMD Data-Warehouse usage to identify any outlying user behavior. The review conducted will be based upon the business rules and expected usage behavior defined for each application. For example, an audit may be conducted to ensure each user has access to a single provider agency's data. This is based upon the assumption a user would work for only one agency at a time. Any exceptions found will be investigated. Similarly, if a user reports their data was tampered with, an audit shall be conducted to review who accessed the record, when, and what edits were made.

The OMH application systems environment, including the OMH Data-Warehouse and the secure web portal, shall be secured through multiple layers of defense.

Initially, these applications shall be secured in a multi-tiered architecture which isolates users' access from the application and the application from the data via state network controls which limit accesses to those required for operations. These network defenses shall be monitored through several solutions on a 24 x 7 x 365 basis.

Users will be authorized to access systems using a delegated security model, where approved "Security Managers" within the user's own organization identity the user, provide application authorization assignments, account provisioning, and access review. Authentication systems shall be compliant with Federal and New York State Identity Assurance/Trust Level systems; systems which require access to confidential information shall require multi-factor authentication and out-of-band identification. Administrators will be appointed by each organization following completion of Confidential/Non-Disclosure Agreements (CNDA). Account use and authorization assignments can be reviewed by the Security Manager and, at a high level, are periodically reviewed by OMH.

Applications shall be monitored through a number of solutions. First and foremost, intrusion detection systems shall observe traffic to OMH unencrypted applications and staff shall be notified on a 24 x 7 x 365 basis of potentially high-risk attacks. In addition, applications perform standard web logging. These logs shall be periodically reviewed.

## EXHIBIT C

### MONITORING PROTOCOL

All Authorized Agencies shall monitor, the use of the NYS DOL / OMH Employment Support System by their Employees, agents, and contractors/service providers in the workplace on a regular ongoing basis to ensure that the data and information is accessed and provided solely in accordance with authorized employment program activities, and shall take appropriate remedial action for any unauthorized use. OMH and DOL agree to the follow monitoring protocol for this purpose.

The DOL/OMH Joint Management Committee shall establish, and shall require Authorized Agencies, agents, and contractors/service providers to establish, systems, protocols, and procedure to ensure that Employees, agents, and contractors/service providers are complying with the confidentiality requirements of this Agreement.

OMH will delegate access to OMH Authorized Agencies and their respective users. Access will be granted consistent with each user's need for information access and data security appropriate to each user's responsibilities in accordance with the NYS DOL / OMH Employment Support System security permissions established by the DOL/OMH Joint Management Committee.

In addition, OMH and DOL shall each designate a Security Officer, and require each Authorized Agency, and its agents, or contractors/service providers authorized to access new system, to designate a Security Officer responsible to implement security policies and procedures to ensure and monitor proper use of the NYS DOL / OMH Employment Support System by its Employees. Such policies and procedures must include, but not be limited to: i) facility security to safeguard the facility and the equipment therein from unauthorized physical access, tampering and theft; ii) workstation safeguards to restrict access to authorized users; iii) requiring supervisory staff to conduct periodic and regular walk through office areas to observe and determine whether staff are complying with confidentiality requirements; iv) reviewing records of system activity, such as exception lists and v) promptly reporting security incidents. The Security Officer shall conduct accurate and thorough assessments of the potential risks and vulnerabilities to the confidentiality and integrity of the NYS DOL / OMH Employment Support System's data available to its staff and take measures to reduce these risks and vulnerabilities. Finally, each security officer shall maintain adequate records to document compliance with both the security protocols and the confidentiality requirements contained in this Agreement subject to audit.

