

**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 17-PI-18**

**Supersedes: N/A**

**Expiration Date: N/A**

**DATE:** July 28, 2017

**TO:** Regional NY Connects ILC Grantees

**SUBJECT:** Business Associate Agreement for Review, Signature, and Submission

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**ACTION REQUESTED:**

Each Independent Living Center (ILC) that has entered into an agreement to administer the NY Connects Program and the Balancing Incentive Program (BIP) following a successful application in response to the Request for Applications, "Partnership to Expand and Enhance NY Connects: A Balancing Incentive Program Funding Opportunity for Independent Living Centers and/or Community-Based Organizations," issued by NYSOFA on August 25, 2016 (RFA) must review, sign, and submit the attached Business Associate Agreement (BAA). This Program Instruction and the attached Business Associate Agreement are being issued pursuant to the terms of the RFA and the Master Contract entered into between NYSOFA and each successful applicant, in accordance with the NY Connects: Choices for Long Term Care—Revised Program Standards issued on December 17, 2014 in 14-PI-16.

**RESPONSE DUE DATE:**

Each ILC must review, complete, and sign two (2) copies of the Business Associate Agreement and deliver both original, signed documents to the address below no later than August 18, 2017. ILCs must not access the Client Data System until a signed BAA is received and signed by NYSOFA.

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

Once received, the Business Associate Agreement will be signed by NYSOFA's Director and one (1) original, signed copy of such will be returned to the ILC.

**PURPOSE:**

The attached Business Associate Agreement (BAA) details the responsibilities of each ILC that administers NY Connects concerning the use and disclosure of Protected Health Information (PHI). For purposes of this Program Instruction, references to the Health Insurance Portability and Accountability Act (HIPAA) include the Health Insurance Portability and Accountability Act, the implementing regulations at Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations, and the Health Information Technology for Economic and Clinical Health (HITECH) Act. By signing, each ILC that administers the NY Connects program acknowledges the application of HIPAA and provides assurances that any obligations imposed by HIPAA or contained in the BAA will be satisfied.

**BACKGROUND:**

The New York State Office for the Aging (NYSOFA) is partnering with the New York State Department of Health (DOH) and other state agencies in the development, implementation, and administration of BIP, the No Wrong Door (NWD) program, and the expansion and enhancement of the New York Connects Program to meet BIP structural change requirements. DOH, as the single state agency designated to administer the Medicaid program, is a hybrid entity for purposes of HIPAA as defined in 45 CFR § 164.103. This means that DOH conducts certain activities which are covered under HIPAA, and that certain requirements of HIPAA may apply to DOH and to entities that do business with DOH.

DOH has identified NYSOFA as a Business Associate for purposes of the NY Connects Program and, as such, many provisions of HIPAA will apply to NYSOFA in its performance of activities related to the program. One of NYSOFA's responsibilities in this arrangement is to enter into Business Associate Agreements with any subcontractors that perform HIPAA-covered activities; as such, BAAs must be entered into with all entities that administer the NY Connects Program. In the performance of these activities, NYSOFA's subcontractors are considered Business Associates for purposes of HIPAA. A Business Associate Agreement establishes permitted uses and disclosures of PHI, identifies limitations on uses and disclosures of PHI, and includes

necessary assurances that PHI will be protected and HIPAA complied with.

A Business Associate Agreement must be entered into before NYSOFA can allow subcontractors to create, receive, maintain, or transmit PHI. Because the expansion and enhancement of the NY Connects Program is a joint venture with DOH and therefore involves information which will be deemed PHI, participating ILCs must enter into Business Associate Agreements with NYSOFA prior to participation in the program.

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**PROGRAMS AFFECTED:**

<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"/> NY Connects: Choices for Long Term Care	<input type="checkbox"/> Other:			

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

STANDARD BUSINESS ASSOCIATE AGREEMENT  
(SUBCONTRACTOR)

In connection with (a) the Underlying Agreement (as defined below), which requires New York State Office for the Aging (“**NYSOFA**”), a New York State Agency, to be provided with, to have access to, and/or to disclose Protected Health Information (as defined below) that is subject to regulations issued pursuant 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**”) and (b) the obligations of \_\_\_\_\_

(Contractor Name)

an Independent Living Center, which hereby takes on the role and may be referred to as a Subcontractor (as defined below), this Standard Business Associate Agreement (the “**Agreement**”) is made and entered into by and between NYSOFA and Contractor in connection with:

- (i) NYSOFA’s receipt, use, disclosure and creation of Protected Health Information and/or Medicaid Confidential Data; and
- (ii) the performance by Contractor of its obligations in connection with the Underlying Agreement as a Subcontractor.

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 or the Underlying Agreement.
  - 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” means, if permitted by DOH/OHIP, the combining of PHI from DOH with other PHI received by Contractor, to permit data analyses that relate to health care operations of the respective data sources.
  - 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 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 maintained by Contractor; 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. “Underlying Agreement” means the Agreement relating to NY Connects and the Balancing Incentive Program (“BIP”), entered into by and between NYSOFA and Contractor following Contractor’s successful application in response to the Request for Applications, “Partnership to Expand and Enhance NY Connects: A Balancing Incentive Program Funding Opportunity for Independent Living Centers and/or Community-Based Organizations,” issued by NYSOFA on August 25, 2016, as amended or supplemented from time to time, and to which this BAA is attached, as well as any subsequent agreement between the parties.

m. “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 Contractor.** With regard to its use and/or disclosure of PHI, Contractor agrees to:

a. Not use or disclose the PHI other than as permitted or required by this Agreement or the Underlying Agreement or as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom NYSOFA 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, Contractor 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 a subcontractor, to whom Contractor 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 NYSOFA any Security Incident of which Contractor 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 Contractor 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 Contractor 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 Contractor.

c. Promptly report to NYSOFA, and mitigate, to the extent practicable, any harmful effect that is known to Contractor of any use or disclosure of PHI by Contractor 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 Contractor to NYSOFA of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to NYSOFA by Contractor shall be required only upon request. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Contractor'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 NYSOFA 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 NYSOFA notice of all of the elements specified in 45 C.F.R. § 164.404(c) (to the extent such information is available to Contractor) 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 Contractor, including, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Contractor to have been, accessed, acquired or disclosed during such Breach. Contractor shall cooperate and assist, at no cost to Covered Entity and/or NYSOFA, only to the extent such Breach is caused by or resulting from the acts or omissions of Contractor, its subcontractors or agents, in making notification as required by law in the event of a Breach due to Contractor.

e. Cooperate and assist Covered Entity and/or NYSOFA 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 and/or NYSOFA to the extent such violation, Security Incident and/or Breach is caused by or resulting from the acts or

omissions of Contractor, 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 Contractor with respect to such information. NYSOFA acknowledges that such writing may differ in form, but will not differ in substance from this Agreement. If Contractor 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, Contractor 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 NYSOFA or the Covered Entity, provide access to PHI in a Designated Record Set to the Covered Entity or, as directed by 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, Contractor will provide access to PHI in such format to the extent Contractor 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 Contractor, Contractor shall notify NYSOFA of the request within 3 business days of such request and will cooperate with NYSOFA and/or the Covered Entity and allow Covered Entity to send the response to the Individual.

h. Upon 10 days written notice by 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 Contractor, Contractor shall notify NYSOFA of the request within 3 business days of such request and will cooperate with 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, Contractor shall, within 10 business days after receipt of such request, notify Covered Entity, with a copy to NYSOFA, of any request for access by HHS and shall provide Covered Entity and NYSOFA 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. Contractor shall make any such accounting available to Covered Entity upon request.

k. Upon 10 days written notice by the Covered Entity or NYSOFA, 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 Contractor, Contractor shall notify NYSOFA of the request within 3 business days of such request and will cooperate with Covered Entity and/or NYSOFA and allow Covered Entity to send the response to the Individual.

l. Upon written notice by NYSOFA that the Underlying Agreement will be terminated for any reason, return to NYSOFA or destroy and, unless return or destruction is infeasible, certify to NYSOFA in writing of any such destruction, within thirty (30) days of Contractor's receipt of such notice, all PHI obtained from Covered Entity or created or obtained by Contractor on behalf of Covered Entity with respect to the Underlying Agreement, including such PHI that is in the possession of Contractor'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 Contractor'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, Contractor shall extend all protections contained in this Agreement to Contractor'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 Contractor.

m. Comply with HITECH as applicable to Contractor.

n. To the extent Contractor is required to carry out Covered Entity's and/or NYSOFA's obligations under 45 C.F.R. subpart E, comply with the requirements of such subpart that apply to each of Covered Entity and NYSOFA 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 Contractor, 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 to NYSOFA, 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 Contractor by a person without valid authorization.

