

Schedule B - Subcontractor Business Associate Agreement

This Subcontractor Business Associate Agreement (“Agreement”) is entered into and effective upon the earlier occurrence of either the date of Master Agreement execution involving HRIS Services, or Subcontractor receipt of PHI from Customer (each an “Effective Date”), by and between Customer (“Business Associate”) and Governmentjobs.com, Inc. (“Subcontractor”) and supplement the applicable NEOGOV Service Agreement (or if explicitly specified by the parties otherwise, such equivalent master terms and conditions or agreement governing the provision and receipt of NEOGOV Subcontractor Services) between NEOGOV and Customer (the “Master Agreement”).

This Agreement is intended to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and the Privacy Rule, Security Rule, Enforcement Rule and Breach Notification Rule under HIPAA and HITECH (the Privacy Rule, Security Rule, Enforcement Rule and Breach Notification Rule hereinafter referred to collectively as the “Rules”). Both parties intend this Agreement to be construed and administered to comply with the requirements of HIPAA, HITECH and the Rules.

RECITALS

WHEREAS, Business Associate provides certain services to entities that are themselves HIPAA Covered Entities or Business Associates and, in connection with those services, Business Associate’s Covered Entity and Business Associate partners disclose PHI to Business Associate, or Business Associate creates and receives PHI on behalf of its Covered Entity and Business Associate partners;

WHEREAS, Subcontractor provides certain services to Business Associate and, in connection with those services, Business Associate may disclose PHI to Subcontractor, or Subcontractor creates and receives PHI on behalf of Business Associate;

WHEREAS, the parties desire to protect the privacy and provide for the security of the PHI pursuant to HIPAA, HITECH and the Rules;

WHEREAS, the Rules require Subcontractor to enter into a contract containing specific requirements pertaining to Subcontractor’s use and disclosure of PHI received from, or created or received on behalf of, Business Associate;

WHEREAS, the parties agree that there is good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to enter into the covenants and agreements contained in this Agreement.

NOW THEREFORE, for and in consideration of the recitals above and mutual covenants and conditions below, Business Associate and Subcontractor enter into this Agreement, and agree as follows:

SECTION 1 – DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as amended by the HITECH Act and may be further amended from time to time (the “Privacy Rule”) and the Security Standards for Health Insurance Reform at 45 C.F.R. Parts 160, 162 and 164, as amended by the HITECH Act and may be further amended from time to time (the “Security Rule”).

1.1 Breach. “Breach” shall mean the unauthorized acquisition, access, use or disclosure of Protected Health Information which compromises the security or privacy of such information. “Breach” is subject to the limitations and exceptions set forth in 45 C.F.R. § 164.402.

1.2 Individual. “Individual” shall mean the person who is the subject of Protected Health Information.

1.3 Protected Health Information (“PHI”). “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Subcontractor from or on behalf of Business Associate.

1.4 Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

1.5 Subcontractor. “Subcontractor” shall mean the entity identified as “Subcontractor” above in the opening paragraph of this Agreement, and the subcontractors, agents, and person(s) or entity(ies) under its control, which create, receive, maintain, or transmit PHI on behalf of Business Associate. “Subcontractor” shall include any subcontractor to whom Subcontractor as defined above in this section 1.5 delegates a function, activity or service to be performed on behalf of Business Associate.

1.6 Subcontractor Services. “Subcontractor Services” shall mean the services Subcontractor provides to or on behalf of Business Associate pursuant to the Master Agreement, which is incorporated into, and made part of, this Agreement.

SECTION 2 – USES AND DISCLOSURES OF PHI

2.1 Use and Disclosure of PHI. Subcontractor may not use or disclose PHI or any information derived from PHI, other than as permitted or required by this Agreement or as Required by Law.

2.2 Subcontractor Services. Subcontractor may use or disclose PHI as necessary for the purposes of providing Subcontractor Services, provided that any such use or disclosure complies with the Rules and would not violate the Privacy Rule if done by Business Associate or Business Associate’s Covered Entity or Business Associate customers.

2.2 Other Permitted Uses and Disclosures. Subcontractor may use and disclose PHI, if necessary: (a) for the proper management and administration of the Subcontractor; and (b) to carry out the legal responsibilities of Subcontractor. Subcontractor may disclose PHI pursuant to Subsection 2.2 (a) and (b) above only if: (i) the disclosure is Required by Law; or (ii) Subcontractor obtains reasonable assurance from the person or entity to whom the PHI is disclosed that the information will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person or entity, and the person or entity notifies Subcontractor of any instances of which it is aware in which the confidentiality of the PHI has been breached.

