CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT

With regard to my work with _____(Requestor)

I, _____ am:
(INDIVIDUAL's name)

☐ an employee of Requestor
☐ a volunteer with Requestor
☐ a contractor of Requestor
☐ an employee of a contractor of Requestor
☐ a volunteer with a contractor of Requestor
☐ a subcontractor to a contractor of Requestor
☐ an employee of a subcontractor to Requestor
☐ a volunteer with a subcontractor to Requestor

and;

A. Access or Exposure Protected Information In General

I understand that as part of performing my duties as an employee, volunteer, contractor or subcontractor I may have access to, see or hear "Protected Information," which, for purposes of this agreement, shall include, but not be limited to:

1. Data or information obtained from sources outside of OTDA, such as Federal Tax Information (FTI); Federal Parent Locator Services (FPLS) information; Unemployment Insurance Benefit (UIB) information; Social Security Administration (SSA) information; and, Medicaid (MA) information.

2. Data or information maintained in and/or obtained from OTDA-owned applications, systems, networks and/or databases, including but not limited to: Welfare Management System (WMS); Child Support Management System (CSMS); Automated State Support Enforcement and Tracking System (ASSETS); Benefits Issuance Control System (BICS); Cognos; Computer Output to Laser Disk (COLD) report system; and/or the Commissioner's Dashboard.

3. Data or information identifying an individual, particularly where such disclosure could result in an unwarranted invasion of personal privacy. Such data or information may include, but is not limited to: home addresses; telephone numbers; Social Security numbers; client identification numbers; payroll information; financial information; health information; and/or, eligibility and benefit information;

4. Computer codes or other electronic or non-electronic data or information, the disclosure of which could jeopardize the compliance stature, security or confidentiality of OTDA's information technology solutions, applications, systems, networks or data;

5. Non-final OTDA policy or deliberative data or information related to the official business of OTDA;

6. Data or information which is not otherwise required to be disclosed under the NYS Freedom of Information Law;

7. Any other material designated by OTDA as being "Confidential," "Personal," "Private" or otherwise "Sensitive."

I acknowledge and agree that all Protected Information (oral, visual or written, including both paper and electronic) which I see or to which I have access shall be treated as strictly confidential and shall not be released, copied or otherwise re-disclosed, in whole or in part, unless expressly authorized by the New York State Office of Temporary and Disability Assistance (OTDA).

I understand and agree that access to and the use of Protected Information obtained in the performance of my duties shall be limited to purposes directly connected with such duties, unless otherwise provided in writing by OTDA. When access to such information or data also results in access to Protected Information or data beyond that which is necessary for the purpose for which access was granted, I agree to access only that Protected Information needed for the purpose for which access was given.

When I no longer require the use of or access to such Protected Information, whether because of termination of employment, reassignment of job duties or otherwise, I agree that I will not access or attempt to access any Protected Information, including, but not limited to any Protected Information in State systems or other sources, to which I have been given access. I will return any and all reports, notes, memoranda, notebooks, drawings, data and other Protected Information developed, received, compiled by or delivered to me in order to carry out my functions or which may be in my possession, regardless of the source of the Protected Information. Any Protected Information not returned will be catalogued, and thereafter securely scrubbed, shredded, or otherwise disposed of in accordance with New York State EISO policies [http://www.its.ny.gov/tables/technologypolicyindex].

I understand that federal and State law and regulation prohibit the release or disclosure of such Protected Information, in whole or part. I acknowledge and hereby agree that I will not copy, re-disclose or otherwise share Protected Information in whole or in part in any form to anyone unless I am expressly directed to do so by my supervisor and such disclosure complies with applicable federal and State law and regulation. I further understand that if I am unsure as to what information is confidential, I will immediately, and prior to any such access, use, or re-disclosure, consult with OTDA or my supervisor.

I will safeguard, and will not disclose to unauthorized parties, any user name and/or password that may be issued to me in furtherance of my access to the Protected Information unless authorized. I understand that my access to Protected Information may be revoked at any time if my responsibilities change, or for any other reason at the discretion and direction of OTDA, or my supervisor. Further, I will not facilitate access or disclosure of Protected Information to any unauthorized person or entity, whether by knowingly providing my user name and/or password or otherwise.

I will comply with all applicable Federal and State confidentiality, record security, compliance and retention laws, regulations, policies and procedures.

I will immediately report to my supervisor any activities by any individual or entity that I have reason to believe may compromise the availability, integrity, security or privacy of the Protected Information. I will immediately notify OTDA and my supervisor of any request for Protected Information that does not come from an individual directly involved in the project.

I agree not to attach or load any hardware or software to or into any State or Requestor equipment unless properly authorized, in writing, to do so by OTDA. I will use only my access rights to, and will access only those systems, directories, and Protected Information authorized for my use by OTDA.

I will not use OTDA telecommunications, Internet, E-mail or other services or equipment for any illegal, disruptive, unethical or unprofessional activities, for personal gain, or for any purpose that could jeopardize the legitimate interests of the State or expose some or all Protected Information.

I agree not to knowingly take any actions that may intrude upon, disrupt or deny OTDA or Requestor services or the flow of any Protected Information.

I agree to store any Protected Information received in secure, locked containers or, where stored on a computer or other electronic media, in accordance with state and federal law and regulation, as well as OTDA's and New York State Office of Information Technology Services' (ITS) security policies that protects Protected Information from unauthorized disclosure.

I agree that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding this Agreement or any Protected Information shall be disseminated in any way to the public, nor shall any presentation be given regarding this Agreement without the prior written approval of OTDA.

B. Access or Exposure to Information With Heightened Obligations:

I. Child Support Information

1. I acknowledge that, through attendance at a training program provided or approved by OTDA, I have been advised of the laws, regulations, policies, and rules governing use and disclosure of child support information, including federal information (as defined below) and agree to follow the same.

2. I will not access child support information on any system maintained by New York State for any purpose other than those permitted by law, including:

    - Actions necessary to establish paternity, establish, modify or enforce orders of child support or combined orders of child and spousal support.
    - The administration of the child support program, including data and systems management.
    - Verifying child support or combined child and spousal support payments to persons in Medicaid (MA), Temporary Aid to Needy Families (TANF) or Supplemental Nutrition

Assistance Program (SNAP) households as part of an eligibility determination or recertification;
- Obtaining information about child support orders and combined orders of child and spousal support for the purpose of administering the MA, TANF or SNAP program.
- Investigation of fraud in the MA, TANF, or SNAP program.

3. I will not access any cases, accounts, files or screens except those necessary to perform my duties.

4. I understand that all child support information I have access to, whether in paper, electronic, or other format is confidential and may not be used or disclosed for any other purpose, or be released to any party, without prior written consent of the OTDA Division of Child Support Enforcement or (if employed by a social services district) the Coordinator of the child support unit of the social services district where I am employed, or the designee of either.

5. I understand that any access, use, or disclosure for any unauthorized purpose without prior written consent as set forth in paragraph 4 shall constitute a breach of confidentiality and may result in disciplinary proceeding, criminal charges, and/or civil liability.

NOTICE: Pursuant to Social Services Law 111-v, any person who willfully discloses or permits disclosure or release of Confidential Information obtained hereunder shall be guilty of a class A misdemeanor and shall be liable to any person who incurs damages due to said disclosure in a civil action.

II. Federal Information

1. For the purposes of this Agreement, "federal information" shall mean all information obtained through the Federal Parent Locator System (FPLS), including National Directory of New Hires (NDNH), and the Federal Case Registry (FCR). The FPLS is an automated national information system which locates employment, income, asset and home address information on parents in child support cases. The NDNH contains new hire (W-4), quarterly wage (QW) and unemployment insurance (UI) information on employees in both the public and private sector. The FCR collects and maintains records provided by state child support agency registries, which include abstracts of support orders and information from child support cases. This information must be safeguarded as required by state and federal rules whether in transmission or at rest, and in both electronic and paper form. Federal information must be protected from improper disclosure in accordance with state and federal rules regardless of where it is stored or displayed, including the Automated State Support Enforcement and Tracking System (ASSETS), the Child Support Management System (CSMS), and Computer Output to Laser Disk (COLD), or a local system. Federal information that has been independently verified is no longer federal information, but remains child support information subject to Section I, above.

2. I will not access federal information for any purpose other than those permitted by law, including:

    - Actions necessary to establish paternity, establish, modify or enforce order of child support or combined orders of child and spousal support.

- The administration of the child support program.
- Information obtained from the NDNH or FCR may be disclosed to agencies administering plans or programs under titles IV-A, IV-B, IV-D and IV-E of the federal Social Security Act for the purpose of assisting that program to carry out its responsibilities of administering title IV-A, IV-B, IV-D and IV-E programs.
- Certain location and employment information from the FPLS may be disclosed to locate an individual for the purposes of establishing parentage or relative foster care under titles IV-B or IV-E of the federal social security act.

3. I acknowledge that paragraphs three through five in Section B, I above, apply to use, disclosure and safeguarding of federal information.

III. Federal Tax Return Information

I have read the quoted provisions of Section 6103, 7213, 7213A and 7431 of the Internal Revenue Code contained in Attachment B of this Agreement and I understand that Section 6103 of the Internal Revenue Code imposes strict confidentiality requirements on child support enforcement personnel who have or have had access to federal tax returns or return information and that Sections 7213, 7213A and 7431 of the Internal Revenue Code impose criminal and civil penalties for unauthorized inspection or disclosure of any tax return or return information. I further understand that:

1. All tax returns and return information which the Internal Revenue Service discloses to state and local child support enforcement agencies are confidential under the terms of Section 6103(a) of the Internal Revenue Code, and may not be disclosed by any officer or employee of any state or local child support enforcement agency or other person except as authorized by Internal Revenue Code;

2. All tax returns or return information which the Internal Revenue Service discloses to state and local child support enforcement agencies may be used only for purposes of and to the extent necessary in establishing and collecting child support obligations from, and locating, individuals owing such obligations;

3. Willful unauthorized inspection or disclosure of a tax return or return information by an officer or employee of a state or local child support enforcement agency or other employees is unlawful under the terms of Section 7213 and 7213A of the Internal Revenue Code and punishable as a felony by a fine in any amount not exceeding $5,000 or imprisonment of not more than five (5) years, or both, together with the costs of prosecution. Willful unauthorized inspection of a tax return or return information is punishable by a fine of up to $1,000 and/or imprisonment of up to one year, together with the costs of prosecution;

4. Under the terms of Section 7431 of the Internal Revenue Code, a taxpayer may bring a civil lawsuit to recover actual and punitive damages from an officer or employee of a state or local child support enforcement agency or other person who has disclosed, whether knowingly or by reason of negligence, such taxpayer's tax return or return information in violation of the provisions of Section 6103 of the Internal Revenue Code; and

5. The civil and criminal penalties apply even if the unauthorized disclosures were made after employment has ceased with the child support agency, agents or contractors.

I understand and agree that the terms of this Agreement shall continue even when I am no longer an OTDA or Requestor employee, contractor, subcontractor, or volunteer and that I will abide by the terms of this Agreement in perpetuity.

I understand that failure to comply with these requirements may result in disciplinary action, termination, civil action and/or criminal prosecution, as well as any other penalties provided by law.

This Agreement shall be governed by the laws of the State of New York, unless otherwise required by Federal law.

_____

(INDIVIDUAL's Signature)

_____

(INDIVIDUAL's Printed Name)

_____

(Entity of which INDIVIDUAL is an employee, subcontractor or volunteer)

_____

(Date)

ATTACHMENT A

Legal and Regulatory References

The Federal and State statutory, regulatory and policy requirements related to information security, confidentiality, privacy and compliance include, but are not limited to, the following, as amended:

Child Support

- General rules: 42 U.S.C. § 654(26); 45 C.F.R. § 303.21; SSL § 111-v; 18 NYCRR 346.1(e), 347.19
- Child Support Systems data: 42 U.S.C. § 654a, (d); 45 C.F.R. § 307.13; SSL § 111-v
- Domestic Violence Indicators: 42 U.S.C. § 653(b)(2); 42 U.S.C. § 654(26)(e); SSL § 111-v
- Federal and State Case Registry: 42 U.S.C. §§ 653(h), (m); 42 U.S.C. § 654a(e)
- Federal Parent Locator Service/State Parent Locator Service: 42 U.S.C. §§ 653(b), (l), (m); 42 U.S.C. § 654(8); 42 U.S.C. § 663; SSL § 111-b(4)
- Financial Institution records: 42 U.S.C. § 666(a)(17); 42 U.S.C. § 669a(b); SSL § 111-o
- Government Agency and Private records: 42 U.S.C. § 666(c)(1)(D); SSL § 111-s
- IRS and State Tax Information: 26 U.S.C. § 6103(p)(4)(C); 26 U.S.C. §§ 6103(l)(6), (8); 26 U.S.C. § 6103(l)(10)(B); NY Tax Law §§ 697(e)(3), 1825; SSL § 111-b(13)(b); See also IRS Publication 1075: Tax Information Security Guidelines for Federal, State, and Local Agencies, available at https://www.irs.gov/pub/irs-pdf/p1075.pdf
- The most current Corrective Action Plan, and any updates, prepared in response to the most recent IRS Security Review Report, and any future IRS Security Review Reports
- The most current Security Agreement, Security Addendum and attached Plan of Actions and Milestones, and any amendments, executed by OTDA and ITS
- New Hires Data: 42 U.S.C. § 653(i); 42 U.S.C. § 653a(h); SSL § 111-m

Public Assistance

- Fair Hearing Records: 45 C.F.R. § 205.10(a)(19); 18 NYCRR 358-3.7; 18 NYCRR 358-4.3; 18 NYCRR 358-5.11(b); 18 NYCRR 387.2(j)
- General rules: 42 USC § 602(a)(1)(A)(iv); 45 C.F.R. 205.50, SSL §§ 20(3)(h) and (i) and 136; 18 NYCRR Part 357 & § 358–5.11; 2018 - 2020 TANF State Plan (https://otda.ny.gov/policy/tanf/TANF2015.pdf)
- IRS and State Tax Information: 26 U.S.C. § 6103; SSL § 23; 136-a(2); NY Tax Law § 697(e)(3); See also IRS Publication 1075: Tax Information Security Guidelines for Federal, State, and Local Agencies, available at https://www.irs.gov/pub/irs-pdf/p1075.pdf
- Welfare Management System (WMS) data: SSL §§ 21(2)-(5)
- Income and Eligibility Verification System (IEVS): 42 USC §§ 1320 b-7 (a)(4) & (5), (c)
- Substance Abuse Confidentiality: 42 U.S.C. § 290 dd-2
- Mental Health Confidentiality: Mental Hygiene Law § 33.13
- Unemployment Insurance Benefits (UIB): 42 U.S.C. § 1320-b7; 20 CFR § 603; NYS Labor Law § 537
- Domestic Violence Residential and Non-Residential Programs: 18 NYCRR §§ 452.10 and 462.9

Home Energy Assistance Program (HEAP)

- General Rules: 2016-2017 HEAP State Plan, Section 17.6

Supplemental Security Income (SSI) Additional State Payments

- Confidentiality: 18 NYCRR §§ 398-13.1 through 13.4
- File Retention: 18 NYCRR § 398-14.1

Medical Assistance

- General rules: 42 U.S.C. § 1396a (a)(7), amended by Pub. L. No. 113-67, 127 Stat. 1165 (2013); 42 C.F.R. § 431.300 et seq.; SSL §§ 136, 367-b(4), 369(4); 18 NYCRR 357.1 – 357.6; 18 NYCRR 360-8; Public Health Law § 2782 (AIDS information)
- HIPAA regulations: 45 C.F.R. pt. 160; 45 C.F.R. pt. 164

Supplemental Nutrition Assistance Program (SNAP)

- General Rules: 7 U.S.C. § 2020(e)(8); 7 C.F.R. § 272.1(c); 7 C.F.R. § 278.1(q); 18 NYCRR 387.2(j)

