

## SUBCONTRACTOR BUSINESS ASSOCIATE AGREEMENT

**Provider Name:** \_\_\_\_\_

This Subcontractor Business Associate Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between LGTC and \_\_\_\_\_ (“**Subcontractor Business Associate**” or “**Subcontractor**”) to comply with the Privacy Rule and the Security Rule promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 CFR Parts 160 through 164, and the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”).

**Whereas**, LGTC and Subcontractor Business Associate are parties to a pre-existing agreement (the “Prior Agreement”), pursuant to which Subcontractor Business Associate provides services to LGTC;

**Whereas**, in connection with services provided under the Prior Agreement, LGTC makes available to Subcontractor Business Associate certain Protected Health Information that is confidential and must be afforded special treatment and protection;

**Whereas**, LGTC has entered into Business Associate Agreements with certain Covered Entity Clients and, pursuant to such Business Associate Agreements, LGTC has agreed to maintain an agreement with each agent or subcontractor that has or will have access to the Protected Health Information which LGTC creates or receives in the course of performing services for its Covered Entity Clients; and

**Whereas**, the parties are entering into this Agreement, the terms of which shall be part of and subject to the Prior Agreement, in order for LGTC to satisfy its obligations under HIPAA and one or more Business Associate Agreements to which LGTC is a party.

**Now therefore**, the Parties agree as follows:

1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear.

a. **Covered Entity Client** shall mean an entity with whom LGTC contracts for transport services which qualifies as a “Covered Entity” under 45 C.F.R. § 160.103, as amended.

b. **Designated Record Set** shall have the same meaning given such term under 45 C.F.R. § 164.501, as amended.

c. **HIPAA** shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

d. **HIPAA Regulations** shall mean the regulations promulgated under HIPAA by the United States Department of Health and Human Services at 45 C.F.R. Parts 160-164.

e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Investment Act of 2009, Public Law 111-5, enacted on February 17, 2009.

f. **Individual** shall mean the person who is the subject of the Protected Health Information, and shall include a person who qualifies as a personal representative of that person.

g. **Protected Health Information** (“PHI”) means individually identifiable health information (as defined in 45 C.F.R. § 160.103, as amended), limited to the information created or received by Subcontractor from or on behalf of LGTC or LGTC’s Covered Entity Clients. It includes 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 (a) identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

h. **Secretary** shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.

i. **Unsecured Protected Health Information** (“Unsecured PHI”) shall mean PHI that is not secured through the use of technology or methodology specified by the Secretary in applicable guidance.

j. **Breach** shall mean the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. Exceptions to this definition exist for cases in which: (1) the unauthorized acquisition, access, or use of PHI is

unintentional and made by an employee or individual acting under authority of Subcontractor if such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship with Subcontractor, and such information is not further acquired, accessed, used, or disclosed; (2) an inadvertent disclosure occurs by an individual who is authorized to access PHI at Subcontractor to another similarly situated individual at Subcontractor, as long as the PHI is not further acquired, accessed, used, or disclosed without authorization; or (3) a disclosure of PHI occurs and Subcontractor has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

k. **Security Incident** shall have the meaning set forth in 45 C.F.R. § 164.304 and related Guidance promulgated by the Secretary.

l. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Regulations, and the HITECH Act.

2. **Limits on use and Disclosure of PHI.** Subcontractor agrees that it will not use or disclose PHI for any purpose other than as expressly permitted or required by this Agreement. Subcontractor may use or disclose PHI for the following purposes:

a. As reasonably necessary to perform the services described in, and to effectuate the purposes of, the Prior Agreement, or as otherwise permitted or required under this Agreement or as Required By Law;

b. For the proper management and administration of Subcontractor's business and to carry out its legal responsibilities provided that: (i) such disclosures are Required by Law; or (ii) Subcontractor obtains in writing prior to making any disclosure to a third party (a) reasonable assurances from the third party that the PHI will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the third party; and (b) an agreement from the third party to notify Subcontractor immediately of any instance of which it is aware in which the confidentiality of the PHI has been breached; and

c. To perform Data Aggregation Services, as that term is defined by 45 C.F.R. § 164.501, on behalf of LGTC.

