



PHI HEALTH, LLC  
Air Ambulance Provider Agreement

Sierra – Sacramento Valley  
Emergency Medical Services Agency  
Agreement No. 2022-03

## Sierra – Sacramento Valley Emergency Medical Services Agency



### Regional Executive Director

John Poland, Paramedic

### Medical Director

Troy M. Falck, MD, FACEP, FAAEM

### JPA Board Chairperson

Sue Hoek, Nevada County Supervisor

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**Serving Butte, Colusa, Glenn, Nevada, Placer, Shasta, Siskiyou, Sutter, Tehama, & Yuba Counties**

May 22, 2024

David Motzkin, President  
PHI Health, LLC dba PHI Air Medical  
2800 N 44<sup>th</sup> St. Suite 800  
Phoenix, AZ 85008

RE: Air Ambulance Provider Agreement between the Sierra – Sacramento Valley Emergency Medical Services Agency and PHI Health, LLC dba PHI Air Medical

Mr. Motzkin,

Pursuant to the provisions contained in the above referenced Agreement, this letter is to provide written notification that the Sierra – Sacramento Valley Emergency Medical Services Agency has renewed this Agreement, without modification, for an additional two (2) year term, effective August 1, 2024, through July 31, 2026.

Please let me know if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John Poland", is written over a light blue horizontal line.

John Poland, Paramedic  
Regional Executive Director  
Sierra – Sacramento Valley EMS Agency

cc: PHI Health, LLC d/b/a PHI Air Medical  
Attention: Legal Department  
2800 N. 44<sup>th</sup> Street, Suite 800  
Phoenix, AZ 85008

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This Agreement (hereinafter referred to as 'AGREEMENT') is entered into this 1<sup>st</sup> day of August 2022, by and between the SIERRA – SACRAMENTO VALLEY EMERGENCY MEDICAL SERVICES AGENCY (hereinafter referred to as 'AGENCY') and PHI HEALTH, LLC d/b/a PHI AIR MEDICAL (hereinafter referred to as 'PROVIDER').

## **SECTION 1: RECITALS OF AUTHORITY**

WHEREAS, pursuant to California Health and Safety Code, Division 2.5, § 1797.200, AGENCY is the legally designated local emergency medical services agency (LEMSA) for the counties of Butte, Colusa, Glenn, Nevada, Placer, Shasta, Siskiyou, Sutter, Yuba, and Tehama; and

WHEREAS, pursuant to California Health and Safety Code, Division 2.5, § 1797.204, the LEMSAs shall plan, implement, and evaluate an emergency medical services system consisting of an organized pattern of readiness and response services based on public and private agreements and operational procedures; and

WHEREAS, pursuant to California Health and Safety Code, Division 2.5, § 1797.218, the LEMSAs may authorize an ALS or LALS program which provides services utilizing AEMT or paramedic personnel, or both, for the delivery of emergency medical care to the sick and injured at the scene of an emergency, during transport to a general acute care hospital, during interfacility transfer, while in the emergency department of a general acute care hospital until care responsibility is assumed by the regular staff of that hospital, and during training within the facilities of a participating general acute care hospital; and

WHEREAS, California Code of Regulations, Title 22, Division 9, Chapter 8 gives AGENCY the authority to classify EMS aircraft and integrate EMS aircraft into its prehospital care system; and

WHEREAS, AGENCY has classified PROVIDER as an ALS Air Ambulance; and

WHEREAS, California Code of Regulations, Title 22, Division 9, Chapter 8 § 100300 (b)(4) requires each LEMSAs choosing to integrate such aircraft into its prehospital care system to

develop written agreements with air ambulance providers specifying conditions to routinely serve their jurisdiction; and

WHEREAS, California Code of Regulations, Title 22, Division 9, Chapter 4, § 100168 (b)(4) requires qualified organizations to have a written agreement with the LEMSA to provide ALS services; and

WHEREAS, PROVIDER agrees to comply with the terms and conditions as expressed herein;

Now THEREFORE, it is agreed by and between the parties hereto as follows:

## **SECTION 2: AGREEMENT TERM**

- 2.1** This AGREEMENT supersedes and replaces all agreements previously executed between PROVIDER and AGENCY for the provision of air ambulance services within AGENCY'S jurisdictional region.
- 2.2** This AGREEMENT shall, subject to the limitations contained herein, be for a period of two (2) years, beginning August 1, 2022. This AGREEMENT may be renewed for subsequent two (2) year periods, upon written notification from AGENCY.
- 2.3** Amendments or modifications to the provisions of this AGREEMENT may be initiated by either party hereto but may only be incorporated into this AGREEMENT by mutual consent and in writing.
- 2.4** This document and references incorporated herein fully express all understandings of the parties concerning this AGREEMENT. No addition to, or alteration of, the terms and conditions of this AGREEMENT, and no verbal understandings of the parties, or their officers, agents, or employees, shall be valid unless made by formal written amendment to this AGREEMENT.
- 2.5** AGENCY may immediately terminate this AGREEMENT if PROVIDER'S permit to operate as an air ambulance provider is revoked or suspended.
- 2.6** AGENCY may suspend this AGREEMENT immediately if PROVIDER or PROVIDER'S employees are engaging in a continuing course of conduct which poses an imminent

threat to the public health and safety. Notification of any such suspension shall be in writing and shall state reasons for the suspension and length of suspension.

**2.7** Either party may terminate this AGREEMENT at any time, without cause, by providing at least ninety (90) calendar day's prior written notice to the other party.

