

Memorandum of Agreement
Between
New York State Office for the Aging
And

(Insert Area Agency Name)

This Memorandum of Agreement is entered into by and between the New York State Office for the Aging (NYSOFA), 2 Empire State Plaza, Albany, NY 12223, and

(Insert Agency Name and Address)

(hereafter referred to as AAA), regarding the use of and entry of data into a statewide database or system of records owned or maintained by NYSOFA.

Statewide databases are software systems created, developed, or maintained by a state agency, such as NYSOFA. The PeerPlace Cloud-Based Data Management System (Data System), developed by PeerPlace Networks, LLC, is an example of a statewide database. Any statewide database is a system of records as defined under Personal Privacy Protection Law (PPPL), Article 6-A of the Public Officers Law. Any reference to a system of records herein shall also refer to a statewide database.

I. RESPONSIBILITIES OF THE AAA

- A. The AAA agrees to utilize in its operation the Data System developed by PeerPlace, which will be maintained by NYSOFA as a statewide database, when made available to the AAA.

- B. The AAA acknowledges and understands that the Data System will include information that identifies individuals applying for or receiving services administered by AAAs under the auspices of NYSOFA. This information is confidential and privileged. The AAA shall comply with all applicable federal and state privacy laws and regulations governing electronically stored data. The AAA shall comply with PPPL requirements regarding data use, access, disclosure, privacy, and security as set forth in this Agreement. The AAA shall monitor the performance of its employees, agents, contractors, and subcontractors in complying with the PPPL requirements and those identified in this Agreement. The AAA shall maintain documentation of such efforts subject to audit.

- C. NYSOFA and the AAA understand that data entered by the AAA into the Data System, including data that contains Personal Information (PI) and Protected Health Information (PHI), is owned by and shall continue to be owned by the AAA. This Agreement shall have no effect on such ownership. The AAA's access to and entry of data into the Data System shall be conditioned upon acceptance of and adherence to the provisions of this Agreement.
- D. The AAA understands that any statewide database maintained by NYSOFA, a State Agency, and entry by the AAA of any Personal Information, as defined in Section Ninety-Two of the Public Officers Law, into such database, are subject to the provisions of the Personal Privacy Protection Law. The AAA understands that, AAA's continued ownership of such data notwithstanding, the requirements imposed by the PPPL will apply to such data due to its location within a system of records maintained by NYSOFA.
- E. The AAA understands that, under the PPPL, NYSOFA is required to cause the requirements of the PPPL to be applied to any agreements it executes that relate to the use and entry of data in its systems of records. The AAA shall ensure that its use of and entry of data into the statewide database complies with all requirements applicable to such data under the PPPL.
- F. The AAA understands and agrees that the requirements of the PPPL and those identified in this Agreement must also be applied to any contracts and/or subcontracts entered into by the AAA which involve use of and/or access to the Data System or any Personal Information which is or will be located therein, including the collection of Personal Information and entry into the Data System. The AAA is responsible for ensuring that all such requirements are extended to all contractors and/or subcontractors.
- G. The AAA agrees to comply with all current and future policies, procedures, and instructions issued by NYSOFA relating to the handling of any data which is subject to the PPPL.
- H. Beginning on the effective date of this Agreement, the AAA agrees to not delete or otherwise dispose of any records contained in the Data System which were first created on or after April 1, 2009, including records which are migrated into the Data System but originated elsewhere, unless notified otherwise by NYSOFA or unless such deletion is requested by the individual to whom the record pertains.

- I. The AAA agrees to comply with requests by NYSOFA to provide access by a data subject to any data owned by the AAA and maintained in the Data System which has been requested by the data subject pursuant to the PPPL.
- J. The AAA agrees to comply with requests by NYSOFA to make a change or amendment to a record owned by the AAA and maintained in the Data System when a request for such amendment is made by a data subject pursuant to the PPPL and determined by NYSOFA to be appropriate.
- K. The AAA shall ensure that all employees, agents, contractors, and subcontractors authorized to access the statewide database have been fully advised of the confidential nature of the information contained therein, the safeguards required to protect the information, and any civil and criminal sanctions for noncompliance contained in applicable state and federal laws.
- L. The AAA shall comply with instructions issued by NYSOFA that relate to collecting and making available certain client data for purposes of emergency preparedness. Such instructions may require utilization of a module or program made available within the Data System to maintain the information necessary to respond to an emergency and to generate a report of such data in the event of an emergency.
- M. The AAA shall comply with the requirements of 45 C.F.R. § 1321.51 in obtaining the informed consent of individuals from whom information is collected, recorded, or shared in connection with the provision of services under the Older Americans Act or the New York State Elder Law or the AAA's obligations as an area agency on aging. The AAA will comply with instructions provided by NYSOFA regarding the obtaining of and documenting of informed consent. This includes use by the AAA of any scripts, processes, and procedures developed by NYSOFA and provided to the AAA which relate to obtaining and documenting of the informed consent of an individual to capture, share, and/or disclose his or her information, including the use of such information for purposes of emergency preparedness.
- N. The AAA consents to NYSOFA's access to and use of data owned by the AAA and located in the Data System in the manner described in the attached Data Use Agreement, for the lawful purposes described therein, and subject to the limitations contained therein.

