

NEW YORK STATE OFFICE FOR THE AGING

2 Empire State Plaza, Albany, NY 12223-1251

Andrew M. Cuomo, Governor

Greg Olsen, Acting Director

An Equal Opportunity Employer

TECHNICAL ASSISTANCE MEMORANDUM

Number: 16-TAM-03

Supersedes: N/A

Expiration Date: N/A

DATE: July 26, 2016

TO: Directors of Area Agencies on Aging (AAA) which administer the NY Connects/No Wrong Door/Balancing Incentive Program

SUBJECT: Sample Business Associate Agreements

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PURPOSE:

This Technical Assistance Memorandum is being issued along with a Sample Business Associate Agreement to provide guidance to AAAs that administer NY Connects in developing Business Associate Agreements to be entered into with subcontractors.

BACKGROUND:

This Technical Assistance Memorandum is being issued by the New York State Office for the Aging in connection with the NY Connects/No Wrong Door/Balancing Incentive Program. As participation in the Program will require the collection and/or use of Protected Health Information subject to the requirements of the Health Insurance Portability and Accountability Act and implementing regulations (HIPAA), Area Agencies on Aging participating in the Program are being required to enter into Business Associate Agreements (BAAs). As Business Associates, AAAs are responsible for entering into similar Business Associate Agreements with all subcontractors that will perform activities related to the NY Connects/Balancing Incentive Program. This responsibility is identified in the HIPAA regulations and in the BAA between NYSOFA and each AAA. Each AAA is responsible for ensuring that no subcontractor that performs NY Connects/No Wrong Door/Balancing Incentive Program functions will be allowed access to the client data system prior to having entered into a BAA. To ensure that subcontractors are allowed the access necessary to perform their contracted responsibilities, it is imperative that these agreements are executed in a timely manner.

To assist AAAs with the completion of all necessary BAAs, NYSOFA has developed the attached Sample Business Associate Agreement. This document may be used by AAAs as guidance in drafting BAAs to be entered into with subcontractors. This sample may be used in whole or in part, and may be revised to meet the specific needs of each AAA. It is the responsibility of each AAA to enter into BAAs with subcontractors as necessary, and to ensure that any agreement entered into reflects the needs and circumstances of the parties involved. This sample is intended to serve only as guidance, and any such agreement should be carefully reviewed before being used by any AAA. AAAs are encouraged to seek legal counsel to review the sufficiency of any agreement it enters into.

PROGRAMS AFFECTED:

- | | | | | |
|--|---|--|---------------------------------|---------------------------------|
| <input type="checkbox"/> Title III-B | <input type="checkbox"/> Title III-C-1 | <input type="checkbox"/> Title III-C-2 | | |
| <input type="checkbox"/> Title III-D | <input type="checkbox"/> Title III-E | <input type="checkbox"/> CSE | <input type="checkbox"/> WIN | <input type="checkbox"/> Energy |
| <input type="checkbox"/> EISEP | <input type="checkbox"/> NSIP | <input type="checkbox"/> Title V | <input type="checkbox"/> HIICAP | <input type="checkbox"/> LTCOP |
| <input checked="" type="checkbox"/> Other: | NY Connects: Choices for Long Term Care | | | |

CONTACT PERSON: Any questions or concerns should be directed to the AAA's assigned NY Connects Coordinator.

SAMPLE STANDARD BUSINESS ASSOCIATE AGREEMENT
(SUBCONTRACTOR)

