

CONFIDENTIALITY AGREEMENT

Between

*****, with offices at *****, hereinafter referred to as “the Researcher,” and the **New York State Office of Children and Family Services**, having an address of 52 Washington Street, Rensselaer, New York 12144, hereinafter referred to as “OCFS.”

Witnesseth

WHEREAS, the Researcher is conducting a research study entitled “The NYSCB Comprehensive Needs Assessment,” hereinafter referred to as “the Evaluation;”

WHEREAS, the goal of the proposed Evaluation is identification of specific areas in need for improvement within the vocational rehabilitation services and supports, program practices, and policies of the unit within OCFS entitled the “New York State Commission for the Blind” (NYSCB), as mandated by Federal Rehabilitation Services Administration (RSA) regulations;

WHEREAS, the Evaluation involves conducting various research studies some of which will involve surveys and/or focus group discussions with NYSCB participants (proposed subjects) over the contract term;

WHEREAS, OCFS agrees to provide information about the Evaluation to consumers of the NYSCB who meet the eligibility criteria, who will directly contact the Researcher if they are interested in participating in the Evaluation;

WHEREAS, the Researcher will not be receiving confidential information directly from OCFS for this Evaluation;

WHEREAS, the Researcher will obtain the proposed subject’s consent to participate in the Evaluation prior to commencing the Evaluation; and

WHEREAS, the Researcher agrees that this Confidentiality Agreement pertains only to the Evaluation; and

WHEREAS, the Researcher acknowledges and agrees further OCFS approval will need to be obtained for any larger-scale multi-agency evaluation that may be developed based on the findings from the Evaluation;

WHEREAS, the Researcher has obtained all approvals and consents necessary, and as required by law, including an Institutional Review Board approval of the Evaluation, to proceed with the Evaluation;

NOW, THEREFORE, in consideration of the promises, responsibilities and covenants contained herein, OCFS and the Researcher agree as follows:

INFORMED CONSENT

(1) Proposed subjects will be advised of the opportunity to participate in the Evaluation.

Subjects are free to withdraw their consent at any time and/or to refuse to answer any or all questions. The Researcher or research employees will review the purpose of the Evaluation, procedures, and steps to preserve confidentiality and potential benefits and risks of participation with each potential participant (or group of potential participants). Proposed subjects will also be advised that the Researcher shall re-disclose confidential information as provided by law including that the Researcher shall report such information as a suicide threat or threat of harm to others, and that all allegations of suspected child abuse or maltreatment are required to be reported to the Statewide Central Register of Child Abuse and Maltreatment (SCR). Subjects willing to participate in the Evaluation must give their informed consent in writing prior to the commencement of data collection (a copy of which is annexed hereto as Appendix "A") and, if under age 18, assent to the Researcher contacting the youth's parent or legal guardian to obtain the parent or legal guardian's prior written consent unless the Researcher's Institutional Review Board (IRB) has approved a waiver of parental consent, in which case, written assent of the youth is still required to be obtained by the Researcher.

EVALUATION PROCEDURES

(2) The Researcher shall conduct the Evaluation by the method and procedures set forth in the Researcher's research protocol (a copy of which is annexed hereto and marked as Appendix "B"). The Researcher shall comply with all of the terms and conditions of this confidentiality agreement ("Agreement") and of the approval of OCFS contained in the letter of approval of the Researcher's research proposal. The Researcher may only use the subject data in a manner and for a purpose consistent with the purpose for which the data was supplied and as stated in the research protocol. With respect to any conflict between the research protocol and this Agreement, the provisions of the OCFS approval letter and this Agreement shall control.

CONFIDENTIALITY

(3) The Researcher agrees:

- a. To use the confidential information or data furnished hereunder only for the Evaluation purposes described in the research protocol and herein;
- b. To replace any identifying information, including but not limited to the name, address and social security number, of any individual with an alphanumeric or other appropriate code for the purpose of any draft or final monograph or report;
- c. To request and/or collect only such information as is necessary to perform the Evaluation;
- d. To retain such confidential information or data only so long as may be necessary to effectuate the purposes of the Evaluation described in the research protocol and herein; and
- e. That secondary dissemination of information by the Researcher that would reasonably identify an individual is prohibited.

- (4) The Researcher will protect the confidential nature of all information or data included in any material provided to or collected by the Researcher. For the purpose of this Agreement, confidential information or data includes, but is not limited to: personal or client-identifiable information, client-specific information, verbal, written and electronic information or other system-generated and maintained client-specific information relating to children who are in foster care or who are in juvenile detention centers, data obtained from foster parents, juvenile justice services, child protective services, preventive services, foster care, and/or adoption services whether or not client identifiers have been removed from the information.
- (5) The Researcher will ensure that the names and other data that may reasonably identify participants in the Evaluation or their families will not appear in any draft or final monograph or report.
- (6) The Researcher agrees to store all confidential information or data that it receives under this Agreement in secure, locked containers and/or in a secure computer system. Where data is transmitted and/or stored on a computer or other electronic media, the Researcher must have and comply with an appropriate computer security policy that protects confidential information or data from unauthorized disclosure. The computer security policy must include provisions that address the physical security of computer resources; equipment security to protect equipment from theft and unauthorized use; software and data security; and access control. Any access to the data, wherever stored, must be limited to research personnel with an official business need. Responsibility for computer security must be assigned to a specific individual or organization and the assignment must be documented.