In addition, the parties recognize that the NYS DOL / OMH Employment Support System have data logging functionality which records all transactions. To assist in its monitoring requirements, DOL and OMH will generate reports for use as approved by the DOL/OMH Joint Management Committee. Typical monitoring reports which the DOL/OMH Joint Management Committee may specify for use follow:

### Sampling/Transaction Logs

Transaction logs showing the accounts accessed by a random representative sample of individual Employees of DOL, OMH and each Authorized Agency for a specific date and time period shall be generated. Review shall include, but not be limited to, review of the reason for which the record was accessed by the Employee to determine if there was a deviation from access control/confidentiality requirements. Corrective action shall be taken as needed to address misuse of the NYS DOL / OMH Employment Support System. Security Officers at each site will maintain records appropriate to document compliance with security including review of any data logs provided subject to audit. . Intentional inappropriate access of a record shall result in immediate termination of an employee's right to access the NYS DOL / OMH Employment Support System.

### Exception Reports

Exception reports for Authorized Agency users, including their service providers, which identify a particular user(s) based upon the following user behavior:

- where a user has accessed the account of an individual who is not identified as being served by the agency or service provider employing the user;
- where user has accessed client accounts for individuals falling outside the normal geographical region to which the user is assigned or for which the user is responsible;
- where a user has accessed a number of customer accounts that would fall outside a normal range for user workload;
- where a user has access a number of customer accounts within a period of time that would fall outside a normal expected time range for the number of queries;
- where a user has accessed accounts of clients with the same last name as the user;
- where a user has accessed customer accounts during inappropriate access periods as mutually agreed upon by OMH or Authorized Agency and their service providers, including requests before or after normal working hours, on days when state offices are not open, on days when the user is on leave;
- where a user has multiple user accounts or user accounts at more than one service provider.

Each transaction on an exception report must be investigated and if warranted the finding with corrective action noted.

The parties mutually agree that the criteria for generating exception reports set forth herein are not exhaustive and that Authorized Agencies and/or their service providers may propose additional criteria as the basis for an exception report.

The DOL/OMH Joint Management Committee shall work cooperatively to analyze trends of the NYS DOL / OMH Employment Support System use and to identify and/or refine parameters of user behavior that can be used to produce exceptions reports to identify potential or actual misuse.

The parties mutually agree that should DOL be notified by the USDOL that the monitoring protocols developed under this Agreement are inadequate to meet the requirements of 20 CFR Part 603, they will immediately cooperate with one another and with other system users to bring the monitoring protocols in line with USDOL expectations.

The parties mutually agree that should OMH be notified by HHS or DOJ that the monitoring protocols developed under this Agreement are inadequate to meet the requirement for confidentiality established by HIPAA and or HITECH, that the parties will immediately cooperate with one another and with other system users to bring the monitoring protocols in line with HHS or DOJ expectations.

#### Other

Nothing herein shall preclude DOL or OMH from generating additional transactions logs for Employees identified by DOL for audit or from generating other “exception reports” which might identify misuse of the NYS DOL / OMH Employment Support System. DOL or OMH shall provide such transaction logs or exceptions reports to each other and to distribute to appropriate Security Officers for appropriate review and action as described above.

**EXHIBIT D**  
**AGENCY NON-DISCLOSURE ACKNOWLEDGMENT**

WHEREAS, the New York State Office of Mental Health (OMH) and the New York State Department of Labor (DOL) are parties to an Interagency Agreement (the “Agreement”) regarding the use of the NYS DOL / OMH Employment Support System; and

WHEREAS, under the Agreement, access to information residing in the NYS DOL / OMH Employment Support System shall be in furtherance of its authorized employment activities; and

WHEREAS, access to the information contained in the NYS DOL / OMH Employment Support System is limited to authorized Employees as defined in the Agreement administering employment services; and

WHEREAS, Section II.E of the Agreement requires, a signed non-disclosure acknowledgment;

NOW, THEREFORE, the undersigned representatives of each Agency warrant and represents as follows:

1. My signature below is an acknowledgment that all Employees authorized to have access to records and information contained in the NYS DOL / OMH Employment Support System under the Agreement:

- a. Have been instructed about:
  - The confidential nature of the Confidential Information;
  - That employees are not authorized to access such information, for any purpose, unless the Confidential Information is that of an Authorized Agency client who has granted access to such information by signing appropriate documentation;
  - The limitations on disclosure and use of the Confidential Information;
  - The safeguards required to protect the Confidential Information;
  - The sanctions in applicable state law for unauthorized disclosure of said Confidential Information; and that
  - Such individuals must adhere to the confidentiality requirements set forth in the Agreement and must not re-disclose any Confidential information;
- b. Have acknowledged that he/she understands and shall comply with such limitations; and
- c. Have acknowledged that he/she has received unemployment insurance confidentiality instruction and HIPAA / HITECH instruction within the

prior twelve-month period by taking and completing courses approved by DOL and OMH

2. All parties shall report fully and promptly any infraction of the confidentiality requirements set forth in the Agreement to the DOL/OMH Joint Management Committee.

3. The signatory below represents that he or she is authorized to execute this Acknowledgment on behalf of the Agency.

OMH

\_\_\_\_\_  
Signature

Please Print:

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

DOL

\_\_\_\_\_  
Signature

Please Print:

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT E**

**INDIVIDUAL EMPLOYEE NON-DISCLOSURE  
ACKNOWLEDGMENT**

The purpose of this Agreement is to authorize access to the NYS DOL / OMH Employment Support System by employees of Authorized Agencies and their agents and contractors/service providers and to ensure employees' compliance with the restrictions contained herein.

\_\_\_\_\_, an authorized employee ("Employee") of \_\_\_\_\_, an Authorized Agency or its agent or contractor/service provider, is hereby granted access to the NYS DOL / OMH Employment Support System in accordance with the following terms and conditions.

1. Employee understands that access to the NYS DOL / OMH Employment Support System has been granted to him/her for the sole purpose of performing authorized employment program activities. Any other use of the NYS DOL / OMH Employment Support System is strictly prohibited.
2. All information contained in the NYS DOL / OMH Employment Support System is confidential and shall not be re-disclosed to any person or organization except those authorized to use the information for authorized employment services. Employee has been fully advised of those persons or organizations to which information may be disclosed.
3. Employee has been advised of federal and state privacy and confidentiality laws and shall comply with all applicable provisions. Failure to comply with such laws may result in a criminal prosecution or civil sanctions.
4. Access to the NYS DOL / OMH Employment Support System is granted through the issuance of a user name and password only during the period of employment with the Authorized Agency or its agent of sub-contractor for authorized employment services. Access shall be limited to only that information on the NYS DOL / OMH Employment Support System that is necessary to performance of official duties. Employee shall not attempt to obtain data to which he/she has not been given access to, nor where the client has not authorized such access. Employee shall not use the NYS DOL / OMH Employment Support System for any personal activities and shall not disclose his/her user name or password to anyone.
5. Employee access may be terminated at any time without any prior notice. Employee shall immediately notify the Authorized Agency of any misuse, misappropriation, or unauthorized access to, or disclosure of, information. Employee will cooperate with any investigation of OMH, the Authorized Agency, or the Department of Labor (the Department) concerning the misuse, misappropriation, or unauthorized disclosure of information.

6. Employee shall not make copies of the NYS DOL / OMH Employment Support System software or use the software in violation of any intellectual property rights of the software company owners or the Department. Employee understands that any licensing rights are limited to use for t authorized employment activities and are subject to revocation at any time.
7. Employee shall comply with any protocol or procedure established by OMH, the Authorized Agency, or DOL to protect the privacy and confidentiality of data contained in the NYS DOL / OMH Employment Support System.
8. Employee understands that DOL, OMH and, if applicable, the Authorized Agency reserve the right, without notice, to monitor any of Employee's activities related to the use of the NYS DOL / OMH Employment Support System .

I certify that I have read the above document and that I have been advised of the confidentiality requirements and will comply therewith even after my relationship with this employer is terminated.