II. SUSPENSION AND TERMINATION

A. Suspension of access to the Data System.

1. NYSOFA may suspend or limit access by the AAA, its agents, employees, contractors, or subcontractors to the Data System upon a material failure to comply with:
 - (a) the terms of this Agreement; or
 - (b) any applicable federal or state laws or regulations or with the AAA's obligations as an area agency on aging such that it compromises the security and/or integrity of the Data System or the data contained therein.
2. NYSOFA will investigate and will make a determination regarding any suspicions of the occurrence of either (a) or (b) above. The AAA agrees to cooperate with NYSOFA in any such investigation. NYSOFA will cooperate with the AAA in identifying and achieving appropriate remedies that minimize the impact to AAA regarding access to the Data System.
3. If NYSOFA has identified the need for corrective action by the AAA and AAA fails to complete such corrective action in the allotted timeframe, NYSOFA may terminate access to the Data System by the AAA, its agents, employees, contractors, or subcontractors upon ninety (90) days' notice to AAA, provided that access will not be terminated if AAA takes the identified corrective action during that time.

B. This Agreement shall terminate in the event of de-designation by NYSOFA of AAA as an area agency on aging, as defined in Section 102 of the Older Americans Act, or upon the discontinuation of such designation for any reason, including voluntary relinquishment by AAA. Upon termination, NYSOFA may, to the extent necessary to satisfy the requirements of 45 C.F.R. § 1321.35 and in accordance with 9 N.Y.C.R.R. § 6652.7, take control and/or ownership of the Data System and any data contained therein, including all data entered by AAA, to allow for continued and uninterrupted performance of any and all functions previously performed by AAA in relation to its designation as an area agency on aging.

C. NYSOFA reserves the right to terminate access to the Data System for any reason upon one hundred twenty (120) days' notice to the AAA, provided that NYSOFA will assist and cooperate with AAA in the extraction and migration of all data owned by AAA and returning all such data to the AAA in reasonably usable form.

- D. To the extent necessary to comply with the requirements of the PPPL and any other applicable state or federal law, the terms of this Agreement shall survive its termination.
- E. Notice of suspension, limitation, or termination of this Agreement shall be sent to the AAA's Director or the Chairman of the AAA's governing body, or to the Chief Executive Officer or the Chairman of the Governing Board of the County in which AAA serves as an area agency on aging, and/or to his or her designee.
- F. NYSOFA's right to terminate this Agreement for breach thereof shall not limit the right of the NYSOFA to undertake any other action under the Agreement, or State or Federal law, to enforce this Agreement and secure satisfactory corrective action, 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.

III. GENERAL PROVISIONS

- A. 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.
- B. The AAA may not assign this Agreement, its obligations, or any interest hereunder. Any assignment of this Agreement shall be null and void.
- C. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
- D. If any term or provision, or portion thereof, of this Agreement is, or becomes, invalid or unenforceable under any applicable statute or rule of law or public policy, it is to be deemed severed from this Agreement to the extent of its unenforceability or invalidity, and shall have no effect on the validity or enforceability of any other term or provision, or of this Agreement as a whole, which shall remain in full force and effect.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT BY THEIR DULY AUTHORIZED OFFICIALS ON _____, 2016:

New York State Office for the Aging:

Signature: _____

Name (print): Greg Olsen _____

Title: Acting Director _____

Address: 2 Empire State Plaza, 5th Floor _____

Albany, NY 12223-1251 _____

(Full Name of AAA Organization)

Signature: _____

Name (print): _____

Title: _____

Address: _____