This Agreement is made in connection with the Contract between {NAME OF AREA AGENCY ON AGING} (“AAA or shortened title of entity”) and {SUBCONTRACTING ENTITY} (“Subcontractor or other shortened title”), by which AAA has contracted with Subcontractor for the performance of certain functions related to AAA’s participation in the NY Connects/Balancing Incentive Program (“BIP”). By participating in the NY Connects/BIP, AAA may be provided with, have access to, and/or disclose Protected Health Information (as defined below) that is subject to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations codified at 45 C.F.R. parts 160-164, as may be amended from time to time (the “Privacy and Security Rules”), and the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated pursuant to such Act, as may be amended from time to time (“HITECH”) (HIPAA, the Privacy and Security Rules, HITECH and the Omnibus Rule together are the “HIPAA Rules”). AAA, through an agreement with the New York State Office for the Aging (“NYSOFA”), participates in the Balancing Incentive Program by the operation of the NY Connects/No Wrong Door (“NWD”) program. For such program, AAA has been identified as and accepted the responsibilities of a Business Associate Subcontractor, with NYSOFA having been identified as a Business Associate of the New York State Department of Health (“DOH”), a Covered Entity under HIPAA. As a subcontractor of AAA in conducting activities related to the NY Connects/BIP, Subcontractor may be provided with, have access to, and/or disclose Protected Health Information subject to the requirements of HIPAA, and is therefore a Business Associate of AAA. Subcontractor hereby acknowledges that when it is in possession of PHI under this Business Associate Agreement (the “Agreement”), it is a Subcontractor as defined below. This Agreement is made and entered into by and between AAA and Subcontractor in connection with:

- (i) AAA’s receipt, use, disclosure, and creation of Protected Health Information and/or Medicaid Confidential Data; and
- (ii) the performance by Subcontractor of its obligations in connection with NY Connects/BIP as a subcontractor of AAA.

1. **DEFINITIONS:** Unless otherwise defined in this Agreement, any and all capitalized terms used in this Agreement have the meanings ascribed to them in the HIPAA Rules.
 - a. “Breach” has the same meaning as the term “Breach”, as defined in 45 C.F.R. § 164.402.
 - b. “Business Associate” has the same meaning as the term “Business Associate”, as defined in 45 C.F.R. § 160.103.
 - c. “Covered Entity” has the same meaning as the term “Covered Entity” as defined in 45 C.F.R. § 160.103 and, as used in this document, shall refer to the Office of Health Insurance Programs of the New York State Department of Health (“DOH/OHIP”).
 - d. “Data Aggregation Services” has the same meaning as the term “Data Aggregation,” as defined in 45 C.F.R. § 164.501.
 - e. “Designated Record Set” has the same meaning as the term “Designated Record

Set”, as defined in 45 C.F.R. § 164.501.

f. “Electronic Protected Health Information” or “Electronic PHI” means information that comes within paragraphs 1(i) or 1(ii) of the definition of “Protected Health Information”, as defined in 45 C.F.R. § 160.103.

g. “Individual” has the same meaning as the term “Individual”, as defined in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502.

h. “Medicaid Confidential Data” or “MCD” means any information or data received from DOH pursuant to the Memorandum of Understanding between DOH and the New York State Office for the Aging (NYSOFA) signed in July, 2015, as may be amended or supplemented from time to time, about individuals who have applied for or receive Medicaid benefits, including Medicaid claims data, names and addresses, diagnoses, medical services, and other personally identifiable health information.

i. “Protected Health Information” or “PHI” has the same meaning as the term “Protected Health Information”, as defined in 45 C.F.R. § 160.103. “Protected Health Information” includes without limitation “Electronic Protected Health Information” as defined above.

j. “Security Incident” has the same meaning as the term “Security Incident”, as defined in 45 C.F.R. § 160.304, but shall not include (i) unsuccessful attempts to penetrate computer networks or servers accessed or maintained by **Subcontractor**; and (ii) immaterial incidents that occur on a routine basis, such as general “pinging” or “denial of service” attacks.

k. “Subcontractor” has the same meaning as the term “Subcontractor”, as defined in 45 C.F.R. § 160.103.

l. “Unsecured Protected Health Information” or “Unsecured PHI” has the same meaning as the term “unsecured protected health information” as defined in 45 C.F.R. § 164.402.