Employee \_\_\_\_\_

Name \_\_\_\_\_  
(please print)

Date \_\_\_\_\_

Partner \_\_\_\_\_

By \_\_\_\_\_

Email \_\_\_\_\_

Phone \_\_\_\_\_

## EXHIBIT F

### DTF Secrecy Agreement

DTF-202 (8/09)

New York State Department of Taxation and Finance

### Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code

The New York State Tax Law and the Department of Taxation and Finance impose secrecy restrictions on:

- all officers, employees, and agents of the Department of Taxation and Finance;
- any person engaged or retained by this department on an independent contract basis;
- any depository, its officers and employees, to which a return may be delivered;
- any person who is permitted to inspect any report or return;
- contractors and workmen hired by the department to work on its equipment, buildings, or premises, or to process returns or other papers; and
- visitors to the department's buildings or premises.

Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for anyone to divulge or make known in any manner the contents or any particulars set forth or disclosed in any report or return required under the Tax Law. Computer files and their contents are covered by the same standards and secrecy provisions of the Tax Law and Internal Revenue Code that apply to physical documents.

Any unlawful disclosure of information is punishable by a fine not exceeding \$10,000, imprisonment not exceeding one year, or both. State officers and employees making unlawful disclosures are subject to dismissal from public office for a period of five years.

Unauthorized disclosure of automated tax systems information developed by the department is strictly prohibited. Examples of confidential systems information include: functional, technical, and detailed systems design; systems architecture; automated analysis techniques; systems analysis and development methodology; audit selection methodologies; and proprietary vendor products such as software packages.

The Internal Revenue Code contains secrecy provisions which apply to federal tax reports and returns. Pursuant to sections 6103 and 7213 of the Internal Revenue Code, penalties similar to those in the New York State law are imposed on any person making an unauthorized disclosure of federal tax information. In addition, section 7213A of the Internal Revenue Code was enacted to prohibit the unauthorized inspection of returns or return information (also known as "browsing"). The unauthorized inspection of returns or return information by state employees is punishable by a fine not exceeding \$1,000 for each access, or by imprisonment of not more than one (1) year, or both, together with the cost of prosecution.

---

I certify that I have read the above document and that I have been advised of the statutory and Department of Taxation and Finance secrecy requirements. I understand that these secrecy requirements apply to any State Directory of New Hire Information contained in OSOS and certify that I will adhere thereto, even after my relationship with this employer is terminated.

Organization \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (please print) \_\_\_\_\_

Address - Street: \_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_

## EXHIBIT G

### BUSINESS ASSOCIATE CONFIDENTIALITY AGREEMENT

1. The terms and conditions of this document entitled “Confidentiality Agreement” (“Confidentiality Agreement”), and attached to and incorporated in the Agreement, shall apply in the event that Protected Health Information (as defined below) is used or disclosed in connection with or in the course of Contractor’s performance of the Agreement, and pursuant to which Contractor may be considered a “business associate” of the New York State Office of Mental Health as defined in the Health Insurance and Portability Act of 1996 (“HIPAA”) including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH ACT”) as Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-115).
2. For purposes of this Confidentiality Agreement, the term “Contractor” shall mean and include the term “Business Associate” as such term is defined in 45 CFR §164.103.
3. **Definitions:** Terms used, but not otherwise defined, in this Confidentiality Agreement shall have the same meaning as those terms in 45 CFR §§160.103, 164.103, and 164.501.
  - a. Breach. “Breach” shall have the same meaning as the term “breach” in §13400 of the HITECH Act and guidance issued by the Department of Health and Human Services and shall include the unauthorized acquisition, use, or disclosure of Protected Health Information that compromises the privacy or security of such information.
  - b. Covered Entity. “Covered Entity” shall mean the New York State Office of Mental Health.
  - c. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.
  - d. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g)
  - e. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, subparts A and E.
  - f. Protected Health Information. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR §160.103, but is limited to the protected health information created or received by Contractor for or on behalf of Covered Entity in connection with or in the course of Contractor’s performance of the Agreement.
  - g. Required by Law. “Required by Law” shall have the same meaning as the term “Required by Law” in 45 CFR §164.103.
  - h. Secretary. “Secretary” shall mean the Secretary of the Federal Department of Health and Human Services or his/her designee.

i. Security Rule . “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, subparts A and C.

j. Unsecured Protected Health Information. “Unsecured Protected Health Information” shall mean Protected Health Information that is not secured through the use of a technology or methodology specified by the Secretary in guidance, or as otherwise defined in §13402(h) of the HITECH Act.

