

NEW YORK STATE OFFICE FOR THE AGING

2 Empire State Plaza, Albany, NY 12223-1251

Andrew M. Cuomo, Governor

An Equal Opportunity Employer

Greg Olsen, Acting Director

PROGRAM INSTRUCTION	Number:	16-PI-15
	Supersedes:	N/A
	Expiration Date:	N/A

DATE: July 28, 2016

TO: Directors of Area Agencies on Aging (AAA) using the PeerPlace Data Management System provided by NYSOFA

SUBJECT: Memorandum of Agreement and Data Use Agreement for Review, Signature, and Submission

.....
ACTION REQUESTED:

Each AAA whose access to and use of the PeerPlace Data Management System is provided by NYSOFA must review, sign, and submit the attached Memorandum of Agreement and Data Use Agreement.

RESPONSE DUE DATE:

Each AAA must review, complete, and sign two (2) copies each of the Memorandum of Agreement and Data Use Agreement and deliver all original, signed documents to the address below no later than August 31, 2016.

Rose Donnelly
New York State Office for the Aging
2 Empire State Plaza, 5th Floor
Albany, New York 12223

Once received, the Agreements will be signed by NYSOFA's Director and one (1) original, signed copy of each Agreement will be returned to the AAA.

PURPOSE:

The attached Memorandum of Agreement (MOA) details the responsibilities of each AAA to whom the PeerPlace Data Management System is being provided by NYSOFA. Access to and use of the Data System by each AAA is conditioned upon agreement to the terms contained therein. The attached Data Use Agreement (DUA) contains an assurance that NYSOFA will be granted use of certain data entered into the Data System in order to satisfy various obligations. The DUA specifies the purposes for which such data may be used, identifies limitations on NYSOFA’s use of this data, and contains assurances by NYSOFA regarding its use of such data.

BACKGROUND:

NYSOFA is subject to various laws concerning the privacy, confidentiality, and treatment of information pertaining to individuals. Of particular importance is New York’s Personal Privacy Protection Law (PPPL). The PPPL applies not only to data owned by a state agency, but to all data contained in a system of records owned or maintained by a state entity, even if such data is owned by an individual or entity other than the state agency. As the PeerPlace Data Management System is a system of records owned or maintained by NYSOFA, a state entity, all data contained within the system is subject to the PPPL.

Among NYSOFA’s legal obligations under the PPPL is the obligation to cause the requirements of the PPPL to be applied to all agreements it executes that relate to the system of records. As such, the requirements contained in the PPPL must be complied with by AAAs and their subcontractors in the collection and maintenance of data which is or will be located in the PeerPlace System. The MOA addresses the responsibilities of each AAA which relate to such data, and the terms contained in the MOA are based largely on the requirements of the PPPL. More information on the PPPL, including the statutory language, can be found at the Committee on Open Government website at <http://www.dos.ny.gov/coog/index.html>.

-
- PROGRAMS AFFECTED:** Title III-B Title III-C-1 Title III-C-2
- Title III-D Title III-E CSE WIN Energy
- EISEP NSIP Title V HIICAP LTCOP
- Other: NY Connects: Choices for Long Term Care

CONTACT PERSON:
Angelia Smith-Wilson
Email: Angelia.Smith-Wilson@aging.ny.gov

TELEPHONE:
(518) 408-1673

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: _____

Data Use Agreement
Between
New York State Office for the Aging
And

(Insert Area Agency Name)

This Data Use 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 access and use by NYSOFA of data owned by the AAA and entered into the PeerPlace Cloud-Based Data Management System (Data System), developed by PeerPlace Networks, LLC, and owned, maintained, or controlled by NYSOFA.

I. PURPOSE OF THE DATA USE AGREEMENT

The purpose of this Agreement is to ensure NYSOFA's access to and use of data owned by AAA for the lawful purposes identified herein, and to identify the limitations accompanying such access and use.