2. **OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI; OBLIGATIONS RELATING TO MCD**

2.1 Obligations of **Subcontractor**. With regard to its use and/or disclosure of PHI, Subcontractor agrees to:

a. Not use or disclose the PHI other than as permitted or required by this Agreement or as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom **AAA** is required to disclose such information or as otherwise permitted under the Privacy and Security Rules.

b. Implement and use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, **Subcontractor** will:

(i) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI as required by the Privacy and Security Rules;

(ii) Ensure that any agent, including an additional subcontractor, to whom **Subcontractor** provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect Electronic PHI; and

(iii) Promptly (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) thereof) report to **AAA** any Security Incident of which **Subcontractor** becomes aware. Any notice of a Security Incident shall include the identification of each Individual whose Protected Health Information has been, or is reasonably believed by **Subcontractor** to have been, accessed, acquired, or disclosed during such Security Incident as well as any other relevant information regarding the Security Incident, in each case to the extent such information is available to **Subcontractor** and promptly after (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) thereof) such information becomes known to **Subcontractor**.

c. Promptly report to **AAA**, and mitigate, to the extent practicable, any harmful effect that is known to **Subcontractor** of any use or disclosure of PHI by **Subcontractor** in violation of the requirements of this Agreement and/or any Security Incident or Breach, and take steps to avoid any further similar violating uses or disclosures and/or Security Incidents or Breaches; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by **Subcontractor** to **AAA** of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to **AAA** by **Subcontractor** shall be required only upon request. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on **Subcontractor**'s firewall, port scans, unsuccessful log-in attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

d. Report to **AAA** any Breach of Unsecured PHI immediately after (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach) the discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach and provide to **AAA** notice of all of the elements specified in 45 C.F.R. § 164.404(c) (to the extent such information is available to **Subcontractor**) promptly after (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach) such information becomes known to **Subcontractor**, including, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by **Subcontractor** to have been, accessed, acquired or disclosed during such Breach. **Subcontractor** shall cooperate and assist, at no cost to Covered Entity, NYSOFA, and/or **AAA**, only to the extent such Breach is caused by or resulting from the acts or omissions of **Subcontractor**, its subcontractors or agents, in making notification as required by law in the event of a Breach due to **Subcontractor**.

e. Cooperate and assist Covered Entity, NYSOFA, and/or **AAA** in the reasonable investigation of any violation of the requirements of this Agreement and/or any Security Incident or Breach at no cost to Covered Entity, NYSOFA, and/or **AAA** to the extent such violation, Security Incident and/or Breach is caused by or resulting from the acts or omissions of **Subcontractor**, its subcontractors or agents.

f. Ensure that all of its subcontractors and agents that receive, use, or have access to PHI agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply through this Agreement to **Subcontractor** with respect to such information. **AAA** acknowledges that such writing may differ in form, but will not differ in substance from this Agreement. If **Subcontractor** becomes aware of a pattern of activity or practice of a subcontractor or agent that would constitute a material breach or violation of the subcontractor's or agent's obligations under such writing, **Subcontractor** shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the contract or arrangement.

g. Upon 10 days written notice by **AAA**, NYSOFA, or the Covered Entity, provide access to PHI in a Designated Record Set to the Covered Entity or, as directed by **AAA**, NYSOFA, or the Covered Entity, to an Individual in order to meet applicable access requirements of the Privacy and Security Rules. If required to provide access to PHI in a Designated Record Set in a specific format, **Subcontractor** will provide access to PHI in such format to the extent **Subcontractor** maintains PHI in such format in accordance with Section 13405(e) of the HITECH Act. If an Individual makes a request for access to PHI directly to **Subcontractor**, **Subcontractor** shall notify **AAA** of the request within 3 business days of such request and will cooperate with **AAA**, NYSOFA, and/or the Covered Entity and allow Covered Entity to send the response to the Individual.

h. Upon 10 days written notice by **AAA**, NYSOFA, or the Covered Entity, make, or make available for, amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual. If an Individual makes a request for an amendment to PHI directly to **Subcontractor**, **Subcontractor** shall notify **AAA** of the request within 3 business days of such request and will cooperate with **AAA**, NYSOFA, and/or the Covered Entity and allow Covered Entity to send the response to the Individual.

i. Subject to attorney-client and any other applicable legal privilege, make its internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, available to the Covered Entity upon 10 days written notice, and to the Secretary of the U.S. Department of Health and Human Services (“HHS”) or his/her designee, in the reasonable time and manner specified by the Secretary, for purposes of the Secretary determining compliance of Covered Entity with the HIPAA Rules. Subject to the legal privileges referred to above and as otherwise permitted by law, **Subcontractor** shall, within 10 business days after receipt of such request, notify Covered Entity, with a copy to NYSOFA and **AAA**, of any request for access by HHS and shall provide Covered Entity, NYSOFA, and **AAA** with a copy of the HHS request for access and all materials to be disclosed pursuant thereto.

