

**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-05**

**Supersedes: N/A**

**Expiration Date: N/A**

**DATE:** August 4, 2016

**TO:** Directors of Area Agencies on Aging (AAA)

**SUBJECT:** Sample Personal Privacy Protection Agreement

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**PURPOSE:**

This Technical Assistance Memorandum is being issued along with a Sample Personal Privacy Protection Agreement to provide guidance to AAAs in developing a means of extending to their contractors the requirements of New York's Personal Privacy Protection Law (PPPL) and the terms of the Memorandum of Agreement to be entered into between each AAA and NYSOFA.

**BACKGROUND:**

AAAs were instructed by Program Instruction 16-PI-15 to sign a Memorandum of Agreement (MOA) and a Data Use Agreement (DUA). The MOA details the responsibilities of each AAA regarding the collection and use of Personal Information and in the use of and access to the PeerPlace Statewide Client Data System. The contents of the MOA reflect in large part NYSOFA's responsibilities under the PPPL. Among NYSOFA's responsibilities is the requirement that NYSOFA apply the provisions of the PPPL to certain agreements pertaining to data use and sharing. This was accomplished by NYSOFA through use of the MOA, which provides for compliance by AAAs with the PPPL, and which also requires the AAAs to extend the requirements of the PPPL and the terms of the MOA to the AAAs' contractors.

The Data Use Agreement, which was attached to the same Program Instruction, focuses on the use by NYSOFA of data owned by AAAs. The DUA contains assurances by the AAAs that this data will be available to NYSOFA, and assurances by NYSOFA regarding limitations on such use. As the DUA addresses circumstances

specific to the relationship between NYSOFA and the AAAs, the terms and provisions contained in the DUA need not be applied to any contractors of the AAAs.

While the requirements of the PPPL must be extended by NYSOFA to the AAAs, and further extended by the AAAs to their contractors, the PPPL does not specify the means by which this must be achieved. Unlike HIPAA, which explicitly requires the use of Business Associate Agreements to ensure compliance by contractors, compliance by contractors with the PPPL does not require a BAA. To assist AAAs in causing the requirements of the PPPL and the relevant terms of the MOA to apply to their contractors, NYSOFA has developed the attached Sample Personal Privacy Protection Agreement. This sample may be used as guidance for those AAAs entering into such agreements with their contractors. The sample may be used in part or in whole, or its terms may be incorporated into other agreements. AAAs are encouraged to seek legal counsel in determining how to ensure compliance by their contractors with the PPPL and the terms of the MOA.

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

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Personal Privacy Protection Agreement  
Between  
{AREA AGENCY ON AGING}  
And  
{NAME OF CONTRACTOR}

This Agreement is entered into by and between the {AAA NAME AND ADDRESS} (hereafter AAA), and {SUBCONTRACTOR NAME AND ADDRESS} (hereafter referred to as Contractor), regarding the use of and entry of data into a statewide database or system of records.

Statewide databases, as defined under Personal Privacy Protection Law (PPPL), Article 6-A of the Public Officers Law, are software systems created, developed, or maintained by a state agency. Such databases and the information entered into these databases are subject to the requirements of the PPPL. The PeerPlace Cloud-Based Data Management System (Data System), developed by PeerPlace Networks, LLC, is maintained by and made available to AAA and its contractors by the New York State Office for the Aging (NYSOFA), a state agency, and is therefore a statewide database. Any reference to a System of Records herein shall also refer to a statewide database.

**I. DEFINITIONS**

1. Data Subject: Any natural person about whom Personal Information has been collected by or on behalf of a state agency.
2. Personal 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 “Personally Identifiable Information” shall mean Personal Information, and the terms may be used interchangeably.
3. Protected Health Information (PHI): Protected Health Information carries the definition provided in 45 C.F.R. § 160.103.
4. System of Records: Any group of records under the actual or constructive control of any state agency which includes the Personal Information of one or more Data Subjects. Any reference to “statewide database” shall mean a System of Records, and the terms may be used interchangeably.

## II. RESPONSIBILITIES OF THE CONTRACTOR

- A. The Contractor acknowledges and understands that the Data System will include information that identifies individuals applying for or receiving services administered by AAA and its contractors under the auspices of NYSOFA. This information is confidential and privileged. The Contractor shall comply with all applicable federal and state privacy laws and regulations governing electronically stored data. The Contractor shall comply with PPPL requirements regarding data use, access, disclosure, privacy, and security as set forth in this Agreement. The Contractor shall monitor the performance of its employees, agents, contractors, and subcontractors in complying with the PPPL requirements and those identified in this Agreement. The Contractor shall maintain documentation of such efforts subject to audit.
- B. The Contractor understands that any statewide database maintained by a state agency, and entry 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 PPPL. The Contractor understands that the requirements imposed by the PPPL will apply to such data due to its location within a system of records maintained by NYSOFA.
- C. The Contractor 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 Contractor understands that NYSOFA has extended these requirements to AAA by separate agreement, and that AAA likewise must 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 Contractor agrees that its use of and entry of data into the statewide database will comply with all requirements applicable to such data under the PPPL.
- D. The Contractor 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 Contractor 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 Contractor is responsible for ensuring that all such requirements are extended to all contractors and/or subcontractors.
- E. The Contractor agrees to comply with all current and future policies, procedures, and instructions issued by NYSOFA or the AAA relating to the handling of any data which is subject to the PPPL.

- F. The Contractor will fully inform all employees, agents, contractors, and subcontractors authorized to access the statewide database 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.
- G. The Contractor shall make no disclosures of Personal Information other than those allowable under the PPPL or as permitted by the AAA and/or NYSOFA.
- H. The Contractor shall comply with instructions issued by NYSOFA or the AAA 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.
- I. The Contractor shall comply with the requirements of 45 C.F.R. § 1321.51 and all other applicable federal and state laws and regulations in obtaining the informed consent of individuals from whom information is collected, recorded, or shared in connection with the provision of services. The Contractor will comply with instructions provided by NYSOFA or the AAA regarding the obtaining of and documenting of informed consent. This includes use by the Contractor of any scripts, processes, and procedures developed by NYSOFA or the AAA and provided to the Contractor 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.

### **III. SUSPENSION AND TERMINATION**

- A. AAA may immediately suspend, limit, or terminate this Agreement and/or access by the Contractor, its agents, employees, contractors, or subcontractors to the Data System upon a failure to comply with:
  - (i) the terms of this Agreement; or
  - (ii) any applicable federal or state laws or regulations such that it compromises the security and/or integrity of the Data System or the data contained therein.

- B. 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.
- C. AAA's right to terminate this Agreement for breach thereof shall not limit the right of the AAA 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.

#### **IV. 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 Contractor 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:

AAA:

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

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

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

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

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

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

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

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

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