**2.8** PROVIDER shall promptly notify AGENCY if PROVIDER is temporarily unable to meet the terms of this AGREEMENT.

## **SECTION 3: AGENCY RESPONSIBILITIES**

### **3.1 Administration**

A. AGENCY Director/designee is authorized to act on behalf of AGENCY in all matters related to this AGREEMENT.

B. At any time during normal business hours (8:00 am to 5:00 pm Monday - Friday), and at other times as may reasonably be deemed necessary by AGENCY, and provided that AGENCY provides PROVIDER with reasonable advance notice, AGENCY'S authorized representatives(s) may exercise AGENCY'S right to inspect or observe. AGENCY will provide reasonable notice to PROVIDER to limit any potential conflict with PROVIDER'S ongoing operations.

C. AGENCY representatives shall conduct themselves in a professional and courteous manner, not interfere with PROVIDER'S personnel in the performance of their duties and shall always be respectful of PROVIDER'S employer/employee relationship.

D. AGENCY staff may at any time, without reasonable advance notice, inspect PROVIDER's EMS aircraft units to verify compliance with this AGREEMENT. An inspection may be postponed if it is shown that the inspection would unduly delay the air ambulance unit from responding to an emergency call. A memorandum of the inspection shall be forwarded by AGENCY to PROVIDER within five (5) working days, specifying any deficiencies, a reasonable timeframe within which to correct any deficiencies, date of the inspection, the unit number, and the names of participating crew. PROVIDER must show proof of correction of any deficiencies noted during said inspection, and within the time specified by AGENCY.

## **SECTION 4: PROVIDER RESPONSIBILITIES**

### **4.1 Performance Expectations**

- A. PROVIDER shall respond to (accept or decline) requests for service from AGENCY designated air ambulance coordination centers on a seven (7) day per week, twenty-four (24) hour per day basis, in accordance with applicable AGENCY policies.
- B. PROVIDER shall respond to and complete all emergency (911) transport assignments, regardless of the potential payment source or payment capability of the patient.
- C. PROVIDER'S personnel may, on occasion and as available/necessary/appropriate/compliant with applicable law, provide patient care in AGENCY authorized ground ambulance units during patient transport.
- D. PROVIDER shall monitor, maintain, and upgrade, if necessary, the care, skill and diligence provided to patients under this AGREEMENT. Provider shall ensure that the care provided by its staff is that which is expected of reasonably competent HEMS pilots, paramedics, nurses, and other personnel in the same or similar circumstances.
- E. PROVIDER shall meet and continuously maintain the requirements and responsibilities of all applicable AGENCY policies/protocols.
- F. PROVIDER shall maintain accreditation for rotor-wing ambulance service, as established by the Commission on Accreditation of Medical Transport Service ("CAMTS"), throughout the term of this AGREEMENT.
- G. PROVIDER shall comply with all applicable Federal, State, and local laws, rules, and regulations.

### **4.2 Communications**

- A. PROVIDER shall maintain and operate a dispatch center and flight services in substantial compliance with the CAMTS accreditation standards for such services.
- B. PROVIDER shall record and keep for a minimum of ninety (90) days, records of all telephone lines and radio frequencies used for EMS communications, into or out of PROVIDER'S dispatch center.

- C. PROVIDER shall allow AGENCY staff access to all PROVIDER dispatch tapes, logs, data, etc., at reasonable times, with reasonable advance notice to PROVIDER.
- D. PROVIDER shall obtain, install, and maintain in PROVIDER'S air ambulance units all radio and telecommunications equipment necessary for effective/efficient dispatch and coordination of air ambulances, and for effective/efficient communication with first responders, ground ambulance units and base/modified base/receiving hospitals.

#### **4.3 Personnel Standards/Field Activities**

- A. All personnel employed by PROVIDER in the performance of work under this AGREEMENT shall be competent and hold current/valid certificates/licenses/accreditations as required by California EMS statutes/regulations and AGENCY policies for their applicable level of certification/licensure. PROVIDER shall be held accountable for its employees' credentials and actions during the course and scope of their employment.
- B. PROVIDER shall maintain current records of its personnel, including addresses, phone numbers, qualifications, and certificates/licenses/accreditations with expiration dates. Upon AGENCY's reasonable request, PROVIDER will provide copies to AGENCY of relevant certificates/licenses/accreditations of personnel providing services hereunder.
- C. PROVIDER shall ensure, when responding to an emergency call, that its air ambulance units are staffed with a minimum of two (2) medical personnel, in addition to the pilot, whose level of licensure shall, at a minimum, be one (1) California licensed and AGENCY accredited paramedic and one (1) California licensed Registered Nurse who has completed an AGENCY Paramedic Accreditation/Orientation course.
- D. PROVIDER shall ensure its employees engaged in patient care shall meet and comply with the applicable training/continuing education requirements as established by the State of California, AGENCY, and PROVIDER for their level of certification/licensure and job description. PROVIDER further agrees to encourage personnel to attend/participate in regularly scheduled continuing education provided by base/modified base hospitals.