#### 4. **Obligations and Activities of Contractor:**

a. Contractor agrees not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

b. Contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Agreement, and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity pursuant to this Agreement. Contractor agrees to fully comply with the responsibilities of Business Associates as set forth in §13401 of the HITECH Act.

c Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of the Agreement,

d. Contractor agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by the Agreement of which it becomes aware. Further, Contractor agrees to report to Covered Entity any security incident of which it becomes aware, including a Breach of Unsecured Protected Health Information. In the event of such a breach:

(1) Contractor shall promptly notify Covered Entity of the breach when it is discovered. A breach is considered discovered on the first day on which Contractor knows or should have known of such breach. Such notification shall identify the Individuals, and their contact information, whose Unsecured Protected Health Information has, or is reasonably believed to have been, the subject of the breach.

(2) Covered Entity or Contractor, as determined by Covered Entity, shall promptly notify individuals about a breach of their Unsecured Protected Health Information, as soon as possible but not later than 60 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall be in a form and format prescribed by Covered Entity and shall meet the requirements of §13402 of the HITECH Act.

e. Contractor agrees to ensure that any agent or subcontractor of Contractor to whom Contractor provides Protected Health Information received from, or created or received by Contractor on behalf of Covered Entity pursuant to the Agreement agrees to at least the same restrictions and conditions that apply through this Confidentiality Agreement to Contractor with respect to such Protected Health Information.

- f. To the extent that the information made available to Contractor under the Agreement includes Protected Health Information in a Designated Record Set, Contractor agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR §164.524.
- g. To the extent that the information made available to Contractor in connection with or in the course of Contractor's performance of the Agreement includes Protected Health Information in a Designated Record Set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- h. Contractor agrees to make its internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of Covered Entity pursuant to the Agreement available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner as designated by the Covered Entity, for purposes of the Secretary's determining Covered Entity's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information under the Agreement and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- j. Contractor agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with paragraph (i) of Section 4 of this Confidentiality Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- k. Contractor shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent that Covered Entity is responsible for compliance with such rule.

## **5. Permitted Uses and Disclosures by Contractor**

Except as otherwise limited in the Agreement and this Confidentiality Agreement, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

## **6. Specific Use and Disclosure Provisions**

- a. Except as otherwise limited in the Agreement or this Confidentiality Agreement, Contractor may use Protected Health Information for the proper management and

administration of the Contractor or to carry out the legal responsibilities of the Contractor.

b. Except as otherwise limited in the Agreement and this Confidentiality Agreement, Contractor may disclose Protected Health Information for the proper management and administration of the Contractor, provided that disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality obligations under this Confidentiality Agreement have been breached.

c. Except as otherwise limited in the Agreement and this Confidentiality Agreement, Contractor may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted in 45 CFR §164.504(e)(2)(i)(B).

d. Contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with New York State Mental Hygiene Law and 45 CFR §164.502(j)(1).

## **7. Obligations of Covered Entity**

a. Covered Entity shall notify Contractor of any limitation(s) in its notice of privacy practices Covered Entity produces in accordance with 45 CFR §164.520, to the extent that such limitation may affect Contractor's use or disclosure of Protected Health Information.

b. Covered Entity shall notify Contractor of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Contractor's permitted or required uses and disclosures.

c. Covered Entity shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

## **8. Permissible Requests by Covered Entity**

Covered Entity shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Covered Entity may permit Contractor to use or disclose Protected Health Information for data aggregation or management and administrative activities of Contractor, if the Agreement includes provisions for same.

