

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

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(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

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(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 (Statewide Data System), developed by PeerPlace Networks, LLC, and maintained by NYSOFA, 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.

Data is collected by AAA in connection with the provision of services under the auspices of NYSOFA and in accordance with its obligations as an area agency on aging. Data is entered by the AAA into its own local database (hereafter referred to as Local Data System)—which may also be developed by PeerPlace Networks, LLC and made available to AAA through independent contract between AAA and PeerPlace—and is subsequently transmitted to the Statewide Data System, a statewide database owned and/or maintained by NYSOFA.

**I. RESPONSIBILITIES OF THE AAA**

A. The AAA acknowledges and understands that the Statewide 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.

- B. NYSOFA and the AAA understand that data entered by the AAA into the Local Data System and transmitted to the Statewide 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.
- C. 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, including by transmittal from any other database such as the Local Data System, 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 transmittal to and location within a system of records maintained by NYSOFA.
- D. 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, or into the Local Data System when such data will subsequently be entered into or transmitted to the Statewide Data System, complies with all requirements applicable to such data under the PPPL.
- E. 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 the collection and/or use of any Personal Information which is or will be located in the Statewide Data System. The AAA is responsible for ensuring that all such requirements are extended to all contractors and/or subcontractors.
- F. 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.
- G. Beginning on the effective date of this Agreement, the AAA agrees to not delete or otherwise dispose of any records contained in the Local Data System which were first

created on or after April 1, 2009, including records which have been migrated into such Data System but originated elsewhere, unless notified otherwise by NYSOFA or unless such deletion is requested by the individual to whom the record pertains.

- H. The AAA agrees to comply with requests by NYSOFA to provide access by a data subject to any data containing Personal Information which is owned by the AAA and maintained in the Local Data System, and which has been requested by the data subject pursuant to the PPPL, where NYSOFA has determined that the data subject has a right to such access under the PPPL.
- I. 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 Local 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.
- J. The AAA shall ensure that all employees, agents, contractors, and subcontractors authorized to access either the Statewide Data System or the Local Data System 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.
- K. The AAA shall implement a process for making appropriate data available for purposes of emergency preparedness. This involves seeking the informed consent of individuals for certain information to be used for such purposes, and maintaining this information in such a way that, in the event of an emergency, a report may be generated which contains only that client data which is necessary to respond to such emergency and for which informed consent was obtained for such purposes. AAA shall comply with instructions by NYSOFA regarding data that should be treated as useful or necessary for these purposes. The AAA shall make any such report available as directed by NYSOFA.
- L. 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.

M. The AAA consents to NYSOFA's use of data owned by the AAA and transmitted to the Statewide 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. The AAA agrees that any transmittal of such data performed by AAA shall be done so in accordance with all applicable policies, procedures, and standards issued by the New York State Office of Information Technology Services, including but not limited to the Encryption Standard, NYS-S14-007.

## **II. SUSPENSION AND TERMINATION**

A. NYSOFA may suspend, limit, or terminate this Agreement upon the AAA's failure to comply with the terms of this Agreement, any applicable federal or state laws or regulations, or with its obligations as an area agency on aging.

B. NYSOFA reserves the right to terminate this Agreement for any reason upon one hundred twenty (120) days' notice to the AAA.

C. 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 discontinuation of the designation of AAA as an area agency on aging, 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 Local Data System and any data contained therein, including all data entered by AAA, to allow for continued and uninterrupted performance by NYSOFA of any and all functions previously performed by AAA in relation to its designation as an area agency on aging.

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 Commissioner 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.

[INTENTIONALLY LEFT BLANK]

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, 5<sup>th</sup> Floor

Albany, NY 12223-1251

\_\_\_\_\_  
(Full Name of AAA Organization)

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

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

Address: \_\_\_\_\_

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