3. **Additional Obligations:**

a. **Limits on use and Further Disclosure.** Subcontractor agrees that the Protected Health Information shall not be further used or disclosed other than as permitted or required by the Prior Agreement, as amended by this Agreement or as Required by Law.

b. **Safeguards.** Subcontractor will establish and maintain appropriate safeguards and warrants that it has established reasonable safeguards to prevent any use or disclosure of the PHI, other than as provided for by the Prior Agreement, as amended by this Agreement, or as Required by Law. Without limiting the foregoing, Subcontractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI. Subcontractor further warrants that it will not use or disclose any PHI in any manner that will violate HIPAA Regulations if LGTC engaged in such activity. Subcontractor shall specifically comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 of the Security Rule as such regulations are amended from time to time, as required by the HITECH Act. Subcontractor agrees to periodically complete a privacy and security survey, audit, and/or attestation if requested by LGTC to assist LGTC in auditing Subcontractor's compliance with the HIPAA Regulations.

c. **Minimum Necessary.** Subcontractor shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure.

d. **Reports of Improper use or Disclosure.** Subcontractor shall report to LGTC, within one business day, any use or disclosure of PHI not provided for or allowed by this Agreement of which Subcontractor becomes aware. Without limiting the foregoing, Subcontractor agrees to report to LGTC, within one business day, any Security Incident with respect to Electronic PHI of which it becomes aware. Such reports should be made to the designated LGTC HIPAA Compliance Officer at any of the following:

LogistiCare Solutions, LLC  
Attn: HIPAA Compliance Officer  
1275 Peachtree St., 6<sup>th</sup> Floor

Atlanta, GA 30309

Or

Telephone:  
1- 800-486-7647

Or

Email:  
hipaaofficer@logisticare.com

e. **Breach Notification.** In the event of a Breach of Unsecured PHI, Subcontractor shall provide written notification to LGTC of such Breach without unreasonable delay and no more than one business day from discovery of the Breach so that LGTC can notify its Covered Entity Clients, if required. A Breach is treated as discovered as of the first day on which the Breach is known to Subcontractor or, by exercising reasonable diligence, would have been known to the Subcontractor. Knowledge of a Breach by a member of the workforce or other agent of the Subcontractor (other than the person committing the Breach) is imputed to Subcontractor. Consequently, Subcontractor shall implement reasonable policies and systems for discovery of Breaches and train its workforce members and agents to recognize and promptly report a Breach. Subcontractor understands and agrees that it bears the burden to prove why a Breach Notification is not required. Consequently, Subcontractor shall carefully document risk assessments and how any applicable exceptions are met.

f. **Contents of Breach Notification.** Subcontractor's notification to LGTC of a Breach of Unsecured PHI must be written in plain language and describe: (1) what happened, including the date of the Breach and date of discovery; (2) the types of Unsecured PHI that were involved; (3) any steps individuals should take to protect themselves from potential harm resulting from the Breach; (4) what the Subcontractor is doing to investigate the Breach, to mitigate harm, and to protect against further Breaches; and (5) contact procedures for individuals to ask questions or learn additional information. The notice must also include the identification of each individual whose Unsecured PHI has been or is reasonably believed to have been Breached, if known. Subcontractor shall provide any additional information concerning the Breach as reasonably requested by LGTC. Notification must be provided in writing to the designated LGTC HIPAA Compliance Officer at the address and fax number above. If the Subcontractor believes that the Breach poses an imminent threat of misuse of Unsecured PHI, the Subcontractor shall also provide immediate notice to the designated LGTC HIPAA Compliance Officer via telephone, email or other appropriate means. Subcontractor will make itself, and any subcontractors, agents, or employees available to LGTC at no cost to LGTC to testify as witnesses or otherwise in the event of litigation or administrative proceedings based upon claimed violation of HIPAA, except where Subcontractor is named an adverse party to LGTC.

g. **Subcontractors and Agents.** Subcontractor agrees that anytime PHI is provided or made available to any subcontractors or agents, Subcontractor must enter into a Business Associate Agreement with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Agreement. This includes without limitation any contracts with billing companies, factoring companies, or other entities to whom Subcontractor may provide its trip logs, trip manifests, or LGTC billing documents.

h. **Right of Access to Information.** To the extent that LGTC is obligated by contract or by law to provide Individuals access to Protected Health Information in a Designated Record Set, Subcontractor will provide such access to LGTC within five business days of LGTC's request. This right of access shall conform with and meet all of the requirements of 45 C.F.R. § 164.524.

i. **Amendment and Incorporation of Amendments.** Subcontractor agrees to make PHI contained in a Designated Record Set available to LGTC for amendment within five business days of LGTC's request and to incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.

j. **Provide Accounting.** Subcontractor will document disclosures of PHI and information related to such disclosures as would be required for LGTC or LGTC's Covered Entity Clients to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Subcontractor will provide such information to LGTC upon request.

k. **Access to Books and Records.** Subcontractor agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received on behalf of LGTC, available to LGTC and to the Secretary for purposes of determining LGTC Covered Entity Client's compliance with HIPAA, HIPAA Regulations, and the HITECH Act.

