

CITY CLERK ORIGINAL

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**Agreement**") is made effective the 22 day of July, 2015 ("**Effective Date**"), by and between the City of Glendale ("**Glendale**"), and PHI Air Medical, L.L.C. ("**PHIAM**"). Glendale and PHIAM may from time to time be either a Covered Entity or a Business Associate as such terms are used in this Agreement and defined under applicable law. Accordingly, the terms Covered Entity and Business Associate used herein shall apply to Glendale and/or PHIAM, as applicable, and solely to the extent such parties are deemed either a Covered Entity or a Business Associate under applicable law. (Glendale and PHIAM may sometimes be referred to individually as a "**Party**" and collectively as the "**Parties.**")

WITNESSETH

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

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

WHEREAS, the Health Information Technology for Economic and Clinical Health Act, and regulations thereunder (collectively, "HITECH Act"), codified at 42 U.S.C. 17921-17954, provides modifications to the HIPAA Privacy and Security Rule;

WHEREAS, pursuant to the HITECH Act, the Secretary of HHS has issued regulations at 45 C.F.R. Part 164, Subpart D (the "Data Breach Rule", together with the HIPAA Privacy and Security Rule and any and all regulations promulgated under the HITECH Act, the "HIPAA Rules") and may issue additional regulations in the future to further protect the security, confidentiality, and integrity of health information;

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby each Party will provide services to or on behalf of the other Party (the "Contract") and, pursuant to such Contract, each of the Parties may be considered a "business associate" of the other Party as defined in the HIPAA Rules;

WHEREAS, in connection with these services, each of the Parties, when acting as a Covered Entity, may disclose to the other Party, when acting as a Business Associate, certain Protected Health Information that is subject to protection under the HIPAA Rules; and

WHEREAS, both Parties agree that the HIPAA Rules require that the Covered Entity receive adequate assurances that the Business Associate will comply with certain obligations with respect to the Protected Health Information received in the course of providing services to

or on behalf of the Covered Entity, and the purpose of this Agreement is to comply with the requirements of the HIPAA Rules.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Definitions. Except as otherwise defined in this Agreement, any and all capitalized terms shall have the same meaning as the definitions set forth in the HIPAA Rules, as amended from time to time. In particular, the following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Privacy Rule, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. 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.

B. Purposes for which PHI May Be Disclosed to Business Associate. In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may Disclose Protected Health Information ("PHI") to Business Associate solely for the purposes described in the Contract.

C. Obligations of Business Associate. Business Associate acknowledges that sections of the HIPAA Rules apply directly to Business Associate as they apply to Covered Entity and agrees to comply with such rules and regulations, including:

1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or Required by Law, Business Associate shall not Use or Disclose PHI except as necessary to provide the services as described in the Contract to or on behalf of Covered Entity, and shall not Use or Disclose PHI in a manner that would violate the Privacy Rule if Used or Disclosed by Covered Entity. Notwithstanding the foregoing, Business Associate may access, create or receive PHI and Use and Disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, provided that Business Associate shall in such cases:

a) provide information to members of its workforce Using or Disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement; and

b) unless such Disclosure is Required by Law, obtain reasonable assurances from the person or entity to whom the PHI is Disclosed that: (a) the PHI will be held confidential and further Used and Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached.

Business Associate must also comply with the HIPAA Privacy and Security Rule (45 C.F.R. §§ 164.314(a)(2)(i)(A), 164.504(e)(2)(ii)(B)) as well as Covered Entity's minimum necessary policies.

2. Incident Reporting. Business Associate shall report, in writing, to Covered Entity any Breach, Security Incident, or Use, Disclosure or unauthorized access of PHI that is not permitted by this Agreement within two (2) calendar days after discovery (as provided in (45 C.F.R. §§ 164.314(a)(2)(i)(C), 164.504(e)(2)(ii)(C)). The report shall include, at a minimum, the identification of each affected individual. The Covered Entity retains control over breach notification procedures, including risk assessment, provision of breach notification to affected patients and communications to other entities as required, such as media outlets and the Secretary ("Breach Notification Procedure"). Business Associate shall cooperate with Covered Entity in any investigation of the incident and the Breach Notification Procedure, to include a review of breach notification and other communications as requested. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement, the HIPAA Rules, or in violation of any applicable state law.

3. Data Aggregation. In the event that Business Associate works for more than one covered entity, Business Associate is permitted to Use PHI for Data Aggregation purposes only in order to analyze data for permitted Health Care Operations, to the extent that such Use is permitted under the Privacy Rule and the Contract.