- E. PROVIDER shall ensure its personnel are properly oriented before being assigned to respond to emergency medical requests. This orientation shall include, at a minimum, a discussion and/or overview regarding EMS system; EMS policies and procedures including patient destination, trauma triage and patient treatment protocols; radio communications with and between air/ground ambulances, base hospital, receiving facilities, and dispatch center; navigation skills, established landing zones, and known hazards in the service response area; emergency response areas; and equipment utilization and maintenance, in addition to PROVIDER'S policies and procedures.
- F. PROVIDER shall provide patient care documentation education/training to its personnel as needed.
- G. PROVIDER shall ensure that its personnel provide reasonably accurate estimated time of arrival (ETA) information when responding to an emergency request.
- H. PROVIDER shall have a policy prohibiting its personnel from performing services under this AGREEMENT, while under the influence of any alcoholic beverage, illegal drug, or any other substances which impairs their physical or mental performance.
- I. PROVIDER shall ensure its personnel wear appropriate uniform attire, wear visible identification indicating their level of licensure (e.g., Paramedic, RN, MD), and comply with PROVIDER'S dress code rules, if any.
- J. PROVIDER shall ensure its personnel treat other EMS system participants, the public, patients, and their families with professionalism and courtesy.

#### **4.4 Multi-Casualty Incident (MCI)/Disaster Response**

- A. PROVIDER shall cooperate with AGENCY in rendering emergency assistance in response to an MCI, or during a declared or undeclared disaster as identified in applicable AGENCY plans/policies to the extent PROVIDER's aircraft and personnel are not then in use or otherwise unavailable.
- B. At an MCI/disaster scene, PROVIDER'S personnel shall follow applicable AGENCY MCI/disaster plans/policies, and function within the Incident Command System.
- C. As is reasonable and to the extent possible, PROVIDER shall participate in MCI/disaster training/exercises that take place within or otherwise affect PROVIDER'S normal response area.

#### **4.5 Aircraft, Equipment and Supplies**

- A. PROVIDER shall comply with AGENCY approved medical equipment and supply inventory requirements.
- B. PROVIDER shall ensure that all medical equipment and supplies necessary to provide appropriate patient care are readily available in the transport vehicle, or available to place in the transport vehicle, and that they are operational prior to responding to an emergency request.
- C. PROVIDER's equipment and supplies shall be maintained in clean, sanitary, and safe mechanical conditions at all times.
- D. PROVIDER's air ambulance units shall meet all applicable standards established by Federal Aviation Administration (FAA) Regulations, to include and be operated in compliance with Federal Aviation Regulations ("FAR") Part 135.
- E. PROVIDER shall develop and maintain a maintenance plan in compliance with the manufacturers recommended maintenance schedules, maintain a record of preventative maintenance, repairs and replacement of equipment and helicopters and shall make such plan and records available to AGENCY upon request.
- F. PROVIDER shall have controlled substance policies/procedures, consistent with Drug Enforcement Administration (DEA) and California Code of Regulations, Title 22, Chapter 4 requirements governing the storage, accountability, restocking, and disposal of expired medications and procurement of controlled drugs and substances permitted by AGENCY to be carried and utilized in the provisions of patient care by PROVIDER'S ALS personnel. Any incident of non-compliance with controlled substance policies/procedures shall be reported to AGENCY as soon as possible.
- G. Upon the effective date of this AGREEMENT and annually thereafter, PROVIDER shall submit to AGENCY an inventory of all air ambulance units utilized by PROVIDER under this AGREEMENT.

#### **4.6 Patient Care Records**

- A. PROVIDER shall initiate electronic patient care reports (ePCRs) and submit required EMS data elements to AGENCY, as required by applicable AGENCY policies.
- B. PROVIDER shall make ePCR records available to base, modified base and/or receiving hospitals, as required by applicable AGENCY policies.
- C. PROVIDER shall retain copies of all ePCR records for a minimum of seven (7) years or, if for a minor, seven (7) years past the age of majority, whichever is greater.
- D. In each instance where the mode of patient transport changes due to an aborted call, and the initial responding air ambulance personnel do not maintain care of the patient, PROVIDER will ensure that the initial responding EMS personnel on the air ambulance unit that failed/malfunctioned submit an ePCR regarding the care the patient received while in their care.

#### **4.7 Other Records and Reports**

- A. PROVIDER shall comply with AGENCY requirements for data collection and data submission.
- B. PROVIDER further agrees to maintain and provide all reports as required and/or reasonably requested by AGENCY in relation to this AGREEMENT, including but not limited to the following:
  - 1. All records required to be maintained pursuant to this AGREEMENT such as quality improvement data, training records, and personnel certifications, except recorded radio and telephone communications, shall be preserved by PROVIDER for at least three (3) years from the termination of this AGREEMENT.
  - 2. Written reports on any incident arising out of services provided under this AGREEMENT.
  - 3. Additional information and reports as AGENCY may reasonably request from time to time to monitor the performance of the PROVIDER under this AGREEMENT.

4. A copy of a current air taxi/commercial operator's certificate. PROVIDER shall notify AGENCY within twenty-four (24) hours of any change in the status of said certificate.
- C. PROVIDER shall provide a written report to AGENCY within 72 hours in each instance of EMS aircraft mechanical failure and/or malfunction while on an emergency call which results in a canceled or aborted mission and/or the inability to continue the response or patient transport. The report at a minimum shall include how long it took for another air or ground ambulance to respond to the call, the identity of the subsequent responding unit, and the reason or suspected reason(s) for the EMS aircraft mechanical failure and/or malfunction.
- D. PROVIDER shall log all service inquiries and complaints and shall provide prompt response and follow-up to such inquiries and complaints. Such responses shall be subject to limitations imposed by patient confidentiality restrictions. Details of service inquiries/complaints, including PROVIDER'S findings/resolutions, shall be provided to AGENCY upon request.
- E. PROVIDER shall report unusual occurrences and personnel investigation related matters in accordance with AGENCY policies.
- F. PROVIDER shall provide a written report to AGENCY of significant air ambulance service problems or changes in a timely manner, including but not limited to:
  1. Changes in number of available aircraft and/or EMS aircraft base location(s).
  2. Significant base/modified base hospital complaints.
  3. Major equipment failures.
  4. Vehicle accidents involving PROVIDER's vehicles.
  5. Personnel actions resulting from violations of AGENCY policies/protocols.