l. **Return or Destruction of Information.** Upon request or at termination of this Agreement, Subcontractor agrees to return or destroy all PHI received from LGTC or LGTC's Covered Entity Clients, or created or received by Subcontractor on LGTC's behalf. If return or destruction of the PHI is not feasible, Subcontractor agrees to extend the protections of this Agreement for as long as necessary to protect the PHI and to limit any further use or disclosure. If Subcontractor elects to destroy the PHI, it shall certify to LGTC that the Protected Health Information has been destroyed.

m. **Mitigation Procedures.** Subcontractor agrees to mitigate, to the maximum extent practicable and at Subcontractor's expense, any harmful effect of the use or disclosure of PHI in a manner contrary to this Agreement or applicable law.

n. **Sanction Procedures.** Subcontractor will develop and implement a system of sanctions for any employee, subcontractor or agent who violates the terms of this Agreement or applicable law.

o. **Training.** Subcontractor will train its employees, agents, and subcontractors on the requirements of this Agreement, HIPAA, the HITECH Act, and the HIPAA Regulations, and will provide proof of such training to LGTC upon request.

p. **Property Rights.** Subcontractor agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of this Agreement.

4. **Term and Termination.** The Term of this Agreement shall commence as of the date executed by the parties, and shall terminate when all of the PHI provided to Subcontractor by LGTC, or created or received by Subcontractor on behalf of LGTC, is destroyed or returned to LGTC, or, if it is not feasible to return or destroy, protections are extended to such information.

5. **Termination for Cause.** Upon LGTC's knowledge of a material breach by Subcontractor of the terms of this Agreement, LGTC shall either:

a. Provide an opportunity for Subcontractor to cure the breach or to end the violation within a time specified by LGTC. Should the Subcontractor not cure the breach nor end the violation within the time specified by LGTC, LGTC may terminate the Prior Agreement immediately without penalty;

b. Immediately terminate the Prior Agreement if Subcontractor has breached a material term of this Agreement and cure is not possible; or

c. If neither termination nor cure is feasible, LGTC shall report the violation to the Secretary.

6. **Indemnification.** Subcontractor shall indemnify and hold LGTC and its Covered Entity Clients harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses of any kind whatsoever, including, without limitation attorney's fees, witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement, HIPAA, the HITECH ACT, or the HIPAA Regulations by Subcontractor, its employees, agents, or subcontractors.

7. **Miscellaneous:**

a. **Binding Nature.** This Agreement shall be binding on the Parties hereto and their successors and assigns.

b. **Article Headings.** The article headings used are for reference and convenience only, and shall not enter into the interpretation of this Agreement.

c. **State Law.** To the extent any applicable state law confidentiality requirements are not pre-empted by HIPAA, Subcontractor agrees to comply with such state law requirements.

d. **Third Party Participants.** Subcontractor agrees that any of LGTC's Covered Entity Clients to whom Subcontractor provides services and with whom LGTC has entered into a Business Associate agreement are third party Participants of this Agreement. Notwithstanding the foregoing, no other individual or entity shall be considered a third party beneficiary of this Agreement.

e. **Amendment.** The Parties mutually agree to amend this Agreement from time to time as necessary for either party to comply with the requirements of HIPAA, the HITECH Act, and/or the HIPAA Regulations as they may be amended or revised from time to time, and any judicial, legislative, or administrative interpretation which alters or conflicts with any provisions contained herein. If the parties

are unable to agree on an amendment within ten business days thereafter, LGTC may terminate the Agreement immediately with written notice to Subcontractor.

f. **Conflict.** In the event of any conflict between this Agreement and the Prior Agreement as to the subject matter referenced herein, this Agreement shall control.

g. **Interpretation.** The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA, the HITECH Act, and/or the HIPAA Regulations issued by the HHS or the Office for Civil Rights from time to time. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, and the HIPAA Regulations. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the HIPAA Regulations.

h. **Independent Contractors.** Subcontractor and LGTC agree that they are independent parties and not employees, partners, or party to a joint venture of any kind. Neither party shall hold itself out as the other's agent for any purpose, and shall have no authority to bind the other to any obligation.

i. **Assignment.** Subcontractor shall not assign its rights or obligations under this Agreement without the prior written consent of LGTC.

**IN WITNESS WHEREOF**, LGTC and Subcontractor have caused this Agreement to be signed and delivered by their duly authorized representatives, as of the date set forth above.

**LOGISTICARE SOLUTIONS, LLC**

**SUBCONTRACTOR**

\_\_\_\_\_  
(Print or Type Provider Name)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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