

## **EMERGICON SERVICE AGREEMENT**

This Service Agreement (this "Agreement") is entered into by and between Emergicon, LLC, a Texas corporation ("Emergicon"), and The City of Deer Park EMS hereto (the "Provider").

### **RECITALS**

WHEREAS, Emergicon provides billing and collections services, and other support services (the "Services") to local government agencies, municipalities, fire departments, ambulance providers, and medical emergency services;

WHEREAS, Provider, as part or all of its overall activities, provides emergency and/or nonemergency medical and ambulance services, including emergency medical responses, and other patient encounters and/or patient ambulance transportation (the "Ambulatory Services"); and

WHEREAS, Provider is desirous of obtaining the Services of Emergicon.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

### **ARTICLE ONE: TERM AND TERMINATION**

1.1 Term. Subject to the terms and conditions set forth herein and except as provided in Section 1.02, the initial term of this Agreement shall be for a period of three (3) years from the date of this Agreement (such initial term, together with all extensions thereof, shall be referred to herein as the "Term"). This Agreement is extendable by mutual consent of the parties.

1.2 Termination. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either party, without cause and without liability (except for continuing obligations during such period), upon thirty (30) days advance written notice to the other party.

1.3 Obligations During Notice Period. During the 30-day notice period specified in Sections 1.2, Emergicon shall be entitled to receive compensation for all Accounts (as defined in Section 2.1) billed and collected with respect to the Services and for all other activities performed pursuant to this Agreement, and shall be entitled, after the end of the termination period to receive compensation for all amounts billed during the termination period but not collected until after the end of the termination period.

1.4 Obligations on Termination. Upon termination of the Agreement, for whatever cause, Emergicon will immediately return all original medical records to Provider and will provide to Provider a digital copy of all records related to Provider.

1.5 Mailing of Notices. Any notice required or permitted pursuant to this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by telegram or fax

or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, addressed as follows:

(a) If to the Provider:

The City of Deer Park EMS  
ATTN: Robert Hemminger  
P.O. Box 700  
2211 East X Street  
Deer Park, TX 77536  
Fax: 281-478-7289

If to Emergicon:

Emergicon, LLC  
PO Box 180446  
Dallas, Texas 75218  
ATTN: Christopher Turner  
Fax: 903-887-1863

Each party shall be entitled to specify a different address by giving five days' written notice to the other party. All such notices and communications shall be deemed to be received the same day if by fax (provided the sender has a fax machine/fax database generated proof of receipt) and in three (3) business days if by mail.

## **ARTICLE TWO: BILLING & COLLECTIONS**

2.1 Billing. During the Term, Emergicon shall be responsible for the billing of charges and fees relating to the Services as directed by and provided by Provider, including, but not limited to, private insurance, Medicare, Medicaid, and other governmental programs relating to:

- (a) patient encounters that occur during the Term; and
- (b) other patient encounters forwarded to Emergicon for billing.

(Note: each set of such charges and fees for the Services related to an individual patient encounter may be referred to herein as an "Account" or, collectively, the "Accounts").

2.2 Compensation. In consideration for Emergicon providing the Provider with the agreed upon billing services described in this article, the Provider will pay Emergicon a commission equal to the total amount collected on the account per the following schedule:

Annual cash per transport less than \$400 = 5.5%  
Annual cash per transport greater than \$400 = 6.5%

The cash per transport figure will be calculated annually for cash collections from October 1<sup>st</sup> through September 30<sup>th</sup> divided by the number of transports for that same time period. The commission percentage will be reviewed and adjusted annually, with no retroactive adjustment.

The initial term from contract enactment to September 30, 2016 will be paid at a commission of 6% and cash per transport will then be calculated based on transports conducted (and collections for those transports) from beginning of billing performance through September 15, 2016.

Credit card payments accepted by Emergicon will be charged an additional (1.5%) one and one-half percent. The fee will be payable monthly within 30 days of receipt of invoice.

### 2.3 Collection Efforts.

a) If provider instructs Emergicon to collect on an account(s) initially billed by Provider, Emergicon shall be compensated and paid for the collection efforts on said account in accordance with the following schedule: Fifteen Percent (15%) of the total amount collected on the account.

b) If Provider instructs Emergicon to continue collection efforts on an account after previous efforts have been unsuccessful for 120 days, Emergicon shall be compensated and paid for the collection efforts on said account in accordance with the following schedule: 18% of the total amount collected on the account.

2.4 Copies of Records. Requests for copies of medical records should be submitted directly to Emergicon. Emergicon will authorize release of the records such that the release is in accordance with the standards and time requirements established by State and Federal law, including but not limited to the requirements of Section 773.091 Texas Health and Safety Code.