#### **4.8 Quality Management (QM) Program**

- A. PROVIDER shall retain/employ a California licensed MD or DO Medical Director to provide medical oversight of PROVIDER'S personnel, and liaison with AGENCY.
- B. PROVIDER shall ensure its Medical Director has been oriented to AGENCY policies, procedures, and EMS system design.

- C. PROVIDER shall designate a California licensed paramedic or RN Quality Management (QM) Coordinator to act as a liaison between PROVIDER and AGENCY on QM related matters. PROVIDER'S QM Coordinator shall be responsible for managing PROVIDER'S quality assurance/quality improvement activities, assisting in the investigation of unusual occurrences, and regularly participating in AGENCY'S local/regional EMS system meetings. PROVIDER'S QM Coordinator shall be allotted enough scheduled work hours to adequately perform PROVIDER'S QM functions, and to respond to QM related inquiries from AGENCY representatives and/or other EMS system participants in a timely manner.
- D. PROVIDER shall develop, implement, and maintain an AGENCY approved written Emergency Medical Services Quality Improvement Program (EMSQIP) that should include:
1. Responsibility/assignment of accountability.
  2. Quality metrics that are identified, measured, and compared to metrics/outcomes of evidence-based standards.
  3. Emphasis on the quality of services offered on a continuing basis with attention to developing new strategies for improving patient care.
  4. Evaluation of the improvement process.
  5. Out-of-range cabin temperatures without risk mitigation.
  6. Cardiac arrest during transport.
  7. Transport of infectious disease patients realized during/after transport.
  8. Fatigue-risk management.
  9. Deviation from PROVIDER policy on use/lack of use of night vision goggles.
  10. Flight interruptions or delays due to weather, maintenance, or flight crew.
  11. ETA accuracy.
  12. Number of missed and aborted transports.
  13. Foreign Objects Debris (FOD) incidents.
  14. Unscheduled maintenance rate.
  15. Missed/aborted transports for maintenance.
  16. GAMUT (Ground Air Medical qUality Transport) metrics.
- E. PROVIDER'S EMSQIP shall be designed to objectively, systematically, and continuously monitor, assess, and improve the quality/appropriateness of patient care

and safety. EMSQIP indicators should be tracked and trended to determine compliance with established thresholds, as well as reviewed for potential issues.

- F. PROVIDER'S EMSQIP shall have a process to review activities related to patient care, such as:
1. Customer/staff satisfaction.
  2. Communications.
  3. Equipment maintenance.
  4. Response times.
  5. Medical procedure success rates.
  6. Complete and accurate documentation of EMS care delivered.
- G. PROVIDER'S EMSQIP shall have a written policy that outlines a process to identify, document and analyze sentinel events/adverse events with specific goals to improve patient safety and/or quality of patient care that includes follow-up on the results of actions/goals until loop closure is achieved. The process should encourage personnel to report adverse events, without fear of punitive actions for unintentional acts.
- H. When PROVIDER'S EMSQIP identifies a need for improvement, PROVIDER shall develop, in cooperation with other EMS system participants when applicable, a performance improvement action plan. If the area identified as needing improvement includes system clinical issues, collaboration is required with the PROVIDER'S Medical Director and AGENCY'S Medical Director.
- I. The EMSQIP shall be reviewed annually for appropriateness to PROVIDER'S operations. A summary of this review, including how the PROVIDER'S EMSQIP addressed the program indicators, shall be provided to AGENCY.
- J. PROVIDER'S clinical performance must be consistent with AGENCY approved medical standards, policies, and protocols. Patient transportation and disposition shall be according to AGENCY policies/protocols. Service and care delivered must be evaluated by PROVIDER'S internal QM program, and as necessary through AGENCY'S QM program, to improve and maintain effective clinical performance.
- K. PROVIDER shall be responsible for continually assessing the knowledge of its paramedic and RN personnel in AGENCY policies, procedures, and protocols.

- L. PROVIDER shall be responsible for assessing the skills competency of its paramedic and RN personnel on a regular basis, as required by California EMS regulations and AGENCY policies.
- M. If the PROVIDER or AGENCY Medical Director determines that a paramedic or RN needs additional training, observation or testing, the PROVIDER and AGENCY Medical Director may create a specific and targeted program of remediation based upon the identified need(s), provided that PROVIDER shall make any final determinations on training in the event of a disagreement between PROVIDER and AGENCY on such additional training.

#### **4.9 Relationships and Accountability**

- A. PROVIDER shall exercise its best, good faith efforts to maintain positive working relationships with other EMS system participants.
- B. PROVIDER shall ensure that its personnel work professionally and collaboratively with first responders in the transition of patient care at the scene of an EMS incident.
- C. PROVIDER shall designate a single individual as its contact person for first response agencies and other EMS system participants.
- D. PROVIDER shall designate a single individual as its contact person for AGENCY to address day-to-day issues and PROVIDER'S performance under this AGREEMENT.
- E. As is reasonable and required by AGENCY policies, PROVIDER shall assist in providing continuing education services or other training to EMS system participants.