s. In the event Contractor 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 Contractor. Except as otherwise specified in this Agreement, Contractor may use and disclose the PHI as reasonably necessary to perform its obligations under the Underlying Agreement, provided that such use or disclosure does not violate the HIPAA Rules. Unless otherwise limited herein, Contractor may:

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

b. Disclose the PHI in its possession to a third party for the purpose of Contractor's proper management and administration or to carry out the legal responsibilities of Contractor, provided that the disclosures are required by law or Contractor 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 Contractor 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 Contractor herein. NYSOFA 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, Contractor shall notify the Covered Entity, with a copy to NYSOFA, 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 Contractor regarding such opposition prior to the date on which such disclosure must be made, Contractor may, in its own discretion, disclose PHI as required by law.

2.3 Prohibited Uses and Disclosures PHI by Contractor. Contractor will neither use nor disclose PHI or MCD received from or made available by NYSOFA except as permitted or required by this Agreement. This Agreement does not authorize Contractor to:

- a. Sell PHI or Medicaid Confidential Data for any purpose;
- b. Use or disclose PHI or Medicaid Confidential Data for Contractor's Marketing purposes; or
- c. Offshore any PHI without the prior written consent of Covered Entity and/or NYSOFA.

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

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

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

- a. Contractor 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, Contractor must comply with the following state and federal laws and regulations:*

- *Section 367-b(4) of the New York State Social Services Law*
- *Section 369(4) of the New York State Social Services Law*
- *Article 27-F of the New York State 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) and regulations promulgated thereunder at 45 CFR Parts 160 and 164*
- *Section 33.13 of the New York State Mental Hygiene Law.*

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

*"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.*

*Contractor agrees to ensure that Contractor and any agent, including a subcontractor, to whom Contractor provides MCD/PHI, agrees to the same restrictions and conditions that apply throughout this Agreement. Further, Contractor agrees to state in any such agreement, contract or document that the party to whom Contractor is providing the MCD/PHI may not further disclose it without the prior written approval of the New York State Department of Health. Contractor 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 Contractor enters into that involves MCD/PHI.*

c. *Medicaid Confidential Data: Additional Obligations.* Contractor shall complete or assure completion of an Identity Assurance Assessment for each Contractor agent or employee that will store or process or have access to MCD provided by Covered Entity. Contractor agrees that prior to accessing MCD from NYSOFA 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 Identity Assurance Assessment standards, for access to MCD from Covered Entity; and (iii) sign a certification attesting to implementation of the required controls (Certification). Contractor shall comply with Policies and Procedures regarding MCD.

2.6 *Effect of changes to the HIPAA Rules.* Contractor 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 Contractor on behalf of the Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy the PHI, protections are extended to such information in accordance with Section 2.1(I).

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

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

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

4. **INDEMNITY**

Contractor will indemnify, defend and hold harmless NYSOFA 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 NYSOFA that arise from, or connection with, any act or omission by the Contractor 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, 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 Underlying Agreement to the extent necessary to allow NYSOFA 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, Contractor and NYSOFA do not intend to create any rights in any third parties. Nothing in this Agreement shall confer upon any person other than Contractor and NYSOFA 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. Contractor, and by acceptance hereof, NYSOFA, 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 Terms. This Agreement is hereby incorporated into the Underlying Agreement as an addendum to allow NYSOFA to comply with the HIPAA Rules and other applicable laws. The Underlying Agreement and this Agreement constitute the entire agreement of the parties with respect to the subject matter contained herein.
- 5.8 Survival. This Agreement shall survive termination of the Underlying Agreement unless NYSOFA terminates or supersedes this Agreement.
- 5.9 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.
- 5.10 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:

**NYSOFA Address for Notice:**

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

**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

**Contractor Addresses for Notice:**

Organization Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

- 5.11 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.
- 5.12 Independent Contractors. Notwithstanding any provision contained herein to the contrary, each of Contractor and NYSOFA understand and agree that the parties hereto intend to act and perform as independent contractors and that therefore neither Contractor nor NYSOFA is an employee, partner, or 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 Contractor nor NYSOFA 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. Contractor and NYSOFA 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 \_\_\_\_\_, 2017.

**New York State Office for the Aging**

\_\_\_\_\_

(Contractor Agency Name)

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Greg Olsen

Print Name: \_\_\_\_\_

Title: Acting Director

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

Address: 2 Empire Plaza, 5<sup>th</sup> Floor

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

Albany, NY 12223-1251

\_\_\_\_\_