II. DEFINITIONS

- A. AAA Data: Data collected by AAA and entered into AAA's OLTP, including that data which is included in any OLAP generated by the OLTP and accessed by NYSOFA. Such data is now and shall continue to be the property of AAA.
- B. Aggregate Data: Data relating to multiple data subjects and compiled in a form containing no identifiers and which assigns only a numerical value (e.g., average age, number of Hispanics served) to each data field based on the collective responses of all included data subjects.
- C. Data Subject: Any natural person about whom Personally Identifiable Information has been collected by or on behalf of NYSOFA.

- D. Emergency: The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any causes, whether natural or man-made, and that requires responsive action to protect life or property. Emergencies may include, but are not limited to, fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, epidemic, air contamination, terrorist activity, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacterial release, water contamination, bridge failure, or bridge collapse.
- E. On-line Analytical Processing System (OLAP): A “static” informational system containing statistical, historical, or archival data aggregated from one or more systems of records. An OLAP is an analytic database meant for viewing statistical data for the purposes of reporting, monitoring, and analysis. This type of database cannot be modified by users and new data cannot be entered into an existing OLAP. For purposes of this Agreement, any reference to OLAP shall mean only a statewide OLAP generated for access by NYSOFA which consists of data from OLTPs maintained by AAA and other Area Agencies on Aging, and shall not include any other OLAPs, including others generated from AAA’s OLTP.
- F. On-line Transaction Processing System (OLTP): A “live” informational system consisting of operational data. Data may be entered into or changed within an OLTP, and is frequently updated. For purposes of this Agreement, all references to OLTP shall mean the OLTP utilized by AAA and into which AAA data is initially entered. The OLTP is a storage and retrieval system of records that is the authoritative source for particular data elements also appearing in the OLAP.
- G. Personally Identifiable Information: Any information concerning a data subject which, because of name, number, symbol, mark, or other identifier, can be used to identify that data subject. Any reference to “Personal Information” shall mean Personally Identifiable Information, and the terms may be used interchangeably.
- H. Protected Health Information (PHI): Protected Health Information carries the definition provided in 45 C.F.R. § 160.103.
- I. User Roles: Assigned roles, including administrative roles, which determine the data to be accessible to an individual by type(s) of data and/or by particular data elements or collections of data elements, and the transactions that the individual may perform with regard to this data. User roles are assigned based upon the type of user, the functions performed by the user, and the business needs which accompany these functions.

III. BACKGROUND

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 to be entered into the Data System by AAA as described in the attached Memorandum of Agreement. The Data System is under the control and maintenance of NYSOFA and is made available to AAA for use in administering programs under the auspices of NYSOFA. Data entered into the Data System is owned by and continues to be owned by AAA, and entry of such data into the Data System has no effect on such ownership.

Data entered into the Data System by AAA is located initially in an On-line Transaction Processing system (OLTP), which allows for changes such as the entry of additional data, and is accessible only to AAA. Data located in the OLTP may be used to generate an On-line Analytical Processing system (OLAP). The OLAP is a statewide system containing certain data elements from AAA's OLTP as well as the OLTPs of other Area Agencies on Aging. For purposes of this Agreement, the OLAP shall refer only to the statewide OLAP accessible by NYSOFA and not to any other OLAP which may be generated from AAA's OLTP. Data appearing in the OLAP is capable only of being accessed, and not changed or added to. All data accessed or used by NYSOFA for the purposes identified in this Agreement will be obtained through the OLAP.

IV. DATA TO BE SHARED

- A. Data necessary to satisfy any reporting requirements applicable to NYSOFA under federal law, including but not limited to the Older Americans Act, supporting regulations, and any supplemental instructions issued by federal agencies, as required.
- B. Data necessary to satisfy any reporting requirements applicable to NYSOFA under New York State law, including but not limited to those identified in the Elder Law.
- C. Data to be used in conducting analytics to allow for more effective and more efficient administration of programs in accordance with the requirements and the goals identified in federal and state law, including but not limited to the Older Americans Act and the New York State Elder Law.