2.3 Pursuant to an Authorization. Subcontractor may use or disclose PHI pursuant to a valid authorization by an Individual that satisfies the requirements of 45 C.F.R. § 164.508.

SECTION 3 – OBLIGATIONS OF SUBCONTRACTOR

3.1 Safeguards. Subcontractor shall develop, implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI and comply with the Security Rule with respect to PHI, to prevent use or disclosure of the PHI other than as provided by this Agreement. Upon request by Business Associate, Subcontractor will provide to Business Associate documentation (including a copy of written policies and procedures) demonstrating Subcontractor’s compliance with the Security Rule.

3.2 Reporting Violations; Breach Notification. Subcontractor shall report to Business Associate in writing any use or disclosure of PHI not provided for by this Agreement or the Privacy Rule of which it becomes aware, including Breaches of Unsecured PHI, as required by 45 C.F.R. § 164.410, and any Security Incidents, without unreasonable delay and in no case later than 30 calendar days after the discovery of any such use, disclosure, Breach, or Security Incident. Upon discovery of a Breach, Subcontractor will undertake a documented risk assessment in accordance with the Breach Response Rule to determine whether the acquisition, access, use or disclosure of the PHI at issue is likely to compromise the affected PHI. Subcontractor shall make this determination in coordination and consultation with Business Associate. Subcontractor shall make and retain records of such determinations, including the basis for any determination that an unauthorized use or disclosure of PHI is not a Breach that requires notification of affected individuals, regulators and others, and shall provide the documents supporting such determination to Business Associate if requested. Subcontractor’s determination that the Breach is likely to result in *low probability* of compromise of the affected PHI is subject to review and approval by Business Associate. If Business Associate disagrees with Subcontractor’s determination of low probability of compromise, Subcontractor shall comply with Business Associate’s determination and comply with the requirements of this Agreement consistent with such determination.

3.3 Duty to Mitigate. Subcontractor shall mitigate, to the extent practicable, any harmful effect known to Subcontractor of (a) a use or disclosure of PHI by Subcontractor in violation of the requirements of this Agreement (including a Breach of Unsecured PHI); or (b) a Security Incident.

3.4 Subcontractors and Agents. Subcontractor may disclose PHI to a subcontractor that is a Business Associate and may allow such subcontractor to create, receive, maintain or transmit PHI on its behalf, if the disclosing Subcontractor ensures that the

subcontractor agrees to the same restrictions and conditions that apply to the disclosing Subcontractor with respect to the PHI. If Subcontractor comes to know of a violation the Rules, or a pattern of activity or practice of a subcontractor that constitutes a material breach or violation of the subcontractor's obligation under the contract or other arrangement with Subcontractor, Subcontractor must take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminate the contract or arrangement, if feasible.

3.5 Access to and Amendment of PHI. Upon written request by Business Associate, to the extent Business Associate demonstrates that it is incapable of doing so itself and at Business Associate's cost, Subcontractor shall make PHI in a Designated Record Set available to Business Associate for inspection and copying to enable Business Associate's Covered Entity or Business Associate customers to fulfill their obligations under the Privacy Rule, including without limitation 45 C.F.R. §§ 164.524 and 164.526. No later than 20 calendar days following a request by Business Associate (unless a longer response time is authorized by Business Associate in writing), Subcontractor shall:

- (a) Produce the PHI in the form and format requested by Business Associate if the information is readily producible in such form or format; or, if not, then (i) in another computerized format (e.g., MS Word or Excel, text, HTML or PDF); or (ii) if Subcontractor does not maintain the information electronically, then in readable hard copy form or another form and format as agreed by Business Associate and Subcontractor.
- (b) Transmit a copy of PHI to another person or entity as directed by Business Associate or its Covered Entity or Business Associate partners on behalf of the Individual.
- (c) Incorporate any amendments to PHI as directed by Business Associate.

Any fee for providing the PHI shall be reasonable and cost-based, and otherwise comply with the requirements relating to such fees set forth in 45 C.F.R. § 164.524(4).