### 2.5 Records of Patient Encounters.

(a) Emergicon shall use its reasonable best efforts to bill all Accounts accurately and efficiently with regard to optimizing revenue generation. Such records shall be deemed to be the property of Provider, but Emergicon shall have the right to duplicate and retain paper or electronic copies of the records. If the records exist only in electronic form, each electronic copy shall be deemed to be an original for the purposes of this Agreement. Provider shall have no obligation to forward original medical records during the 30-day notice period regarding termination as set forth in Paragraph 1.2.

(b) Provider acknowledges that Emergicon has no responsibility for complying with all provisions of Title 42 C.F.R. Section 410.40 which states, in part, that an ambulance service bears the responsibility for obtaining Physician Certification Statements ("PCS's"). Provider further understands and concurs that Emergicon is neither an ambulance service nor an ambulance provider within the definitions as set forth by the Centers for Medicare and Medicaid Services.

2.6 Activity Reports. Emergicon shall provide to Provider summary and detail monthly reports of all billing activities that occurred during the preceding month as requested by the Provider by the fifth (5<sup>th</sup>) business day of the month.

2.7 Information Received by Provider. To the extent that Provider receives payments or original copies of documentation directly, Provider shall forward to Emergicon copies of checks, Explanations of Benefits and/or other documentation within five (5) days of the date of receipt of payment by Provider.

2.8 Support Services. Emergicon will provide patients and personnel of Provider with telephone support services during normal business hours (Monday - Friday from 9:00 a.m. to 5:00 p.m.) except on public holidays or other holidays as established by Emergicon.

2.9 Obligation for Payment. Payment in accordance with this Article Two shall be due and owing to Emergicon by Provider for all Accounts collected during the Term and collected after the Term but billed during the Term by Emergicon regardless of whether payment was made to Emergicon or to Provider. Emergicon and Provider agree that the purpose of this Section 2.9 is to guarantee that Emergicon is the only provider engaging in billing services on behalf of Provider.

### **ARTICLE THREE: INDEMNIFICATION**

3.1 Emergicon's Indemnification. Emergicon shall indemnify and hold harmless Provider from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from Emergicon's performance of activities pursuant to this Agreement, but only to the extent caused by the willful misconduct or the negligent acts or omissions of Emergicon. The indemnification provided for herein shall not be applicable to any claim of adjustment or request for reimbursement made by an insurance company or any servicing agency for Medicare or Medicaid that may be made as the result of an audit of claims made or governmental regulations or laws, including Emergicon's fees charged, except for any adjustments or claims for reimbursement made as a direct result of Emergicon's error.

3.2 Insurance. Emergicon shall keep and maintain during the term of this Agreement Errors & Omissions Liability insurance with a qualified insurer of no less than \$1,000,000.00.

### **ARTICLE FOUR: CONFIDENTIALITY**

4.1 Property of Emergicon. Provider agrees that Emergicon's equipment, computer hardware and software, billing and collection processing, and other related systems and equipment are the property and trade secrets of Emergicon, and that Provider will not release any information regarding such trade secrets to any third party without the prior written consent of Emergicon.

4.2 Fact of Contractual Relationship May Be Disclosed. Notwithstanding the foregoing, either party may, without the prior written consent of the other party, disclose the existence of a contractual relationship between the parties.

### **ARTICLE FIVE: AUDITS**

5.1 Accurate Books and Records. During the Term and for a period of three (3) years thereafter, each party agrees to maintain accurate books and records associated with the billing and collections made the subject of this Agreement.

5.2 Right to Audit. Upon reasonable written notice, either party may audit the books and records of the other party insofar and only insofar as such books and records relate or pertain directly to this Agreement. Such audit shall be conducted at the office of the party being audited, shall be during normal business hours, and shall be at the sole cost and expense of the party conducting the audit.

5.3 Penalty for Underpayment. If an audit reveals that a party has failed to pay any amount or portion of any amount due or payable under this Agreement and such amount is in excess of Twenty Thousand Dollars (\$20,000.00), the party being audited shall pay to the auditing party the full cost of the audit and the full amount due or payable plus interest at the rate of ten percent (10%) per annum from the date(s) of non-payment.