#### **4.10 Safety and Infection Control**

- A. PROVIDER shall provide its personnel with training, personal protective equipment (PPE), and immunizations necessary to ensure protection from illness or injury when responding to an emergency medical request.
- B. PROVIDER shall have a Communicable Disease Policy that complies with all Occupational Safety and Health Administration (OSHA) requirements and other regulations related to prevention, reporting of exposure, and disposal of medical

waste. PROVIDER'S personnel shall be trained in prevention and universal precautions.

- C. PROVIDER shall notify AGENCY within five (5) business days of any OSHA major enforcement actions, and of any litigation, or other legal or regulatory proceedings in progress or being brought against PROVIDER'S operations.

#### **4.11 Contract Management/Monitoring Costs, Coordination Fees, and Penalties**

- A. PROVIDER shall reimburse AGENCY for a portion of its expenses related to managing/monitoring this AGREEMENT. PROVIDER shall pay AGENCY annually based on AGENCY'S current fee schedule.
- B. PROVIDER shall reimburse AGENCY for its share of cost associated with air ambulance coordination services provided by AGENCY designated air ambulance coordination centers. Air ambulance coordination costs will be assessed on an assigned incident basis (defined as any emergency 911 incident located within AGENCY'S jurisdictional region, where PROVIDER accepts the air ambulance resource request assignment by an AGENCY designated air ambulance coordination center, regardless of whether PROVIDER's air ambulance unit is subsequently cancelled without a patient transport). PROVIDER shall pay AGENCY annually based on the applicable cost for providing these air ambulance coordination services.
- C. AGENCY may impose financial penalties on PROVIDER for minor breaches of this AGREEMENT, as indicated below:
1. A penalty of \$500 per occurrence will be assessed when PROVIDER "self-launches" to an incident without a formal request and assignment through an AGENCY designated air ambulance coordination center.
  2. A penalty of \$500 per occurrence will be assessed when PROVIDER fails to comply with the requirements contained in AGENCY'S EMSQIP Policy.
  3. Failure to provide PCR records/data in compliance with AGENCY policies:
    - a. A penalty of \$50 will be assessed for every instance an Interim Patient Care Report, at a minimum, is not left at the receiving facility prior to crew departure, &/or for every completed PCR not provided/available to the receiving facility within 24 hours of patient delivery.

- b. A penalty of \$100.00 will be assessed for each calendar day PROVIDER is out of compliance with AGENCY data reporting requirements contained in applicable AGENCY policies.
- 4. Failure to provide timely reports:
  - a. A penalty of \$100 per day will be assessed for any report received after the required due date required by this AGREEMENT and/or AGENCY policies.
  - b. A penalty of \$100 per day will be assessed for all other AGENCY documentation requests received later than five (5) business days from the date of request (unless a later date is agreed to by PROVIDER and AGENCY).
- D. Invoicing and payment of assessed penalties:
  - 1. AGENCY shall invoice PROVIDER for any penalties pursuant to this AGREEMENT within thirty (30) calendar days following AGENCY'S determination that a penalty should be assessed. PROVIDER shall pay AGENCY within thirty (30) calendar days following receipt of such invoice.
  - 2. AGENCY and PROVIDER shall make a good faith effort to resolve any disputes regarding invoiced penalty amounts within this 30-day period. If the parties are unable to mutually resolve the dispute within that 30-day period, the invoice shall be paid in full and subsequent invoices shall be adjusted to reflect the subsequent resolution of the dispute.
  - 3. Failure by AGENCY to assess or impose any penalties at any point, for any reason, does not impact AGENCY'S right to do so in the future; however, AGENCY shall not impose penalties retroactively greater than 90 days. Payment of any penalty does not release PROVIDER from any other liability related to the breach that resulted in the penalty imposition.

#### **4.12 Miscellaneous**

- A. PROVIDER shall ensure that any unresolved incidents or sensitive issues involving other EMS system participants are brought to the attention of the AGENCY.
- B. PROVIDER shall maintain operational control of the aircraft used in the service of this AGREEMENT and shall control all aviation and related flight operations of the aircraft at all times. PROVIDER, and its assigned pilots, shall be in command of the aircraft

at all times. No flight will commence until and unless PROVIDER'S pilot and director of operations are satisfied, at their sole discretion, that the pilot is fit; the aircraft is mechanically sound and properly loaded; and the weather, landing zone, airstrip, airport, and any other conditions necessary for a safe flight are deemed acceptable.

- C. PROVIDER, and its pilots, at their sole discretion, may unilaterally make any changes prior to or while in flight to accommodate changes in weather, air traffic, FAA directive, mechanical problems, or other matters affecting safety in flight. Under no circumstances shall any other person or passenger overrule the pilot regarding the aviation operations of any flight. PROVIDER shall operate all flights under the flight time limitations and rest requirements of FAR Part 135, and the hospital emergency medical evacuation services rules of the FARs shall apply to all pilots.

## **SECTION 5: MATERIAL BREACH OF AGREEMENT**

### **5.1 Notice of Default**

- A. AGENCY shall have the right to terminate or cancel this AGREEMENT in the event PROVIDER materially breaches a term or condition of this AGREEMENT, provided that the procedures set forth in Section 5.3 (Dispute Resolution) shall be followed by AGENCY, including the allowance of a remediation or Cure Period (defined below).