3.6 Accounting of Disclosures.

- (a) **Disclosure Tracking.** Subcontractor agrees to document disclosures of PHI, if any, and information related to such disclosures as required by and in accordance with 45 C.F.R. § 164.528.
- (b) **Production Upon Request.** No later than 20 days following a written request by Business Associate (unless a longer response time is authorized by Business Associate in writing), Subcontractor shall provide an accounting of disclosures of PHI pertaining to the Individual(s) subject of the request, to enable Business Associate's Covered Entity or Business Associate partners to fulfill their obligations under 45 C.F.R. § 164.528. The accounting shall include the details specified in 45 C.F.R. § 164.528(b)(2).
- (c) **Accounting of Disclosures of Electronic Health Records.** If and to the extent Subcontractor uses or maintains an electronic health record ("EHR"), with respect to PHI, Subcontractor shall, in addition to the requirements set forth in paragraphs (a) and (b) above, track and provide accounting of disclosures of EHR for purposes of treatment, payment or Health Care Operations of Business Associate's Covered Entity or Business Associate partners, as provided in 45 C.F.R. § 164.506.
- (d) **Survival of Accounting Obligation.** Subcontractor agrees to maintain an accounting of disclosures described in paragraph (a) above for a period of six (6) years after termination of this Agreement, and disclosures described in paragraph (c) above for a period of three (3) years after termination of this Agreement.

3.7 Inspection of Books and Records. Subcontractor shall make internal practices, books, and records relating to the use and disclosure of PHI available to Business Associate, or at the request of Business Associate to the Secretary, in a time and manner designated by Business Associate or the Secretary, for purposes of the Secretary determining Business Associate's Covered Entity or Business Associate customers' compliance with the Rules.

3.8 Return of PHI. During the Term, when particular PHI is no longer necessary for the performance of Subcontractor Services or for any other purposes for which Subcontractor is authorized to use or disclose the PHI, upon written request from Business Associate, Subcontractor shall without unreasonable delay return or, if Business Associate gives written permission,

securely destroy such PHI in whatever form or medium and retain no copies of such PHI. In the event that Subcontractor determines that returning or destroying the PHI is infeasible, Subcontractor shall provide to Business Associate notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, Subcontractor shall extend the protections of this Agreement (and of any additional requirements imposed by HIPAA, HITECH or the Rules) to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Subcontractor maintains such PHI.

SECTION 4 – REMUNERATION; MARKETING; FUNDRAISING

4.1 Remuneration for PHI.

- (a) Except as set forth in paragraph (b) below, Subcontractor shall not directly or indirectly receive financial or non-financial remuneration in exchange for any PHI from or on behalf of the recipient of the PHI.
- (b) Paragraph (a) above does not apply to disclosures of PHI:
 - (i) For public health purposes pursuant to 45 C.F.R. § 164.512(b) or § 164.514(e);
 - (ii) For research purposes pursuant to 45 C.F.R. § 164.512(i) or § 164.514(e), where the only remuneration received by Subcontractor is a reasonable cost-based fee to cover the cost to prepare and transmit the PHI for such purposes;
 - (iii) For treatment, payment or Health Care Operations purposes pursuant to 45 C.F.R. § 164.506(a);
 - (iv) To or by Subcontractor for activities that Subcontractor undertakes on behalf of Business Associate pursuant to 45 C.F.R. §§ 164.502(e) and 164.504(e), and the only remuneration provided is by Business Associate to Subcontractor, if applicable, for the performance of such activities;
 - (v) To an Individual, or to Business Associate on behalf of the Individual, when requested under 45 C.F.R. §§ 164.524, 164.526 or 164.528; and
 - (vi) Required by Law, subject to the requirements of 45 C.F.R. § 164.512(a).

4.2 Marketing Restrictions. Subcontractor shall not use or disclose PHI for marketing purposes, as defined in 45 C.F.R. § 164.501, except as specifically authorized by Business Associate in writing.

SECTION 5 – OBLIGATIONS OF BUSINESS ASSOCIATE

5.1 Business Associate shall notify Subcontractor in writing of any limitations in its Covered Entities' notices of privacy practices in accordance with 45 CFR §164.520, to the extent that the limitations may affect Subcontractor's use or disclosure of PHI.

5.2 Business Associate shall notify Subcontractor in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that the changes or revocation may affect Subcontractor's use or disclosure of PHI.

5.3 Business Associate shall notify Subcontractor in writing of any restriction to the use or disclosure of PHI that Business Associate or its Covered Entities have agreed to in accordance with 45 CFR §164.522, to the extent that the restriction may affect Subcontractor's use or disclosure of PHI.

5.4 Business Associate shall not request Subcontractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule, or the HITECH Act if done by Business Associate or its Covered Entities.