j. Document such disclosures of PHI as would be required for Covered Entity to respond, in accordance with the HIPAA Rules, to a request by any Individual for an accounting of disclosures of PHI in accordance with the requirements of the HIPAA Rules. Subcontractor shall make any such accounting available to Covered Entity upon request.

k. Upon 10 days written notice by the Covered Entity, NYSOFA, or **AAA**, make available or provide to Covered Entity or the Individual information collected in accordance with Section 2.1(j), to permit Covered Entity to respond, in accordance with HIPAA, the

HIPAA Rules, to a request by an Individual for an accounting of disclosures of PHI. If an Individual makes a request for an accounting directly to **Subcontractor**, **Subcontractor** shall notify **AAA** of the request within 3 business days of such request and will cooperate with Covered Entity, NYSOFA, and/or **AAA** and allow Covered Entity to send the response to the Individual.

l. Upon written notice by **AAA** that all other agreements between the parties which relate to the administration of the NY Connects/BIP will be terminated for any reason, return to **AAA** or destroy and, unless return or destruction is infeasible, certify to **AAA** in writing of any such destruction, within thirty (30) days of **Subcontractor's** receipt of such notice, all PHI obtained from Covered Entity or created or obtained by **Subcontractor** on behalf of Covered Entity with respect to the NY Connects/BIP, including such PHI that is in the possession of **Subcontractor's** subcontractors and agents, and retain no copies if it is feasible to do so; provided, however, that prior to destroying or returning PHI, the Parties and affected Covered Entities will meet and confer in order to reach a mutually satisfactory resolution with respect to the feasibility of destroying or returning the PHI and **Subcontractor's** right to continued use and disclosure of the PHI. If return or destruction of the PHI is infeasible as reasonably determined by Covered Entity, **Subcontractor** shall extend all protections contained in this Agreement to **Subcontractor's** use and/or disclosure of any retained PHI, and limit any further uses and/or disclosures to the purposes mutually agreed upon by the Parties. This Provision shall apply to PHI that is in the possession of subcontractors or agents of **Subcontractor**.

m. Comply with HITECH as applicable to **Subcontractor** as a Business Associate.

n. To the extent **Subcontractor** is required to carry out Covered Entity's, NYSOFA's, and/or **AAA's** obligations under 45 C.F.R. subpart E, comply with the requirements of such subpart that apply to each of Covered Entity, NYSOFA, and **AAA** in the performance of such obligations, including, but not limited to, minimum necessary and document retention standards.

o. In receiving, storing, processing, or otherwise dealing with any "patient identifying information" or "records" as defined in 42 C.F.R. § 2.11, from an alcohol/drug abuse "program," as defined in 42 C.F.R. § 2.11, that is federally assisted in a manner described in 42 C.F.R. § 2.12(b), and that is operated by a Covered Entity, to be fully bound by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

p. Resist in judicial proceedings any efforts to obtain access to "patient identifying information" or "records" as defined in 42 C.F.R. § 2.11 and as maintained by **Subcontractor**, other than as permitted by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

q. Comply with all applicable federal and state laws and regulations governing the confidentiality of Protected Health Information including, without limitation, New York Public Health Law §§ 18 (Access to Patient Information) & 2780 et seq.; New York Mental Hygiene Law §§ 22.05 & 33.13; New York Civil Rights Law § 79-l; New York General Business Law §§ 399-dd (Confidentiality of Social Security Account Number), 399-h, & 899-aa; New York Civil Practice Law and Rules (CPLR) §§ 2302(a), 4504, 4507, 4508, & 4510 and CPLR R. 3122(a); chapter 5 of title 10 of the Official Compilation of Codes,

Rules, and Regulations of the State of New York (NYCRR); 10 NYCRR § 63.6(k); Federal Rules of Evidence R. 501; and 21 C.F.R. § 1304.24(d).