(7) The Researcher, to the extent applicable, shall adhere to the minimum standards identified in the New York State Office of Information Technology Services' Information Security Policy [NYS-P03-002](#). The Researcher agrees that the applicable provisions of the Information Security Policy P03-002, may be amended or supplemented at any time during the course of this agreement and/or OCFS may adopt additional security standards regarding the transmission, storage and disposition of confidential information or data and that the Researcher shall abide by all applicable provisions of such documents as amended or supplemented within seven days of OCFS sending written notice of such amendment, supplement or additional policy. In the event that the Researcher objects to complying with the requirements specified in the amended, supplemented or additional document or documents, upon notice to OCFS, the Researcher may terminate this Agreement, or OCFS may unilaterally elect to terminate this Agreement for noncompliance. The Researcher must upon such termination comply with the requirements of sections (11) and (12) of this Agreement regarding return or destruction of all confidential information.

(8) The Researcher agrees to comply with applicable federal and State statutes and regulations relating to the maintenance and dissemination of client-identifiable information or data, including but not limited to, sections 372, 422, 444, 459-h, 473-e of the Social Services Law; section 501- c of the Executive Law, Article 27-F of the Public Health Law; Title 18 of the New York Code of Rules and Regulations (NYCRR) sections 357.3, 423.7, 431.7, 432.7, 452.10, 457.16 and 465.1; and Title 9 NYCRR section 168.7.

(9) The Researcher agrees to require all of its employees, volunteers and staff to sign the confidentiality statement, (a copy of which is attached hereto as Appendix "C"), before

such employees, volunteers and/or staff are permitted access to confidential information, data or client-specific information provided under this Agreement.

(10)

- a) Researcher agrees not to proceed without confirming the following processes have been completed as required under section 424-a of the Social Services Law (SSL) and section 495 of the SSL.
- b) If the Researcher and any staff or volunteers of the Researcher are an employee, volunteer, consultant or contractor of a Local Department of Social Services (“LDSS”), or a Voluntary Authorized Agency (VA), and will have the potential for regular and substantial contact with youth in residential care or youth cared for by a licensing or provider agency as the terms are defined in section 424-a of the SSL, then that person must be subject to a background check to determine if the person has a history of abusing or maltreating children, or abusing or neglecting vulnerable persons. Until such background checks are concluded, the Researcher, staff or volunteer’s contact with such children *must be* supervised contact.
 - (i) For the purposes of this agreement, “supervised contact” means line-of-sight supervision by a person for whom the background check requirement has already been completed.
 - (ii) All researchers, staff or volunteers must be informed of this requirement prior to employment with the Researcher or as soon as practicable after the Researcher learns of this requirement.
- c) If the researcher is *not* an employee, volunteer, consultant or contractor to OCFS, LDSS or VA, then the determination of whether the researcher should have any contact with children other than supervised contact, must be made by the agency or person with custody of the child.

d) If the researcher is an employee, volunteer, consultant or contractor of a LDSS or a VA then:

(i) the LDSS or the VA must submit a database check to the Statewide Central Register of Child Abuse and Maltreatment (“SCR”) in accordance with Social Services Law (SSL) section 424-a, for every researcher with potential for regular and substantial contact with children cared for by that agency; and

(ii) the LDSS or the VA must submit a Staff Exclusion List (SEL) check to the Vulnerable Persons Central Register maintained by the Justice Center for the Protection of People with Special Needs in accordance with section 495 of the SSL for every researcher with potential for regular and substantial contact with children cared for by that agency to determine whether the individual is the subject of an substantiated finding of abuse or neglect that is listed as a Category 1 finding.

(iii) If the individual is found to be the subject of an indicated report of child abuse or maltreatment, the LDSS or VA must determine, based on information it has available and in accordance with guidelines developed and disseminated by the OCFS, whether to allow the person to have access to children served by the agency. The LDSS or VA must document the specific reason(s) why such person was determined to be appropriate and acceptable to have such access to children being served by the agency. Should the individual be the subject of a Category 1 finding of abuse or neglect and listed on the SEL, the individual will not be permitted to provide services to youth.

(11) The Researcher agrees, at the request of OCFS, at the conclusion or termination of this agreement, or at an earlier date set forth by OCFS, to: (i) cease using all confidential information provided under this agreement; (ii) return or destroy all confidential information, except for executed consents and such records necessary to disclose fully the receipt and disposition of confidential information or data and compliance with the data storage, security and other requirements in this agreement, provided in any form (whether electronic or otherwise) by OCFS; and (iii) certify in writing that the Researcher has complied with the obligations set forth in this section and section (12) of this Agreement.