5.5 Business Associate shall use its best efforts to minimize the disclosure of Protected Health Information to Subcontractor where the disclosure of that information is not needed for Subcontractor to provide products or services to Business Associate.

6 - TERM & TERMINATION

6.1 Term. The Term of this Agreement shall be effective as of the Effective Date, and shall terminate when all PHI is returned to Business Associate or, with prior permission of Business Associate, destroyed, or, if it is infeasible to return or destroy PHI, protections are extended to such PHI, in accordance with the termination provisions of this Section 6.

6.2 Termination for Cause. Business Associate may terminate this Agreement if Business Associate determines, in its sole discretion that Subcontractor has breached any provision of this Agreement or otherwise violated HIPAA, HITECH or the Rules. Business Associate shall provide written notice to Subcontractor and an opportunity for Subcontractor to cure the breach or end the violation within 10 business days of such written notice, unless cure is not possible. If Subcontractor fails to cure the breach or end the violation within the specified time period or cure is not possible, this Agreement shall automatically and immediately terminate, unless termination is infeasible. Subcontractor acknowledges that if cure is not possible and termination of this Agreement is infeasible, as determined in the sole discretion of Business Associate, Business Associate shall have the right to report the violation to the Secretary.

6.3 Obligations upon Termination. Subcontractor's obligations to protect the privacy and security of PHI shall be continuous and shall survive termination, cancellation, expiration or other conclusion of this Agreement or of Subcontractor Services (hereinafter, "termination of this Agreement"). Except as provided below in this Section 6.3, upon termination, cancellation, expiration or other conclusion of this Agreement, for any reason, Subcontractor shall return or, if Business Associate gives written permission, securely destroy PHI in whatever form or medium and retain no copies of such PHI. Subcontractor will complete such return or destruction as soon as possible, but in no event later than 60 days from the date of the termination of this Agreement. In the event that Subcontractor determines that returning or destroying the PHI is infeasible, Subcontractor shall provide to Business Associate notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Subcontractor shall extend the protections of this Agreement (and of any additional requirements imposed by HIPAA, HITECH or the Rules) to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Subcontractor maintains such PHI.

SECTION 7 – MISCELLANEOUS

7.1 Amendment. Subcontractor and Business Associate agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Business Associate to comply with the requirements of HIPAA, HITECH and the Rules.

7.2 Survival. All provisions of this Agreement that are by their nature intended to survive the expiration or termination of this Agreement will survive such expiration or termination.

7.3 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Business Associate to comply with the HIPAA, HITECH and the Rules.

7.4 Third-Party Beneficiaries. This Agreement is intended for the benefit of Subcontractor and Business Associate only. Nothing express or implied is intended to confer or create, nor be interpreted to confer or create, any rights, remedies, obligations or liabilities to or for any third-party beneficiary.

7.5 Status of Subcontractor as Independent Contractor. The parties acknowledge that Subcontractor is an independent contractor of Business Associate and not an agent, partner, joint venturer or employee of Business Associate.

7.6 Notification. All notices, requests, demands, and other communications from one party to the other party relating this Agreement shall be in writing and sent by one of the following methods: (i) by first class mail, registered or certified, postage prepaid, and addressed; (ii) by commercial overnight delivery service using a service which provides traceability of packages and properly addressed; or (iii) by email properly addressed. The parties agree that all notices, requests, and other communications provided electronically satisfy any legal requirement that such communications be in writing. Notices by mail shall be deemed given on the date actually received or the fifth day after mailing, whichever is earlier. Notices by overnight delivery services shall be deemed given on the second business day after the date they are picked up by the delivery service. Notices by email shall be deemed given at the time of sending. For Subcontractor, (i) notices by mail or commercial overnight delivery service shall be directed to the Governmentjobs.com Privacy Team at the following address: 300 Continental Blvd., Suite 565, El Segundo, CA

90245; and (ii) notices by email shall be directed to the Governmentjobs.com Privacy Team at the following email address: privacy@neogov.net.

7.7 Section Headings. The Section headings used in this Agreement are for purposes of convenience or reference only. They shall not be used to explain, limit, or extend the meaning of any part of this Agreement.

7.8 Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be unenforceable in any respect, such holding shall not affect any other provisions of this Agreement, and this Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

7.9 Assignment. Neither party shall assign any of the rights granted by this Agreement nor delegate any of its duties under this Agreement without the prior written consent of the other party, except that Business Associate may assign this Agreement to a parent, subsidiary, affiliate, or purchaser who acquires all or substantially all of the business operations of Business Associate.