r. Pursuant to New York General Business Law § 899-aa(2)&(3) and in conformity with paragraph 2.1(a) of this Agreement, within 15 days' after discovery thereof, notify the Covered Entity with a copy each to NYSOFA and AAA of any "breach of the security of the system," as defined in New York General Business Law § 899-aa(1)(c), that involves PHI containing individuals' "private information," as defined in New York General Business Law § 899-aa(1)(b), that was, or was reasonably believed to be, acquired from Subcontractor by a person without valid authorization.

s. In the event Subcontractor chooses to destroy the PHI in its possession in compliance with paragraph 2.1(l) of this Agreement, and that PHI contains "personal identifying information" as defined in New York General Business Law § 399-h(1)(d), dispose of such information in conformity with New York General Business Law § 399-h(2).

2.2 Permitted Uses and Disclosures of PHI by Subcontractor. Except as otherwise specified in this Agreement, Subcontractor may use and disclose the PHI as reasonably necessary to perform its obligations under any other agreement with AAA which relates to administration of the NY Connects/BIP, provided that such use or disclosure does not violate the HIPAA Rules. Unless otherwise limited herein, Subcontractor may:

a. Use the PHI in its possession for its proper management and administration of Subcontractor, as defined in Subcontractor's policies and procedures, and to carry out the legal responsibilities of Subcontractor.

b. Disclose the PHI in its possession to a third party for the purpose of Subcontractor's proper management and administration or to carry out the legal responsibilities of Subcontractor, provided that the disclosures are required by law or Subcontractor obtains written assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached. Such written assurances shall include adherence to the same restrictions and conditions on use and disclosure as apply to Subcontractor herein. AAA acknowledges that such written assurances may differ in form, but will not differ in substance, from this Agreement.

c. Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1). To the extent permitted by applicable law, prior to disclosing PHI as required by law to a law enforcement, regulatory, administrative, or oversight agency, or in response to a subpoena, court order, civil investigative demand, or other compulsory document or lawful process, Subcontractor shall notify the Covered Entity, with a copy each to NYSOFA and AAA, of such pending disclosure and provide reasonable time for Covered Entity to oppose such disclosure, should Covered Entity deem such opposition necessary; provided, however, that if Covered Entity does not respond to Subcontractor regarding such opposition prior to the date on which such disclosure must be made, Subcontractor may, in its own discretion, disclose PHI as required by law.

- 2.3 Prohibited Uses and Disclosures PHI by Subcontractor. Subcontractor will neither use nor disclose PHI or MCD received from or made available by AAA except as permitted or required by this Agreement. This Agreement does not authorize Subcontractor to:
- a. Sell PHI or Medicaid Confidential Data for any purpose;
 - b. Use or disclose PHI or Medicaid Confidential Data for Subcontractor's Marketing purposes; or
 - c. Offshore any PHI without the prior written consent of Covered Entity and/or NYSOFA.

2.4 Obligations of AAA. By acceptance hereof, AAA agrees:

- a. Upon written notice from DOH/OHIP or NYSOFA, to notify Subcontractor of any restriction, or change in any restriction, to the use or disclosure of Protected Health Information that AAA has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Subcontractor's use or disclosure of PHI.
- b. Upon written notice from DOH/OHIP or NYSOFA, to notify Subcontractor of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Subcontractor's use or disclosure of PHI.
- c. Not to request Subcontractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by AAA.

2.5 Obligations Relating to MCD. To the extent MCD is disclosed to or used by Subcontractor, Subcontractor agrees:

- a. Subcontractor shall not combine any individual-specific claims data that is MCD in any form in another database or information sharing and retrieval system other than The Peer Place Cloud-Based Data Management System, developed by Peer Place Networks, LLC, and shall not make any such data a permanent part of any other database or information sharing and retrieval system.
- b. The Federal Center for Medicare and Medicaid Services (CMS) requires that all contracts and/or agreements executed between DOH/OHIP and any second party that will receive MCD must include contract language that will bind such parties to ensure that all contractors and subcontractors abide by the regulations and laws that govern the protection of individual MCD. This notification and the following language is required in this Agreement and for all future contracts that will govern the receipt and release of individual MCD, and is accordingly set forth in this Agreement:

Medicaid Confidential Data/Protected Health Information (MCD/PHI) includes all information about a recipient or applicant, including enrollment information, eligibility data and protected health information. To the extent that the following may apply, Subcontractor must comply with the following state and federal laws and regulations:

- Section 367-b(4) of the NY Social Services Law
- New York State Social Services Law Section 369 (4)
- Article 27-F of the New York Public Health Law and 18 NYCRR 360-8.1
- Social Security Act, 42 USC 1396a (a)(7)
- Federal regulations at 42 CFR 431.302, 42 CFR Part 2
- The Health Insurance Portability and Accountability Act (HIPAA), at 45 CFR Parts 160 and 164
- Section 33.13 of the New York State Mental Hygiene Law.

Please note that MCD released to **Subcontractor** may contain AIDS/HIV related confidential information as defined in Section 2780(7) of the New York Public Health Law. If applicable, as required by New York Public Health Law Section 2782(5), the following notice is provided to **Subcontractor**:

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for the release for further disclosure."

Alcohol and Substance Abuse Related Confidentiality Restrictions:

Alcohol and substance abuse information is confidential pursuant to 42 CFR Part 2. General authorizations are ineffective to obtain the release of such data. If applicable, the federal regulations provide for a specific release for such data.

Subcontractor agrees to ensure that **Subcontractor** and any agent, including an additional subcontractor, to whom **Subcontractor** provides MCD/PHI, agrees to the same restrictions and conditions that apply throughout this Agreement. Further, **Subcontractor** agrees to state in any such agreement, contract or document that the party to whom **Subcontractor** is providing the MCD/PHI may not further disclose it without the prior written approval of the New York State Department of Health. **Subcontractor** agrees to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that **Subcontractor** enters into that involves MCD/PHI.

c. Medicaid Confidential Data: Additional Obligations. **Subcontractor** shall complete or assure completion of an Identity Assurance Assessment for each subcontractor that will store or process or have access to MCD provided by Covered Entity. **Subcontractor** agrees that prior to accessing MCD from **AAA** it shall: (i) cooperate fully in the Identity Assurance Assessment; (ii) implement the controls, including dual factor authentication and security standards and policies as required by New York State and Identity Assurance Assessment standards, for access to MCD from Covered Entity; and (iii) sign a certification attesting to implementation of the required controls (Certification). **Subcontractor** shall comply with Policies and Procedures regarding MCD.

2.6 Effect of changes to the HIPAA Rules. **Subcontractor** agrees to take such action as is

necessary as determined by the Covered Entity and/or NYSOFA to comply with the HIPAA Rules and any other applicable law.

3. **TERMINATION**

3.1 **Termination Generally.** This Agreement shall terminate when all of the PHI obtained from Covered Entity or created or obtained by **Subcontractor** on behalf of the Covered Entity, is destroyed or returned to Covered Entity, NYSOFA, or **AAA**, or, if it is not feasible to return or destroy the PHI, protections are extended to such information in accordance with Section 2.1(l).

3.2 **AAA's Right to Terminate for Cause.** Upon **AAA's** knowledge of a material breach by **Subcontractor** of the terms of this Agreement, **AAA** shall either:

a. Provide an opportunity for **Subcontractor** to remediate the material breach of the terms of this Agreement or end the violation. If **Subcontractor** does not remediate the material breach of the terms of this Agreement or end the violation within the time specified by **AAA**, **AAA** shall terminate: (A) this Agreement; (B) all of the provisions of any related agreement that involve the use or disclosure of PHI; and (C) such other provisions, if any, of any such related agreement as **AAA** designates in its sole discretion;

b. If **Subcontractor** has breached a material term of this Agreement and remediation is not possible, immediately terminate: (A) this Agreement; (B) all of the provisions of any related agreement that involve the use or disclosure of PHI; and (C) such other provisions, if any, of any such related agreement as **AAA** designates in its sole discretion.