## **9. Remedies in Event of Breach**

Contractor hereby recognizes that irreparable harm may result to Covered Entity, and to the business of Covered Entity, in the event of breach by Contractor of any of the covenants and assurances contained in this Confidentiality Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections 4, 5, or 6 above, Covered Entity shall be entitled to enjoin and restrain Contractor from any continued violation of such Sections. Furthermore, in the event of breach

of Sections 4, 5, or 6 by Contractor, Covered Entity is entitled to reimbursement and indemnification from Contractor for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Contractor's breach. The remedies contained in this Section shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

## **10. Consideration**

Contractor acknowledges that the promises it has made in this Confidentiality Agreement shall, henceforth, be relied upon by Covered Entity in choosing to continue or commence a business relationship with Contractor.

## **11. Interpretation of this Confidentiality Agreement in Relation to Other Contracts Between the Parties**

Should there be any conflict between the language of this Agreement and any other contract or agreement entered into between the Parties (either prior or subsequent to the date of this Confidentiality Agreement), the language and provisions of this Confidentiality Agreement shall control and prevail unless, in a subsequent written agreement, the Parties specifically refer to this Confidentiality Agreement by its title and date, and specifically state that the provisions of the later written agreement shall control over this Confidentiality Agreement.

## **12. Term and Termination**

a. Term. The provisions of this Confidentiality Agreement shall be effective as of the effective date of the Agreement and shall survive termination of the Agreement and shall not terminate unless and until all Protected Health Information is destroyed, or returned to Covered Entity or, if it is infeasible to return or destroy Protected Health Information, in accordance with the termination provisions in Section 9 (c)(2) of this Section, in which case Contractor's obligations hereunder shall continue for so long as Contractor maintains the Protected Health Information.

b. Termination for Cause. A breach of this Confidentiality Agreement by either party shall be considered a material breach pursuant to Section III, B of the Agreement and may give rise to termination of the Agreement in accordance with Section III, B of the Agreement.

c. Effect of Termination.

(1) Except as provided in subparagraph (2) of this paragraph, upon termination of the Agreement for any reason, Contractor shall return to Covered Entity or destroy all Protected Health Information received from Covered Entity, or created or received by Contractor on behalf of Covered Entity. This provision shall apply to all Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information. Upon request by Covered Entity, Contractor shall certify in writing to Covered Entity that all Protected Health Information has been returned or destroyed as required by this section.

(2) In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Confidentiality Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information. Upon request by Covered Entity, Contractor shall certify in writing to Covered Entity that it has taken all the steps required by this section to protect Protected Health Information which could not feasibly be returned or destroyed.

### **13 . Miscellaneous**

- a. Regulatory References. A reference in this Confidentiality Agreement to the Privacy or Security Rules means the rules as in effect or as amended, and for which compliance by a Covered Entity and/or Business Associate is required.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Confidentiality Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. c. Survival. The respective rights and obligations of Contractor under Section 9 of this Confidentiality Agreement shall survive the termination of this Confidentiality Agreement.
- d. Interpretation. Any ambiguity in this Confidentiality Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

## EXHIBIT H

### CONSENT TO PARTICIPATE IN NYS DOL / OMH Employment Support System

In this Consent Form, you can choose to participate in NYS DOL / OMH Employment Support System. Please review the “NYS DOL / OMH Employment Support System” Fact Sheet, “What You Should Know About the “NYS DOL / OMH Employment Support System” before you sign this consent form.

If you decide to participate in the “NYS DOL / OMH Employment Support System”, you will receive assistance in identifying available employment opportunities that match your individual skills and preferences.

In addition, the “NYS DOL / OMH Employment Support System” will assist providers of employment-related services in coordinating employment services from multiple providers through the establishment of a single information system. “NYS DOL / OMH Employment Support System” will serve as the central repository for all employment information (but will not contain any clinical or treatment information).

In order to assist you in finding job matches and to coordinate employment supports, employment service providers will need to have access to your employment history and be able to connect with other employment service providers with whom you are working. Only individual employment support professionals working directly with you, and who have legal authority to view individual employment-related support service information will have access to such information; all others will have access only to demographic information.