### **5.2 Definition of Material Breach**

- A. Material breach is defined as: An infraction or violation of an obligation or requirement as set forth within this AGREEMENT. Conditions which shall constitute a material breach of this AGREEMENT by PROVIDER shall include, but are not limited to, the following:
1. Intentional falsification or omission of data or information supplied to AGENCY by PROVIDER, which effects or has the effect of misrepresenting PROVIDER'S performance under this AGREEMENT.
  2. Failure to submit timely reports or fees: The timely submission of reports and fees is a necessary and material term and condition of this AGREEMENT and

PROVIDER agrees that failure to meet a specified deadline for submission of reports or fees or penalties will be sufficient cause for suspension or termination of this AGREEMENT.

3. Failure or refusal to cooperate with quality assurance and audit findings and recommendations within a reasonable time.
4. Failure to cooperate with AGENCY's monitoring of EMS aircraft provider performance under this AGREEMENT.
5. Multiple or unremedied failures by PROVIDER to correct any minor breach of this AGREEMENT, within a reasonable period of time after written notice from AGENCY.
6. Any act or omission of PROVIDER, which, in the reasonable opinion of AGENCY'S Medical Director, poses a serious risk to public health and safety.
7. Filing of a bankruptcy petition by or against PROVIDER, alleging that PROVIDER is or will become insolvent; appointment of a trustee or receiver for PROVIDER or for any of PROVIDER'S property; a general assignment by PROVIDER for the benefit of its creditors; or entry of a judgment or order determining that PROVIDER is bankrupt or insolvent.
8. Failure to maintain in force throughout the term of this AGREEMENT, including any extensions thereof, the insurance coverage required herein.
9. Material failure of PROVIDER to operate an air ambulance in a manner which enables PROVIDER to remain in compliance with the requirements of applicable federal, state, county, city, and/or AGENCY laws, rules, and regulations. Minor infractions of such requirements shall not constitute a material breach of this AGREEMENT.
10. Willful, chronic, or repeated material failure to comply with any obligation made in this AGREEMENT, if the AGENCY determines that such failure endangers the public health and safety as defined by governing law.

### **5.3 Dispute Resolution**

- A. If PROVIDER commits a material breach of this AGREEMENT, then AGENCY, following the procedures set forth herein and with the approval of AGENCY'S JPA

- Governing Board, may terminate this AGREEMENT, remove PROVIDER from its position as ambulance provider and/or take remediation measures as set forth herein.
- B. If AGENCY has reason to believe that a material breach may have occurred, AGENCY may conduct such investigation as may be appropriate to enable AGENCY to make a preliminary determination as to whether a material breach has occurred and whether such breach presents a danger to the public health and safety. If AGENCY makes a preliminary determination that a material breach has occurred, AGENCY shall give PROVIDER written notice of such determination. The notice shall specify the grounds upon which the preliminary determination is based, including both AGREEMENT provisions that are alleged to have been breached and the alleged facts that support such a finding, and shall indicate whether the alleged material breach presents a danger to the public health and safety. The notice shall grant PROVIDER: (a) ten (10) business days to provide information to AGENCY that rebut the preliminary determination; or (b) forty-five (45) calendar days to cure if there is not imminent risk to the public health and safety ("Cure Period"). Upon a request by PROVIDER, AGENCY may extend the Cure Period.
- C. If PROVIDER fails to rebut the preliminary determination of AGENCY or remedy the material breach within the Cure Period, AGENCY shall schedule a public hearing on the matter before AGENCY'S JPA Governing Board. The JPA Governing Board shall give to PROVIDER written notice of hearing within 72 hours, specifying the date, time, and place of the hearing and the general nature of the matter to be heard, at least fourteen (14) calendar days prior to the hearing. The hearing shall be held as scheduled, except that upon a request by PROVIDER, the hearing may be rescheduled, one (1) time only.
- D. AGENCY'S JPA Governing Board shall make a decision as follows:
1. The JPA Governing Board shall set forth a recommended finding on the issue of whether a material breach has occurred.
  2. If the JPA Governing Board recommends a finding that a material breach has occurred, the JPA Governing Board shall specify AGREEMENT provisions that have been breached and the facts upon which the findings are based.
  3. If the JPA Governing Board recommends a finding that a material breach has occurred, the JPA Governing Board shall then make a finding of the issue whether

the material breach presents a danger to the public health and safety, and shall specify the facts upon which such findings are based.

- E. If AGENCY'S JPA Governing Board recommends a finding that a material breach has occurred, the JPA Governing Board shall determine the course of action that should be taken by the JPA Governing Board.
- F. The decision by the AGENCY'S JPA Governing Board is final. No later than ten (10) business days after the hearing, the JPA Governing Board shall issue a written decision making a final determination on the relevant issues, and shall serve a copy of such decision on PROVIDER, by personal delivery to the person in charge of PROVIDER'S principal place of business during regular business hours.
- G. If AGENCY'S JPA Governing Board decides that there has been a material breach presenting a danger to the public health and safety, the JPA Governing Board may terminate the AGREEMENT, remove PROVIDER from its position as ambulance provider and/or take remediation measures as set forth herein.
- H. If the AGENCY'S JPA Governing Board decides that there has been a material breach without presenting a danger to the public health and safety. PROVIDER will cure the Breach within forty-five (45) calendar days, or the AGREEMENT will be terminated.
- I. PROVIDER shall not be prohibited from disputing any such finding by AGENCY'S JPA Governing Board of material breach through litigation.
- J. AGENCY'S JPA Governing Board shall be the final authority, subject to judicial review.

## **SECTION 6: REMEDIATION MEASURES**

### **6.1 Remediation Measures Cooperation**

- A. PROVIDER shall reasonably and promptly cooperate with AGENCY'S JPA Governing Board JPA and its agents to effect any remediation measures ("Remediation Measures"), which may include:
  - 1. Creation of a remediation plan that requires PROVIDER to meet certain objectives within specific time periods and establish specific consequences for PROVIDER'S failure to meet the objectives.

2. "Remediation Plans" developed by the PROVIDER will be submitted to the AGENCY in writing within ten (10) business days of request, provided PROVIDER'S deficiency does not pose an imminent risk to the health and safety of the COUNTY population.

## **SECTION 7: INSURANCE**

PROVIDER shall file with the AGENCY concurrently herewith a Certificate of Insurance, in companies acceptable to the AGENCY, with a Best's Rating of no less than A-: VII or its financial equivalent showing.

### WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE:

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to PROVIDER'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice – "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the Sierra-Sacramento Valley EMS Agency".

Waiver of Subrogation – The workers' compensation policy shall be endorsed to state that, to the extent of the risks, liabilities, and indemnities assumed by PROVIDER under this AGREEMENT, the workers' compensation carrier waives its right of subrogation against the Sierra-Sacramento Valley EMS Agency, its officers, directors, officials, employees, agents, or volunteers, which might arise by reason of payment under such policy in connection with performance under this AGREEMENT by PROVIDER. PROVIDER shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the AGENCY upon demand.

### GENERAL LIABILITY INSURANCE:

- A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of PROVIDER, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
- 1) Contractual liability insuring the obligations assumed by PROVIDER in this AGREEMENT.
- B. One of the following forms is required:
- 1) Comprehensive General Liability;
  - 2) Commercial General Liability (Occurrence); or
  - 3) Commercial General Liability (Claims Made).
- C. If PROVIDER carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
- 1) Five million dollars (\$5,000,000) each occurrence.
  - 2) Five million dollars (\$5,000,000) aggregate.
- D. If PROVIDER carries a Commercial General Liability (Occurrence) policy:
- 1) The limits of liability shall not be less than:
    - a) Five million dollars (\$5,000,000) each occurrence (combined single limit for bodily injury and property damage).
    - b) Five million dollars (\$5,000,000) for Products-Completed Operations.
    - c) Five million dollars (\$5,000,000) General Aggregate.
- E. If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be five million dollars (\$5,000,000).
- F. Special Claims Made Policy Form Provisions:
- PROVIDER shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of AGENCY, which consent, if given, shall be subject to the following conditions:
- 1) The limits of liability shall not be less than:
    - a) Five million dollars (\$5,000,000) each occurrence (combined single limit for bodily injury and property damage).
    - b) Five million dollars (\$5,000,000) aggregate for Products Completed Operations.
    - c) Five million dollars (\$5,000,000) General Aggregate.

- 2) The insurance coverage provided by PROVIDER shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the AGENCY as noted above. In no cases shall the types of policies be different.

ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The Sierra-Sacramento Valley EMS Agency and its officers, agents, employees, and volunteers are to be covered as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this AGREEMENT to the extent of the risks, liabilities, and indemnities assumed by PROVIDER under this AGREEMENT."
- B. "The insurance provided by PROVIDER, including any excess liability or umbrella form coverage, is primary coverage to the Sierra-Sacramento Valley EMS Agency with respect to any insurance or self-insurance programs maintained by the Sierra-Sacramento Valley EMS Agency. No insurance held or owned by the Sierra-Sacramento Valley EMS Agency shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the Sierra-Sacramento Valley EMS Agency."

AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than three million dollars (\$3,000,000) combined single limit for each occurrence for ground vehicles and ambulances owned by the PROVIDER.

PROFESSIONAL LIABILITY (Medical Malpractice) INSURANCE:

- A. Professional Liability (i.e. Medical Malpractice) Insurance coverage shall be provided in the amount of not less than one million dollars (\$1,000,000) in aggregate.

- B. If PROVIDER subcontracts for professional services in support of PROVIDER'S work provided for in this AGREEMENT, Professional Liability Insurance shall be provided by the subcontractor in an amount not less than one million dollars (\$1,000,000) in aggregate.
- C. The insurance coverage provided shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

AIRCRAFT & HULL LIABILITY AND AVIATION GENERAL LIABILITY INSURANCE:

Aircraft Liability & Premises Liability insurance coverage for bodily injury and property damage (including passengers) with no less than a combined single limit of \$30,000,000 each occurrence.

ADDITIONAL REQUIREMENTS:

Premium Payments – The insurance companies shall have no recourse against the Sierra – Sacramento Valley EMS Agency and funding agencies, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles – PROVIDER shall be responsible for all deductibles in all of PROVIDER'S insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

PROVIDER'S Obligations – PROVIDER'S indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this AGREEMENT.

Verification of Coverage – PROVIDER shall furnish AGENCY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by AGENCY this clause. All certificates and endorsements are to be received and approved by AGENCY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive PROVIDER'S obligation to provide them. AGENCY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of PROVIDER to maintain the insurance required by this AGREEMENT, or to comply with any of the requirements of this section, shall constitute a material breach of the entire AGREEMENT.