(12) As used in this Agreement, the return or complete destruction of confidential information or data includes the complete purging of all confidential information from all computers and back up media storage by the Researcher which must include the following:

- a) The acceptable destruction of removable storage media containing confidential information which is by physically shredding the media or by forensically wiping media with Department of Defense approved computer software. Removable storage media includes, but is not limited to, hard disk drives, CD-R, CD-RW, DVDs, floppy disks, zip disks and tapes. Hard copies (paper) containing confidential information must be shredded using a crosscut or confetti shredder.
- b) All methods of destruction must comply with the current New York State Office of Information Technology Services' [NYS-S13-003](#), Sanitization / Secure Disposal Standard. It is the Researcher's responsibility to be aware of existing sanitization standards, and to check for updated standards, prior to disposal.
- c) The Researcher is required to track and verify the sanitization process and may also be required to audit the forensic wiping procedure.

MISCELLANEOUS

(13) The Researcher shall not publish and/or disseminate the Evaluation, any part of the Evaluation or any results of the Evaluation without the prior review and written approval of OCFS. The Researcher agrees that the prior review and written approval of OCFS is necessary in order for OCFS to determine compliance by the Researcher with the provisions of this Agreement and the research proposal.

(14) The Researcher acknowledges that, in the event that the Researcher's employees, volunteers or staff fail to comply with the terms of this Agreement or the confidentiality statement, OCFS may cease to provide the Researcher and/or the Researcher's employees, volunteers or staff with access to confidential information and data and may demand the return of all confidential information or data previously furnished pursuant to this Agreement and take such other action as it deems appropriate.

(15) If the Researcher provides any employee, volunteer or staff with access to confidential information or data to include "client-identifiable information," it is prohibited from allowing such employee, volunteer or staff to re-disclose such data. The Researcher must explicitly identify each employee, volunteer or staff that is provided access to confidential or client-identifiable information.

(16) The Researcher shall comply with the provisions of the Internet Security Breach and Notification Act (New York State Technology Law § 208). In addition, the Researcher shall promptly notify OCFS where there is reasonable belief of a breach of security, unauthorized access or unauthorized release of personal computer data containing provided personal information regardless of whether or not notification is required under the Internet Security Breach and Notification Act. The Researcher shall be responsible

for any costs and expenses incurred, including any costs and expenses of OCFS, to comply with the notification requirements under the Internet Security Breach and Notification Act or any other notification required by law.

(17) The Researcher agrees that if they or any of their employees, volunteers or staff or agents breaches, or threatens to breach this Agreement or the confidentiality statement referenced in paragraph (9) of this Agreement, in addition to having any engagement terminated, OCFS shall have all equitable and legal rights, including the right to obtain injunctive relief, to prevent such breach and/or to be fully compensated including but not limited to reasonable attorneys' fees for losses or damages resulting from such breach. The Researcher acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the confidential information. The Researcher further understands and agrees that the confidentiality and security obligations of this Agreement shall survive any term of this agreement, and the Researcher will abide by the terms of the confidentiality and security obligations of this Agreement in perpetuity.

(18) The Researcher agrees to permit all reasonable on-site inspections and audits by OCFS and agrees to keep records necessary to disclose fully the receipt and disposition of confidential information or data and compliance with the data storage, security and other requirements in this Agreement. The OCFS Information Security Officer (ISO) shall make all determinations as to whether the Researcher is in compliance with the applicable standards of Information Security Policy P03-002. Unless OCFS shall advise the Researcher of a longer retention period, the Researcher shall retain the executed consents and such records necessary to disclose fully the receipt and disposition of confidential information or data and compliance with the data storage, security and other

requirements in this Agreement for a period of six years after the termination of this Agreement. At the end of six years after the termination of this Agreement or, where after the six years such records are required for pending litigation, upon the termination of such litigation, the Researcher shall destroy the retained executed consents and other records regarding the receipt and disposition of confidential information or data to include client-identifiable information (whether electronic or otherwise), and certify in writing that the Researcher has complied with the obligations set forth in this section. The return or destruction of all confidential information by the Researcher must include the complete purging of all confidential information from all computers and back up media storage as provided in paragraph (12) of this agreement.

(19) The Researcher shall indemnify and hold harmless OCFS and the State of New York from any and all claims, suits, damages and causes of action arising out of or in any way related to the Evaluation, including but not limited to unauthorized disclosure of any confidential information received hereunder.

(20) The Researcher agrees that it shall not assign its obligations under this Agreement, or any part of its interest in this agreement, without first obtaining the written consent of OCFS. Any assignment made without the written consent of OCFS shall be null and void.

(21) The terms of this Agreement shall commence upon execution by the parties hereto and shall terminate on five years from the date of this agreement, provided, however, that the Researcher's confidentiality obligations and obligations under sections (13), (14), (15), (16), (17), (18), (19) and (20) of this Agreement shall survive the termination or expiration of this agreement.

New York State Office of Children and Family Services

By: _____ Date: _____
Name:
Title:

CONTRACTOR NAME HERE

By: _____ Date: _____
Name:
Title: