

**New York State Department of Labor
Non-Disclosure Agreement**

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (Agreement) is made and entered into as of the _____ day of _____ 20XX by and between <insert name of contractor> (“Contractor”) and the State of New York, Department of Labor (NYSDOL).

WITNESSETH:

WHEREAS: In the performance of its services under the contract with NYSDOL for <insert name of contract> CXXXXXX (Contract), Contractor staff may have access to certain confidential information including Unemployment Insurance records (hereinafter collectively referred to as “Information”); and

WHEREAS: NYSDOL wishes to memorialize Contractor’s consent to abide by NYSDOL law (Section 537 of the Labor Law) and Federal rules (20 CFR Part 603) with regard to said Information and any other NYSDOL information that is confidential in nature;

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt, sufficiency, and adequacy of which are mutually acknowledged, Contractor agrees as follows:

1. Except in accordance with proper judicial order or as otherwise provided by law, special confidentiality rules apply to unemployment insurance records. Section 537 of the Labor Law prohibits disclosure of certain Information to the public received from employers and employees in the course of administration of the Unemployment Insurance Law. Such Information is for the exclusive use of the Commissioner of Labor in the discharge of duties under the Unemployment Insurance Law. The unauthorized disclosure of such Information is a misdemeanor pursuant to Section 537 of the Labor Law.
2. Any and all NYSDOL Information, whether computerized or not, whether oral, visual, or written, which Contractor and/or their employees (hereinafter “Contract Worker”) become aware of during the performance of any duties under the contract with NYSDOL is confidential and privileged. In addition, information concerning NYSDOL operations, procedures, policies, and systems will be considered confidential and privileged. Confidential Information shall not be duplicated, disseminated, or disclosed to any person or organization except authorized NYSDOL and the State of New York as necessary to perform their services under the Contract or as otherwise provided herein.” Notwithstanding anything to the contrary in this Agreement, NYSDOL Information shall not include information which the Contractor can clearly demonstrate to NYSDOL’s reasonable satisfaction (i) is already known to the Contractor at the time of its disclosure by NYSDOL free of any obligation to keep it confidential, (ii) is or becomes publicly available through no wrongful act or omission of the Contractor, (iii) is lawfully disclosed to the Contractor by a third party provided Contractor reasonably believe such third party has the right to disclose such information and without restriction on subsequent disclosure, or (iv) is independently developed by the Contractor without reference to, or reliance upon, the NYSDOL Information.

Where the Contractor believe that disclosure of NYSDOL Information is lawfully required to be disclosed to any governmental agency or is otherwise required to be disclosed by law, the Contractor shall, to the extent permitted by law, promptly advise NYSDOL of the demand for access to such NYSDOL Information prior to any disclosure thereof in order to provide NYSDOL with a reasonable opportunity to contest the demand as may be allowable by law. Such notification shall be directed to NYSDOL, Office of Counsel, Attention: General Counsel, Room 508, Building 12, State Office Campus, Albany, New York 12240, 518-457-2191.

3. Access to any and all NYSDOL Information will be limited to only those authorized persons who need the Information in order to perform the services required under the Contract. Such authorized persons may include individuals from Third Party Partners. For purposes of this Agreement, Third Party Partners are state agencies and Contractor’s personnel, subcontractors, vendors, consultants, affiliates, and related entities authorized to provide services under the Contract. Contractor shall ensure that Third Party Partners comply with the non-disclosure provisions set forth herein pursuant to a written agreement with its Third Party Partner(s) which incorporates all of the requirements and safeguards established herein. Such Information may only be used for the purposes specified in the Contract. Contractor shall take affirmative steps to protect any and all NYSDOL Information from being acquired by any unauthorized individuals, including other employees of Contractor.

4. Contractor shall store and maintain the Information in a place and manner that is physically secure from access by unauthorized persons.
5. Contractor shall store and process Information obtained from NYSDOL which is maintained in an electronic format, such as magnetic tapes or discs, in such a way that unauthorized persons cannot obtain the Information by any means.
6. Contractor shall undertake reasonable precautions to ensure that only authorized persons are given access to Information stored in computer systems.
7. Contractor shall instruct all personnel having access to NYSDOL Information about the confidential nature of the Information, the safeguards required to protect the Information, and the sanctions specified in State law for unauthorized disclosure of said Information.
8. Contractor shall sign an acknowledgment that all individuals, including individuals from Third Party Partners, authorized to have access to the Information have been so instructed and that such individuals will adhere to the confidentiality requirements set forth in this Agreement. Contractor shall provide this acknowledgment to NYSDOL prior to the disclosure of any Information hereunder.
9. Contractor shall take all reasonable steps to ensure that Contract Workers and Third Party Partners who have access to the Information provided under this Agreement shall comply with the limitations on data use, access and privacy, and security set forth in this Agreement. Such steps shall include, but not be limited to, requiring such individuals to acknowledge in writing that he/she understands and shall comply with such limitations. Contractor shall report fully and promptly any infraction of these limitations to DOL, Attention: Director of Research and Statistics, Room 400, Building 12, State Office Campus, Albany, New York 12240, 518-457-3805.
10. Contractor understand that the unauthorized alteration, copying, duplication, transmittal, or distribution of NYSDOL Information is a crime. Furthermore, Contractor agree to be bound by all state and federal laws governing confidentiality, privacy of information, and intellectual property.
11. Contractor shall promptly advise the State of any Breach or Security Incident and shall reasonably assist in any investigation of such Breach or Security Incident of the Contractor, its officers, agents, employees, Third Party Partners, and subcontractors of such confidential Information. Breach is defined as such term is defined at Section 208(1) (b) of the State Technology Law and, in the absence of direct evidence of a Breach, a Security Incident is defined as any occurrence where it can be reasonably assumed that Private Information (as such term is defined at Section 208(a) of the State Technology Law), Personal Information (as such term is defined at Section 202(5) of the State Technology Law), sensitive data or information, confidential data or information, and/or protected data or information was exposed, accessed or disclosed without authorization.
12. Contractor shall return or destroy any confidential Information it obtains to NYSDOL when the purposes which necessitated its receipt is completed for the work performed under this contract. Contractor shall not retain any copies of the confidential Information. Notwithstanding the foregoing, the Contractor may retain any confidential Information of NYSDOL contained in, or in support of, its work product.
13. Contractor shall maintain a system for handling, storage, use, and return or destruction of tangible NYSDOL Information governed by this Agreement sufficient to allow NYSDOL to audit compliance with this Agreement. If data is maintained by the Contractor and upon reasonable advance notice, Contractor shall permit NYSDOL to enter upon Contractor's premises at reasonable and mutually agreed times to inspect and review the safeguards and procedures for protecting the confidentiality and limiting the dissemination of any NYSDOL Information and the Contractor's compliance with such safeguards and procedures. Such inspection and review shall be limited to no more than once per calendar year unless NYSDOL reasonably believes that there is an issue with Contractor's compliance with its safeguards and procedures.
14. If Contractor fail to comply with any provision of this Agreement, NYSDOL will notify Contractor of the alleged non-compliance and suspend the scanning services to NYSDOL and the further disclosure of any Information thereunder, until NYSDOL is satisfied that corrective action has been taken and there will be no further non-compliance. Upon termination of scanning services to NYSDOL, Contractor must return or destroy all NYSDOL Information obtained under the Contract and/or this Agreement (and any copies thereof), except as otherwise provide herein.

15. In addition to suspension of scanning services to NYSDOL and/or this Agreement as set forth herein, NYSDOL reserves the right to undertake any other action under the Agreement, or state or federal law, to enforce the Agreement and secure satisfactory corrective action and/or return or destruction of the NYSDOL Information furnished hereunder, including seeking damages, penalties, and restitution as permitted under such law.
16. If any terms or conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions thereof shall not be affected thereby and shall remain in full force and effect.
17. Nothing contained herein shall modify or supersede the confidentiality terms, if any, of the Contract, which are hereby incorporated herein by reference, except to the extent they provide more stringent protections for NYSDOL.
18. Contractor's confidentiality and related assurances and obligations hereunder shall survive termination of the Contract and/or this Agreement.

Contractor's Acknowledgment

<insert name of contractor> is providing this Acknowledgment to NYSDOL as required by Paragraph 8 of the Non-Disclosure Agreement executed by <insert name of contractor> on this _ day of _____.

My signature below is an acknowledgment that all individuals, including individuals from Third Party Partners authorized to have access to NYSDOL Information in order to perform required contractual services as described in the Non-Disclosure Agreement and the Contract referenced therein, have been instructed about:

- the confidential nature of the Information;
- the safeguards required to protect the Information;
- the sanctions specified in New York State law for unauthorized disclosure of said Information; and that
- such individuals will adhere to the confidentiality requirements set forth in the Non-Disclosure Agreement.

Have acknowledged in writing that he/she understands and shall comply with such limitations; and

Have acknowledged in writing that he/she has received unemployment insurance confidentiality instruction by taking and completing Modules I and II (and when required Module III) of the Unemployment Insurance Confidentiality training developed by NYSDOL.

My signature below further warrants and represents that I am authorized to execute this Acknowledgment on behalf of <insert name of contractor>.

Signature

Please Print:

Full Name: _____

Title: _____

Date: _____