Making information related to your employment history and the employment service providers with whom you are working could inadvertently disclose your status as a person with a disability. If, for example, your employment history includes experience in a sheltered work program, or if you are working with a provider recognized for serving people with disabilities, it may be possible for individuals using the NYS DOL / OMH Employment Support System to deduce that you are a person with a disability.

The NYS DOL / OMH Employment Support System may contain information regarding your status as an unemployment insurance claimant or applicant, if you receive, have received or have applied for unemployment insurance benefits from the New York State Department of Labor. Participation in the NYS DOL / OMH Employment Support System may therefore disclose your status as an unemployment insurance claimant or applicant to employment service providers using the NYS DOL / OMH Employment Support System.

If you check the “I GIVE CONSENT” box below, you are saying “I consent to have information concerning all providers of employment services with whom I am working, as well as my employment history, included in the “NYS DOL / OMH Employment Support System”. I understand that there is some risk that such information may inadvertently disclose my status as a person with a disability and consent nonetheless. In addition, I ALSO GIVE CONSENT to the New York State Department of Labor disclosing to employment service provider users of the NYS DOL / OMH Employment

Support System any information regarding my status as an unemployment insurance claimant or applicant contained in NYS DOL / OMH Employment Support System so that I may participate in NYS DOL / OMH Employment Support System.”

If you check the “I DENY CONSENT” box below, you are saying “I do not consent to have information related to the providers of employment services with whom I am working, as well as my employment history, included in the “NYS DOL / OMH Employment Support System. 1. I have been given a copy of the Fact Sheet, “*What You Should Know About NYS’* NYS DOL / OMH Employment Support System” and I have been provided an opportunity to discuss any issues or concerns regarding the “NYS DOL / OMH Employment Support System”.

- Yes
- No

2. Consent:

- I GIVE CONSENT to have information concerning all providers of employment services with whom I am working, as well as my employment history, included in the “NYS DOL / OMH Employment Support System”. Only employment service providers who are directly involved in my care and who are legally authorized to view individual employment-related support service information will have access to such information. I ALSO GIVE CONSENT to the New York State Department of Labor to disclose to users of the NYS DOL / OMH Employment Support System any information regarding my status as an unemployment insurance claimant or applicant contained in NYS DOL / OMH Employment Support System so that I may participate in NYS DOL / OMH Employment Support System.
- I DENY CONSENT to have information related to the providers of employment services with whom I am working, as well as my employment history, included in the “NYS DOL / OMH Employment Support System.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Patient or Patient’s Legal Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Legal Representative (if applicable)

Relationship of Legal Representative to Patient (if applicable)

\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Witness

**Identity Validation**

I, \_\_\_\_\_, employed  
by \_\_\_\_\_, in the following capacity,  
\_\_\_\_\_, attest  
under penalty of perjury, that I have followed the following procedures in verifying the  
identity of the individual who signed the CONSENT FORM and that I can say with  
certainty that the signer is the individual identified in the CONSENT FORM. I verified the  
identity of the individual in accordance with the following protocol:

- I verified the identity of the patient via NYS-issued Driver’s License or Non-Driver ID by: (i) verifying the likeness of the patient to the picture on the ID; (ii) watching the patient sign the informed consent form; (iii) verifying the patient’s signature by comparing it with the one on the ID; and (iv) determining that both the picture and the signature on the ID match those of the patient.
  
- I verified the identity of the patient by reviewing the information provided upon the patient’s admission from the various different sources available and determining that there is enough validated information to positively identify the potential patient as the individual he/she represents him/herself to be.