Shelters for Adults

- Personal, social, financial and medical records: 18 NYCRR§ 491.7(d)(8);
- Records and reports: 18 NYCRR 485.11(f); 18 NYCRR 491.14(f)

Shelters for Families with Children

- Personal, social, financial and medical records. 18 NYCRR 900.9(c)(9);
- Confidentiality of HIV and AIDS related information: 18 NYCRR 900.19

General Information Security, Confidentiality, Privacy and Compliance

- Security and Privacy Controls for Federal Information Systems and Organizations: NIST Special Publication 800-53 Revision 4 and Revision 5, available at https://csrc.nist.gov/publications/sp
- Digital Identity Guidelines: NIST Special Publication 800-63 Revision 3; NIST Special Publication 800-63A, available at https://csrc.nist.gov/publications/sp
- Contingency Planning Standard: NIST Special Publication 800-34 Revision 1, available at https://csrc.nist.gov/publications/sp
- Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations: NIST Special Publication 800-171 Revision 1, available at https://csrc.nist.gov/publications/sp
- Safeguarding SSA Provided Electronic Information: The most current Social Security Administration Technical System Security Requirements (TSSR) (synonymous with the Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information with The Social Security Administration)

Other Statutes and Policies

- Criminal Offenses involving Computers (including governmental and personal records): NY Penal Law art. 156
- Freedom of Information Law: NYS Public Officers Law, Article 6, §§ 84 – 90
- Security Breach and Notification Act: State Technology Law §§ 201-208; NYS General Business Law § 899-aa
- Personal Privacy Protection Law: NYS Public Officers Law, Article 6-A, §§ 91 – 99
- State Archives and Records Administration: Arts and Cultural Affairs Law §§ 57.05 and 57.25
- New York State Information Technology Policies, Standards, and Guidelines: https://its.ny.gov/tables/technologypolicyindex

ATTACHMENT B

Internal Revenue Code (IRC) Section 6103(l)(6) provides:

> The Secretary of Health and Human Services shall disclose return information to State and local child support enforcement agencies only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

IRC Section 6103 imposes strict confidentiality requirements on child support enforcement personnel who have access to federal tax returns or return information. IRC Section 6103(a) provides: Returns and return information shall be confidential, and except as authorized by this title:

> (1) no officer or employee of the United States,
>
> (2) no officer or employee of any State or of any local child support enforcement agency who has or had access to returns or return information under this section, and
>
> (3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), subsection (k)(10), paragraph (6), (10), (12), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),
>
> shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

IRC Sections 7213, 7213A and 7431 impose criminal and civil penalties for unauthorized disclosure or inspection of any tax return or return information:

Criminal Penalty - Section 7213(a)(2), provides that an unauthorized disclosure of return or return information shall be a felony punishable by up to 5 years imprisonment and $5,000 fine:

> (2) State and other employees - It shall be unlawful for any officer, employee, or agent, or former officer, employee, or agent, of any State (as defined in Section 6103(b)(5)), or any local child support enforcement agency willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in Section 6103(b)) acquired by him or another person under subsection (1) (6) or (1) (10) of Section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

Criminal Penalty - Section 7213A(a)(2), provides that it shall be unlawful for any person willfully to inspect, except as authorized by this title, any return information acquired by such person or another person under a provision of Section 6103 referred to in Section 7213(a)(2). Section 7213A(b) further provides that any violation of subsection (a) shall be punishable upon

conviction by a fine in any amount not exceeding $1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

Civil Penalty - Section 7431, provides that a taxpayer may bring a civil action to recover actual and punitive damages from a person who discloses the taxpayer's tax return or return information in violation of the provisions of Section 6103:

a) In General - (2) . . . If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such a person in a district court of the United States.

c) Damages - In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of--
    (1) the greater of--
        (A) $1,000 for each act of unauthorized disclosure of a return or return information with respect to which such defendant is found liable, or
        (B) the sum of--
            (i) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure, plus
            (ii) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, plus
    (2) the costs of the action.