4. Safeguards. Business Associate shall implement reasonable and appropriate administrative, physical and technical safeguards to ensure that PHI is not Used or Disclosed in any manner inconsistent with this Agreement and to protect the confidentiality, integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule. Further, Business Associate will implement any other security requirements to the extent required by Section 17931(a) of the HITECH Act and any applicable regulations. Business Associate will ensure that any agent, including a Subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it.

5. Minimum Necessary. Business Associate and its agents or Subcontractors, if any, shall request, Use and Disclose only a Limited Data Set, if practicable; if not practicable, Business Associate and its agents or Subcontractors, if any, shall request, Use and Disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, unless an exception in 45 C.F.R. § 164.502(b)(2) applies; provided that, when effective, Business Associate agrees to comply with the Secretary's guidance on what constitutes minimum necessary as required by HITECH Act Section 13405.

6. Disclosure to Agents and Subcontractors. If Business Associate Discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a Subcontractor, Business Associate shall require the agent or Subcontractor to agree in writing to the same or substantially similar restrictions and conditions as apply to Business Associate under this Agreement (45 C.F.R. §§ 164.314(a)(2)(i)(B)). To the extent that the Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate must comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations. Business Associate further expressly warrants that its agents or Subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

7. Individual Rights.

a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524, the HITECH Act, and applicable state law. Covered Entity is required to take action on such requests as soon as possible, but not later than fifteen (15) days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. If Business Associate maintains PHI electronically, it agrees to make such PHI electronically available to the applicable Individual. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate, shall permit access according to its policies and procedures implementing the HIPAA Rules.

b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. § 164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. § 164.526.

c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528 and Section 17935(c) of the HITECH Act, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of Disclosures.

8. Internal Practices, Policies and Procedures. Except as otherwise specified herein, Business Associate shall make available its internal practices, policies and

procedures relating to the Use and Disclosure of PHI received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity, the applicable health oversight agency, or the Secretary.

9. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any Use or Disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted Uses and Disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

10. Withdrawal of Authorization. If the Use or Disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the Use or Disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the Use and Disclosure of the Individual's PHI except to the extent it has relied on such Use or Disclosure, or if an exception under the Privacy Rule expressly applies.

11. Knowledge of HIPAA. Business Associate agrees to review and understand the HIPAA Rules as they apply to Business Associate, and to comply with the applicable requirements, as well as any applicable amendments thereto.

12. Remuneration and Marketing. Business Associate will not directly or indirectly receive remuneration in exchange for any PHI, subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable Individual. Business Associate will not engage in any communication which might be deemed to be "marketing" under the HITECH Act.

D. Term and Termination.

1. Term. This Agreement shall be effective as of the Effective Date and shall run coterminous with the Contract. At the termination of this Agreement, all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, shall be destroyed or returned to Covered Entity, unless Covered Entity permits Business Associate to use or disclose PHI for its own management and administration or to carry out its legal responsibilities, in which case the PHI retained shall be limited to the Minimum Necessary for such use or disclosure.

2. Termination for Breach. If Business Associate, or its agents or Subcontractors, if any, violates any material term of this Agreement, as determined by Covered Entity, Covered Entity may, in its discretion: (i) immediately terminate this

Agreement; (ii) provide an opportunity for Business Associate to cure the Breach or end the violation and terminate this Agreement if Business Associate does not promptly cure the Breach or end the violation within a period not to exceed thirty (30) days; or (iii) report the violation to the Secretary if neither termination nor cure is feasible.

Covered Entity may terminate this Agreement effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules or other security or privacy laws or (ii) there is a finding or stipulation that the Business Associate has violated any standard or requirement of the HIPAA Rules or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved. Business Associate agrees to report the commencement of any legal action or investigation against Business Associate arising from an alleged violation of the HIPAA Rules or any other security or privacy laws.

3. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI.

E. Miscellaneous.

1. Independent Contractors. It is expressly agreed and stipulated by and between the Parties hereto that Business Associate and Covered Entity are independent contractors, and neither Party shall be deemed or construed to be an agent, servant, or employee of the other or of any affiliates within the meaning of the Workers' Compensation Act of the applicable State.

2. Insurance. Unless greater coverage is required under any other agreement between Covered Entity and Business Associate for the provision of services related to the Contract and this Agreement, Business Associate shall maintain or cause to be maintained the following insurance covering itself and each Subcontractor or agent, if any, through whom Business Associate provides services: (i) a policy of commercial general liability and property damage insurance, and electronic data processing insurance, with limits of liability not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate; and (ii) such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under this Agreement or from violating Business Associate's own obligations under the HIPAA Rules, including but not limited to, claims or the imposition of administrative penalties and fines on Business Associate or its Subcontractors or agents, if any, arising from the loss, theft, or unauthorized use or disclosure of PHI. Such insurance coverage shall apply to all site(s) of Business Associate and to all services

provided by Business Associate or any of its Subcontractors or agents under the Contract or this Agreement.