I verified the identity of the legal representative via NYS-issued Driver’s License or Non-Driver ID by: (i) verifying the likeness of the legal representative to the picture on the ID; (ii) watching the legal representative sign the informed consent form; (iii) verifying the legal representative’s signature by comparing it with the one on the ID; and (iv) determining that both the picture and the signature on the ID match those of the legal representative. I further verified the right of the legal representative to sign the CONSENT FORM

If I am found guilty of perjury (NYS PEN Law §210.05), I understand that it is punishable as a class A misdemeanor and carries a sentence of imprisonment for up to one year (NYS PEN Law §70.15), and a fine up to \$1,000 (NYS PEN Law §80.05).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

## EXHIBIT I

### Identity Verification Procedure

OMH shall require its Employees and the Employees of Authorized Agencies (collectively “Employees”), to obtain signed informed consent forms, acceptable to the DOL/OMH Joint Management Committee from their respective clients or, where applicable, the client’s legal representative, that authorize DOL to disclose to such Employees any unemployment insurance information pertaining to the client that may reside in the NYS DOL / OMH Employment Support System in connection with the client’s receipt of employment services from OMH, or one of the Authorized Agencies. The identity of the client and, where applicable, the legal representative executing such informed consent forms shall be subject to verification in accordance with the procedure set forth below.

#### Identification of Clients in the NYS DOL / OMH Employment Support System

##### Valid government-issued identification

Employees must first request that their respective clients provide a valid Government - issued identification (i.e. Government Issued Driver’s License or Non-Driver ID containing both a photograph of the client and the client’s signature). If the client is unable to provide such valid Government-issued identification, Employees must utilize the accepted state practices for verifying identification (enumerated below) to verify the client’s identity. Employment support staff with access to the NYS DOL / OMH Employment Support System and working with a client must attest on the informed consent form that they have verified the identity of the client either via a valid Government-issued Driver’s License or Non-Driver ID, or via the accepted state practices (see protocol below).

Support staff verifying the identity of a client via Government-issued Driver’s License or Non-Driver ID must: (i) verify the likeness of the client to the picture on the ID; (ii) watch the individual sign the informed consent form; (iii) verify the client’s signature by comparing it with the one on the ID; and (iv) determine whether both the picture and the signature on the ID match those of the client. If the determination is yes, the support staff shall attest on the informed consent form that he/she verified the client’s identity by following this protocol.

##### State Practices to Verify Client Identity (no valid Government-issued identification)

Currently, OMH, Authorized Agencies and disability providing agencies licensed or operated by NYS, take a number of steps to identify, verify identification, and ensure payment for treatment/services rendered to clients. Typically, upon admission to a program/service/treatment, these agencies gather information related to a potential client’s: age, marital status, relatives, dependents, Social Security number, veteran status, citizenship, etc. Such information is typically gathered from: admission forms, interviews with the individual client, interviews with relative(s) and/or friend(s), and contacts with members of a client’s current or previous treatment teams. The agencies

then verify identifying information using a number of different sources, such as: records from services previously provided, prior admission records, the NYS Department of Health's Medicaid Management Information System, the Social Security Administration, the National Government Service's Medicare contracting system, treatment team members from services previously rendered, and financial questionnaires completed. Upon completing a review of the information provided upon admission from the various different sources available to them, OMH, Authorized Agency or disability providing agency employment support staff with access to the NYS DOL / OMH Employment Support System and working with the client must then make a determination if there is enough validated information to positively identify the potential client as the individual he/she represents him/herself to be.

The employment support staff must then attest on the informed consent form that he/she verified the client's identity using said information.

#### Identification of Legal Representative

Where a client's legal representative requests to sign an informed consent form on behalf of the client, employment support staff with access to the NYS DOL / OMH Employment Support System and working with a client must also verify the identity of the legal representative using a valid Government-issued identification (i.e. Government issued Driver's License or Non-Driver ID containing both a photograph of the representative and the representative's signature).

Support staff verifying the identity of a legal representative via Government-issued Driver's License or Non-Driver ID must: (i) verify the likeness of the legal representative to the picture on the ID; (ii) watch the individual sign the informed consent form; (iii) verify the legal representative's signature by comparing it with the one on the ID; and (iv) determine whether both the picture and the signature on the ID match those of the legal representative. If the determination is yes, the support staff shall attest on the informed consent form that he/she verified the legal representative's identity by following this protocol.

Employment support staff must also verify the right of the legal representative to act on the client's behalf through appropriate documentation (e.g., guardianship papers).