- D. Data used by NYSOFA for purposes of monitoring and evaluation of programs administered under its auspices.
- E. Data necessary to respond to an emergency, when an emergency has been declared by any federal, state, or local government entity or official with the legal authority to make such declaration, or when such data has been requested by any federal, state, or local government entity or official with the authority to make such request for purposes of responding to an emergency, provided that informed consent for such a disclosure has been obtained from each data subject for whom such data is to be disclosed.
- F. Data to be released to third parties for research purposes following an approval process by NYSOFA. Data released for such purposes shall contain no Personally Identifiable Information, unless required by law or by court order. NYSOFA will take additional steps to ensure that no data released for such purposes is capable of identifying any individual, such as prohibiting disclosures of data fields containing very low quantities.

V. TERMS OF USE

- A. NYSOFA will obtain AAA data only from the OLAP database, and not from the OLTP, and its access to and use of AAA data will be limited to that contained in the OLAP.
- B. NYSOFA will access and use only the data reasonably necessary to achieve the purposes identified in this Agreement under “Data to be Shared,” or as required by law or court order.
- C. Whenever practicable, NYSOFA will limit access to and use of AAA data to data in aggregate form.
- D. NYSOFA will treat all data containing Personal Information accessed from the OLAP as highly sensitive and confidential, and will implement procedures and take appropriate actions to protect the confidentiality of such data, including, at a minimum, all such actions identified as applying to such data under the Information Security Controls Standard, NYS-S14-003, including any amendments thereto or supersedence thereof, issued by the New York State Office of Information Technology Services.

- E. NYSOFA will ensure that the transfer of AAA data from the OLTP to the OLAP, the extraction of any such data from the OLAP, and any subsequent use of such data will, at a minimum, be subjected to all data security measures identified in the policies, procedures, and standards adopted by the New York State Office of Information Technology Services, including those currently in effect and any which may be subsequently adopted, and any amendments thereto. These policies, procedures, and standards are available at <http://www.its.ny.gov/eiso/policies/security>.
- F. NYSOFA will adopt procedures identifying user roles and the degree of access to data that will accompany each user role. The degree of access assigned to any user role will not exceed that which is reasonably necessary. Access to and use of any AAA data by NYSOFA employees will be limited to the degree of access assigned to their respective user roles.
- G. NYSOFA shall take steps to ensure that all employees, agents, contractors, and subcontractors of NYSOFA authorized to access AAA data have been fully advised of the confidential nature of the information contained therein, including through the use of end user agreements.
- H. NYSOFA shall limit access to the OLAP and to AAA data to those employees, agents, contractors, and subcontractors with a legitimate business need for such access, and all such access shall require a degree of authentication which satisfies the standards applicable to "Identity Assurance Level 3" as set forth in the Identity Assurance Policy, NYS-P10-006, including any amendments thereto or supersedence thereof, adopted by the New York State Office of Information Technology Services.
- I. NYSOFA will make no disclosures of data other than those identified in this Agreement without the explicit written approval of AAA, except as required by law or court order.

VI. 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. NYSOFA may not assign this Agreement, its obligations, or any interest hereunder. Any assignment of this Agreement shall be null and void.

- C. This Agreement and its terms shall survive unless explicitly revoked or superseded upon mutual consent of both parties hereto, or upon the termination of the Memorandum of Agreement to which this Data Use Agreement is attached.
- D. Upon termination of this Agreement, NYSOFA's access to and use of data contained in the OLAP shall continue in accordance with the terms of this Agreement to the extent necessary for the uninterrupted performance by NYSOFA of the functions identified in this Agreement and to satisfy any legal obligations or requirements.
- E. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
- F. 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, 5th Floor

Albany, NY 12223-1251

(Full Name of AAA Organization)

Signature: _____

Name (print): _____

Title: _____

Address: _____