#### **ARTICLE SIX: PROTECTED HEALTH INFORMATION**

6.1 HIPAA Compliance. Emergicon shall carry out obligations under this Agreement in compliance with the privacy regulations pursuant to Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, et seq., as amended (“HIPAA”), to protect the privacy of any personally identifiable protected health information (“PHI”) that is collected, processed or learned as a result of the services provided pursuant to this Agreement. In conformity therewith, Emergicon agrees that it shall:

- a) Not use or further disclose PHI except as permitted or required by law;
- b) Use appropriate safeguards to prevent use or disclosure of PHI except as permitted by law;
- c) Mitigate, to the extent practicable, any harmful effect that is known to Emergicon of a use or disclosure of PHI by Emergicon in violation of law;
- d) Report to Provider any use or disclosure of PHI not provided for by this Agreement of which Emergicon becomes aware;
- e) Ensure that agents or subcontractors to whom Emergicon provides PHI, or who have access to PHI, agree to the same restrictions and conditions that apply to Emergicon with respect to such PHI;
- f) Make PHI available to Provider and to the individual who has a right of access as required under HIPAA within ten (10) days of the request by Provider on behalf of the individual;
- g) Incorporate any amendments to PHI when notified to do so by Provider;
- h) Provide an accounting of all uses or disclosures of PHI made by Emergicon as required under the HIPAA privacy rule within sixty (60) days; and

- i) Make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining Emergicon's and Provider's compliance with HIPAA.

6.2 HIPAA Disclosures. The specific uses and disclosures of PHI that may be made by Emergicon on behalf of Provider include:

- a) The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by Provider to its patients;
- b) Preparation of reminder notices and documents pertaining to collections of overdue Accounts;
- c) The submission of supporting documentation to carriers, insurers and other payers to substantiate the health care services provided by Provider to its patients or to appeal denials of payments for same;
- d) The preparation and release of medical records to patients or their legal representatives as permitted by HIPPA privacy rule;
- e) Uses required for the proper management of Emergicon as a business associate; and
- f) Other uses or disclosures of PHI as permitted by HIPAA privacy rule.

#### **ARTICLE SEVEN: MISCELLANEOUS**

7.1 No Waiver. The failure of either party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature.

7.2 Provisions Construed Separately. The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision hereof. In the event that a court of competent jurisdiction determines that any term or provision herein shall be invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, and shall be interpreted as if the invalid term or provision were not a part hereof.

7.3 Final Agreement. This Agreement sets forth the entire, final and complete understanding between the parties hereto relevant to the subject matter of this Agreement. No

waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed on behalf of both parties.

7.4 Performance of Agreement, Venue; Choice of Law. Provider understands and agrees that Emergicon will be performing this contract in Dallas County, Texas. The venue for any disputes or causes of action that may arise out of this Agreement is the state and county courts located in Harris County, Texas. The provisions of this Agreement shall be determined in accordance with the laws of the State of Texas excluding the choice of law provisions thereof.

7.5 Headings. The headings of this Agreement are for ease of reference only and are not intended to limit or restrict the terms hereof.

7.6 Binding Nature of Agreement. This Agreement is binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

7.7 Compliance with Laws Generally. Emergicon shall comply with all applicable laws, orders, rules, or regulations of all governmental agencies bearing on its performance hereunder. If so requested by Provider, Emergicon shall submit appropriate evidence of such compliance.

7.8 Independent Contractor. It is understood and agreed that Emergicon is an independent contractor. Nothing herein contained shall be construed to create any partnership, joint venture, or joint enterprise between the parties.

7.9 Non-Profit Status Determination Letter. If Provider is a not-for-profit entity, Provider shall provide a duplicate of its letter determining its not-for-profit status with the Internal Revenue Service. In providing such letter, Provider further represents and warrants to Emergicon that it has done every act necessary to maintain its not-for-profit status with the Internal Revenue Service and is not aware of any pending, threatened or actual revocation of its not-for-profit status.

7.10 Appendices. Emergicon and Provider may enter into various appendices to this Agreement from time to time and at any time regarding additional services. Such appendices shall be considered part of this Agreement as if set forth herein at length unless such appendix provides otherwise.

7.11 Assignment. Neither party shall assign or otherwise transfer this Agreement, any interest in this Agreement, or any right or obligation hereunder to any other party without the written consent of the other party.

7.12 Attorneys' Fees. Should it become necessary for either party to employ an attorney to enforce any of the terms and conditions hereof, including the collection of fees, either party shall do so at their sole cost and expense.

IN WITNESS WHEREOF, Emergicon and the Provider have executed this Agreement on the later date of the two signatures below:

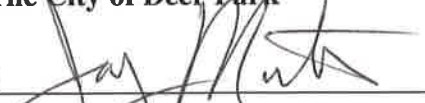
**EMERGICON, L.L.C.**

By: 

Name: Christopher Turner  
Title: President & CEO

Date: 10 Feb 2016

**The City of Deer Park**

By: 

Name: Jerry L. Mouton, Jr.  
Title: Mayor

Date: 2/2/16