3. Indemnification. To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, reasonable attorney's fees, defense costs, and equitable relief) (collectively, "Claims"), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any negligence, fault or other legal liability of Business Associate or its Subcontractors or agents in connection with the performance of Business Associate's duties under this Agreement. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

To the extent permitted by law, Covered Entity agrees to indemnify and hold harmless Business Associate from and against all Claims for any damage or loss incurred by Business Associate arising out of, resulting from, or attributable to any negligence, fault or other legal liability of Covered Entity or its Subcontractors or agents in connection with this Agreement. This indemnity shall not be construed to limit Business Associate's rights, if any, to common law indemnity.

The Party receiving indemnification ("Indemnified Party") shall have the option, at its discretion, to employ attorneys selected by it to defend any such action, the reasonable costs and expenses of which shall be the responsibility of the Party providing indemnification (the "Indemnifying Party"). The Indemnified Party shall provide the Indemnifying Party with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist the Indemnifying Party in establishing a defense to such action.

These indemnities shall survive termination of this Agreement.

4. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate. Business Associate agrees that it acquires no title or rights to PHI as a result of the Contract or this Agreement.

5. Survival. The respective rights and obligations of Business Associate under Sections C, D, E.2, E.3, and E.4 of this Agreement shall survive the termination of this Agreement for any reason.

6. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Glendale: Glendale City Clerk
5850 West Glendale Avenue.
Glendale, Arizona 85301
Telephone: (623) 930-2030

With a Copy to: Glendale City Attorney
5850 West Glendale Avenue.
Glendale, Arizona 85301
Telephone: (623) 930-2930
Fax: (623) 915 2391

If to PHIAM: PHI Air Medical, L.L.C.
2800 N. 44th Street, Suite 800
Phoenix, Arizona 85008
Attn: David Motzkin, President

With a Copy to: PHI Air Medical, L.L.C.
2800 N. 44th Street, Suite 800
Phoenix, Arizona 85008
Attn: Jeff Stanek, Director of Finance

7. Amendments. If any modification to this Agreement is required by HIPAA, the HITECH Act, the HIPAA Rules, or any other federal or state law affecting this Agreement or if Covered Entity reasonably concludes that an amendment to this Agreement is needed because of a change in federal or state law or changing industry standards, Covered Entity shall notify Business Associate of such proposed modification(s) ("Legally-Required Modifications"). Such Legally Required Modifications shall be deemed accepted by Business Associate and this Agreement so amended, if Business Associate does not, within thirty (30) calendar days following the date of the notice (or within such other time period as may be mandated by applicable state or federal law), deliver to Covered Entity its written rejection of such Legally-Required Modifications. If the Parties cannot agree on the effect of any such amendment or interpretation, this Agreement may be terminated upon written notice to the other Party.

8. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Arizona, without regard to applicable conflict of laws principles.

9. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.

10. Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.

11. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

12. Equitable Relief. Business Associate agrees that any disclosure of misappropriation of PHI by Business Associate or its agents or Subcontractors, if any, in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further Disclosure or Breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity.

13. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

14. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.

15. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

16. Entire Agreement. This Agreement, together with the all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements,

negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.

17. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules. In the event of an inconsistency between the provisions of this Agreement and any mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different from those in the HIPAA Rules, as amended, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control.

18. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[Signature Page Follows]

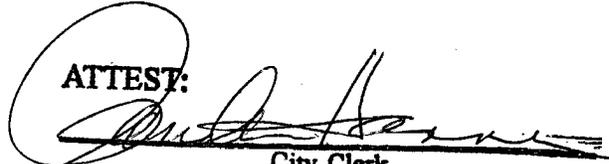
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the month, date, and year indicated below, but which shall be deemed effective as of the Effective Date.

PHI AIR MEDICAL, L.L.C.:

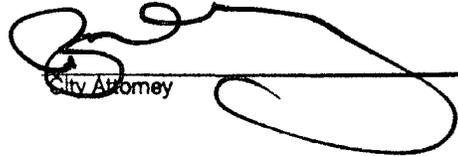
By: 
Name: David Motzkin
Title: President
Date: 06/18/2015

CITY OF GLENDALE:

By: 
Name: Richard A. Bowers
Title: Acting City Manager
Date: 7-22-15

ATTEST:

City Clerk

Approved as to form


City Attorney