

**ATTACHMENT B
CONFIDENTIALITY AGREEMENT**

This Agreement is effective _____, amongst the collaborating partners participating in Long Term Care Task Force: NY Connects Genesee Care Options named in **Attachment A** of this agreement, herein referred to as, “the **Parties**”.

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the “HIPAA Privacy Rule”), and

WHEREAS, the Parties have entered into a Memorandum of Understanding whereby the Parties will provide certain services as specified in an arrangement, reflected in a written agreement, and is hereby referred to as the “MoU”; and

THEREFORE, in consideration of the Parties’ continuing obligations under the MoU, compliance with the HIPAA Privacy Rule, an other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of all Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy Rule.

The term “Protected Health Information” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual.

II. COORDINATION WITH HIPAA PRIVACY RULE

In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule in effect at the time shall control.

III. OBLIGATIONS AND ACTIVITIES OF COLLABORATING PARTNERS

- (a) The Parties acknowledge and agree that all Protected Health Information that is created or received by any Collaborating Partner and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display to another party; is created or received by any Collaborating Party shall be subject to this Agreement.
- (b) The Parties agree to not use or further disclose Protected Health Information other than as permitted or allowed by the Agreement or as required by law.
- (c) The Parties may adopt more stringent protective measures but nothing less than what is required by HIPAA and the Agreement
- (d) The Parties agree to mitigate, to the extent practicable, any harmful effect that is known to the Parties of a use or a disclosure of Protected Health Information by any Party in violation of the requirements of this Agreement.
- (e) The Parties agree not to use or disclose any of the Protected Health Information unless provided for by this Agreement.
- (f) The Parties agree to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by a Collaborating Partner, agrees to the same restrictions and conditions that apply through this Agreement to the Parties with respect to such information.
- (g) The Parties agree to make available Protected Health Information to the extent allowed by and in the manner required by Section 164.524 of the HIPAA Privacy Rule
- (h) The Parties agree that if the definition of Protected Health Information under HIPAA is changed, then the amended definition will apply.
- (i) The Parties agree to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created, or received by a Collaborating Partner, available at the request of the HIPAA regulatory agency representatives.

- (j) The Parties agree to document any disclosures of and make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule

IV. PERMITTED USES AND DISCLOSURES BY THE CONFIDENTIALITY AGREEMENT

Except as otherwise limited in this Agreement, the Parties will only use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of Long Term Care Access: Coordinated Points of Entry as specified in the MoU, provided such use or disclosure would not violate the Privacy Rule.

V. TERM AND TERMINATION

- (a) Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when the MoU is terminated.
- (b) Termination for Cause. By a collaborating party, knowledge of a material breach of this Confidentiality Agreement, the Long Term Care Task Force overseeing Coordinating Points of Entry shall have the right to immediately terminate this Agreement and the MoU. Termination shall be made in writing.
- (c) Effect of Termination. The Parties are individually responsible for maintaining records following termination of this Confidentiality Agreement and MoU agreement in accordance with HIPAA regulations.

VI. MISCELLANEOUS

- (a) Amendment. This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that this Agreement will be automatically amended to conform to any changes in the Privacy Rule as is necessary to comply with the current requirements of the Privacy Rule and Health Insurance Portability and Accountability Act, Public Law 104-191.
- (b) Assignment. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Parties.
- (c) Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties collaborating with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

- (d) Governing Law. This Agreement will be governed by the laws of the State of New York.
- (e) Interpretation. Any interpretation of this Agreement requires strict compliance with HIPAA
- (f) Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Parties who signed this Agreement or the person currently serving in that representative's position with the other Parties.

IN WITNESS WHEREOF, as one of the Collaborating Parties, I have executed this Agreement as of the day and year written below.

Agency/Business Name Printed

Agency/Business Address Printed

Agency/Business Representative Name Printed

Title Printed

Agency/Business Representative Signature

Agency Telephone Printed

Date Signed