## **SECTION 8: PROVIDER REQUIREMENTS**

### **8.1 Non-Discrimination**

A. During the performance of this AGREEMENT, PROVIDER shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including the provisions of the Americans with Disabilities Act of 1990, and Fair Employment and Housing Act, and will not discriminate against employees, applicants or clients because of race, sex, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age (over 40) marital status, denial of Family and Medical Care Leave and use of Pregnancy Disability Leave in regard to any position for which the employee or applicant is qualified. PROVIDER agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individuals without discrimination based upon the aforementioned discrimination bases in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. PROVIDER and AGENCY shall comply with all applicable federal, state and local laws regarding non-discrimination.

### **8.2 Drug-Free Workplace**

A. PROVIDER shall maintain a workplace that is free of drugs and alcohol and to discourage drug and alcohol abuse by its employees. Employees who are under the influence of drugs or alcohol on the job compromise PROVIDER'S interest, endanger their own health and safety and the health and safety of others, and can cause a loss of efficiency, productivity, or a disruptive working environment. As a condition of this AGREEMENT, each PROVIDER employee must abide by this policy. PROVIDER is required to have a drug-free workplace policy pursuant to the Federal Drug-Free Workplace act of 1998, 41 U.S.C., section 701et seq., and the California Drug-Free Workplace Act of 1990, Government Code section 8535, as applicable.

### **8.3 Transferability**

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- A. PROVIDER shall not assign its rights or delegate its duties hereunder without the prior express written authorization of AGENCY. This AGREEMENT is NOT transferable by PROVIDER to another PROVIDER, entity, corporation, company, business or municipality without the prior express written authorization of AGENCY.

#### **8.4 Independent Contractor**

- A. In the performance of this AGREEMENT, PROVIDER, its agents, and employees are, at all times, acting and performing as independent contractors, and this AGREEMENT creates no relationship of employer and employee as between COUNTY or AGENCY and PROVIDER. PROVIDER agrees neither it nor its agents and employees have any rights, entitlement or claim against COUNTY or AGENCY for any type of employment benefits or workers' compensation or other programs afforded to COUNTY and AGENCY employees.

#### **8.5 Confidentiality**

- A. PROVIDER agrees, to the extent required by 42 U.S. C. 1171 et seq., Health Insurance Portability and Accountability Act of 1996 (HIPAA), to comply with applicable requirements of law and subsequent amendments relating to protected health information, as well as any task or activity PROVIDER performs under this AGREEMENT to the extent any PROVIDER would be required to comply with such requirements.
- B. PROVIDER will not use or disclose confidential information other than as permitted or required by this AGREEMENT and any state and federal laws related to confidentiality of patient health care information and will notify AGENCY of any discovered instances of breaches of confidentiality.
- C. Without limiting the rights and remedies of AGENCY elsewhere as set forth in this AGREEMENT, AGENCY may terminate this AGREEMENT without penalty or recourse if determined that PROVIDER violated a material term of the provisions of this section.

- D. PROVIDER will ensure that any subcontractors' agents receiving health information related to this AGREEMENT agree to the same restrictions and conditions that apply to PROVIDER with respect to such information.
- E. PROVIDER understands and agrees that although HIPAA requires these paragraphs to be included in Business Associate Agreements, 42 D.F.R. 2.11 requires qualified service organizations to abide by the Federal Drug and Alcohol Regulations which prohibit such organizations from disclosing any patient identifying information even to an agent or subcontractor without patient authorization or court order.

## **8.6 Amendments**

- A. This document reflects and constitutes the entire AGREEMENT between the parties. Any amendments or changes to this AGREEMENT shall be agreed upon in writing, specifying the changes(s) and the effective dates(s), and shall be executed by duly authorized representatives of both parties. Any changes that may result in federal, state or county laws, regulations or ordinances, relating to employment, non-discrimination, drug screening and patient confidentiality that occur during the term of this AGREEMENT shall automatically be incorporated into this AGREEMENT and compliance with such changes will be required by the PROVIDER.

## **8.7 Notices**

- A. Any notice required or permitted by this AGREEMENT shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by electronic mail (email), upon acknowledgment of email receipt; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the following addresses:

To PROVIDER:      PHI Health, LLC dba PHI Air Medical  
                            Attention: David Motzkin, President  
                            2800 N 44<sup>th</sup> St. Suite 800

Phoenix, AZ 85008

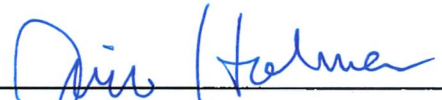
With copy to: PHI Health, LLC d/b/a PHI Air Medical  
Attention: Legal Department  
2800 N. 44<sup>th</sup> Street, Suite 800  
Phoenix, AZ 85008

To AGENCY: Sierra – Sacramento Valley EMS Agency  
Attention: Regional Executive Director  
535 Menlo Drive, Suite A.  
Rocklin CA 95765

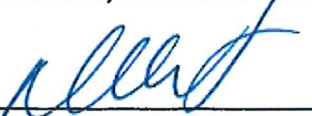
For: **SIERRA – SACRAMENTO VALLEY EMERGENCY MEDICAL SERVICES AGENCY**

By  Date 7/11/2022  
Vickie Pinette, Regional Executive Director

For: **SIERRA – SACRAMENTO VALLEY EMERGENCY MEDICAL SERVICES AGENCY  
JPA GOVERNING BOARD OF DIRECTORS**

By  Date 7-08-2022  
Jim Holmes, Chairperson

For **PHI Health, LLC dba PHI Air Medical**

By  Date 06/29/2022  
David Motzkin, President, PHI Health, LLC