4. **INDEMNITY**

Subcontractor will indemnify, defend and hold harmless **AAA** and its employees, directors, subcontractors, or members of its work force (each of the foregoing referred to as an "Indemnified Party") during the term of this Agreement and subsequent to its termination, from and against all claims, damage, losses, liabilities, fines, penalties, costs or expenses (collectively, "Losses") suffered by **AAA** that arise from, or connection with, any act or omission by the **Subcontractor** or its employees, agents or representatives that constitute or that is otherwise asserted by any regulatory agency or third party to be (i) a breach of any term or condition of this Agreement, (ii) negligence or misconduct, and/or (iii) a violation of the HIPAA Rules. The provisions of this paragraph shall survive the expiration or termination of this Agreement for any reason.

5. **MISCELLANEOUS**

5.1 **Regulatory References.** A reference in this Agreement to a section in HIPAA or the HIPAA Rules means the section as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.

5.2 **Interpretation.** The terms of this Agreement shall prevail in the case of any conflict with any other agreement between the parties to the extent necessary to allow **AAA** to comply with the HIPAA Rules and shall be construed in such a manner as to be permissible under the HIPAA Rules. In the event of an inconsistency between the provisions of this

- Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control.
- 5.3 No Third Party Beneficiaries. Except as expressly stated herein or the Privacy Rule, **Subcontractor** and **AAA** do not intend to create any rights in any third parties. Nothing in this Agreement shall confer upon any person other than **Subcontractor** and **AAA** and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 5.4 Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.
- 5.5 Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of New York and shall be enforceable in the courts of the State of New York, Albany County, or in the United States District Court for the Northern District of New York. **Subcontractor**, and by acceptance hereof, **AAA**, irrevocably submit to the exclusive jurisdiction of such courts.
- 5.6 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to comply with the requirements of the HIPAA Rules.
- 5.7 Survival. This Agreement shall survive unless **AAA** terminates or supersedes this Agreement.
- 5.8 Illegality. In the event that any provision of this Agreement is ruled by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
- 5.9 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder, unless otherwise stated, shall be deemed effectively given when personally received by the intended recipient, and shall be sent by (a) express or overnight courier with proof of delivery; or (b) United States Postal Service, certified or registered mail with signed return receipt, addressed to the person or persons identified herein. Either Party may change the person and address to which notices or other communications are to be sent to it by giving written notice of any such change in the manner provided herein. The initial notification information is:

AAA Address for Notice:

{ORGANIZATION}
Attn: {NAME OR OFFICE/UNIT}
{ADDRESS}
{ADDRESS}

Subcontractor Address for Notice:

{ORGANIZATION}
Attn: {NAME OR OFFICE/UNIT}
{ADDRESS}
{ADDRESS}

DOH Address for Notice:

The New York State Department of Health
Office of Health Insurance Programs
Attn: Manager OHIP Privacy Office
NYSDOH-MISCNY
ESP P1-11S Dock J
Albany, NY 12237

NYSOFA Address for Notice

New York State Office for the Aging
Attn: Office of the General Counsel
2 Empire State Plaza, 5th Floor
Albany, NY 12223-1251

- 5.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile and electronic copies thereof shall be deemed originals.
- 5.11 Independent Contractors. Notwithstanding any provision contained herein to the contrary, each of **Subcontractor** and **AAA** understand and agree that the parties hereto intend to act and perform as independent contractors and that therefore neither **Subcontractor** nor **AAA** is an employee, partner, joint venturer, of the other. Nothing in this Agreement shall be construed as placing the parties in a relationship of employer-employee, partners, or joint venturers. Neither **Subcontractor** nor **AAA** shall have the right to make any promises, warranties, or representations, or to assume or create any obligations, on behalf of the other party, except as otherwise expressly provided herein. **Subcontractor** and **AAA** agree to be solely and entirely responsible for their respective acts and, to the extent provided under the laws, for the acts of any of their respective officers, directors, employees, professional advisors (including accountants), contractors and other agents, except as otherwise expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Standard Business Associate Agreement to be executed by their respective authorized signatories on _____, 2016.

{NAME OF AAA ORGANIZATION}

{NAME OF SUBCONTRACTOR ORGANIZATION}

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Address: _____

Address: _____
