

**AGREEMENT FOR EMS SERVICES**  
**by and between**  
**SEDGWICK COUNTY, KANSAS**  
**and**  
**SMG**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between Sedgwick County, Kansas ("County") and SMG ("SMG"), a Pennsylvania partnership currently managing the Intrust Bank Arena ("Arena")

WITNESSETH:

**WHEREAS**, SMG operates Intrust Bank Arena ("Arena")

**WHEREAS**, SMG desires to have SCEMS equipment and personnel on site during certain events at the Arena.

**WHEREAS**, County, through its Emergency Medical Service ("SCEMS") desires to provide such services and has the necessary equipment, training, expertise, professional certifications and licenses to do so.

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

**ARTICLE I**  
**RESPONSIBILITIES OF SCEMS**

- 1.1 **Provision of Services.** SCEMS agrees to provide SMG with the equipment and personnel for events at the Arena.
- 1.2 **Compensation.** SMG shall compensate SCEMS for the services as described in Appendix A.
- 1.3 **Compliance.** SCEMS shall perform all Services under this Agreement in accordance with any and all regulatory federal, state, and local laws, rules, regulations and policies.
- 1.4 **Insurance.** County is self-funded for Comprehensive General Liability, Workers Compensation, and Automobile insurance. County adheres to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), which limits liability for municipal entities to \$500,000.00. Proof of County's insurance is attached hereto and incorporated herein as Appendix D.
- 1.5 **Patient's Right for Ambulance Service.** SCEMS does not discriminate in the provision of covered medical services hereunder, whether on the basis of a person's age, gender,

marital status, sexual orientation, race, color, religion, ancestry, national origin, disability, handicap, health status, or other unlawful basis including, without limitation, the filing by a person of any complaint, grievance or legal action against SMG, SCEMS, or payor. SCEMS is not required to provide services to a person who refuses to cooperate with SCEMS's efforts to provide services or if SCEMS has other good cause for refusing to provide services. In addition, SCEMS shall abide by the requirements of 41 CFR 60-1.4(a) which prohibits discrimination on the basis of race, color, religion, gender, and national origin. SCEMS shall also abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) which prohibit discrimination as to and against qualified protected veterans and qualified individuals on the basis of disability, and requires affirmative action by covered contractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

## **ARTICLE II RESPONSIBILITIES OF SMG**

- 2.1 **Availability.** SMG expressly understands and acknowledges that SCEMS may be unavailable at times due to high demand, emergencies or other unforeseen circumstances. SCEMS will notify SMG when requests for Services under this Agreement cannot be honored in order to allow SMG to obtain the services of another provider. SMG understands that, in those instances where SCEMS is unavailable, SCEMS has no responsibility to arrange or pay for the charges of a substitute provider or to pay SMG the difference, if any, between the contracted rate and the charges of any such substitute provider.
- 2.2 **Insurance.** SMG shall maintain, at all applicable times, comprehensive general liability and professional liability in amounts equal to at least \$1,000,000.00 per occurrence and \$3,000,000.00 in the aggregate. SMG shall furnish SCEMS with satisfactory evidence of such insurance prior to execution of this Agreement.
- 2.3 **Payment in Full.** SCEMS shall not bill any patient, financially responsible party, insurer, or third party payor for any transports that are the responsibility of SMG. SMG agrees to indemnify, defend, and hold harmless SCEMS for any liability resulting from its submission of any such bills when it was the result of information supplied by SMG. When charges are properly billed for transports, SCEMS shall accept the fee schedule amounts outlined in the Appendices to this Agreement as payment in full.
- 2.4 **Prompt Payment.** SMG agrees to remit payment to SCEMS for all transports for which it is responsible to pay under the law and under this Agreement within thirty (30) days of the date of SCEMS's bill. SMG agrees that payment to SCEMS is not contingent upon any payments that SMG may collect from other sources. SMG agrees to be responsible for the payment to SCEMS of its costs for collection of accounts past thirty (30) days.

### ARTICLE III MUTUAL RESPONSIBILITIES

- 3.1 **Certifications and Licenses.** Each party shall maintain all certifications and licenses as required by all applicable state and federal laws. Each party will be certified to participate in the Medicare and Medicaid programs upon the effective date of this Agreement.
- 3.2 **Compliance with Applicable Lawsuit Rules and Regulations.** Each party agrees to perform its obligations under this Agreement in full compliance with all Federal, State and local laws, rules, and regulations applicable to the Agreement.
- 3.3 **Confidentiality Requirements.** To the extent applicable to this Agreement, the parties agree to comply with the federal Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC 1320d through d-8 ("HIPAA") and any current and future regulations promulgated under either the HITECH Act or HIPAA, including without limitation the federal privacy standards contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Standards"), and the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Standards"), all as may be amended from time to time, and all collectively referred to herein as "Confidentiality Requirements". The parties agree to enter into any further agreements as necessary to facilitate compliance with the Confidentiality Requirements.
- 3.4 **Force Majeure.** Either party shall be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond its control and without fault, including, without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, terrorism, explosion, or inability due to any of the aforementioned causes to obtain labor, materials, roadways, or facilities. In addition to the above, SCEMS shall be excused for failures and delays in performance of its obligations under this Agreement due to adverse weather condition, natural physical barriers, such as mountains, hills, or washes, traffic conditions, natural disasters, and/or other limitations of access to the person requiring services. Such conditions may impede, or affect or block SCEMS's efforts to provide services and/or ability to utilize some or all of its equipment. Nevertheless, each party shall use its best efforts to avoid or remove such causes and to continue performance whenever such causes are removed, and shall notify the other party of the problem.

### ARTICLE IV TERM AND TERMINATION

- 4.1 **Term and Termination.** This Agreement shall be for a term of one (1) years commencing January 1, 2018 and ending December 31, 2018.

Either party may terminate this Agreement upon breach by the other party which is not cured within ten (10) calendar days following receipt of notice thereof. Furthermore, either party may terminate this Agreement at any time without cause upon ninety (90) days' written notice which shall specify the effective date of the termination. The provisions of this Agreement, which by their nature must survive termination to be effective (such as, but without limitation, obligations to pay money and obligations to submit reports) shall be deemed to remain in effect after termination of this Agreement.

**4.2 Immediate Termination.** Either party may immediately terminate this Agreement, without any advance notice of such termination, upon any one of the following occurrences:

- a) If SMG fails to pay SCEMS for the Services required to be performed hereunder or otherwise meet its obligations hereunder.
- b) If either party fails to maintain its required licenses, permits or certifications or is excluded from the Medicare or Medicaid programs.
- c) If either party fails to keep in force the insurance policies required to be maintained under this Agreement.
- d) Upon either party's general assignment for the benefit of creditors or petition for relief in bankruptcy or under similar laws for the protections of debtors, or upon the initiation of such proceedings against either party if the same are not dismissed within forty-five (45) days of service.
- e) If any of the representations of either party as set forth in this Agreement are false or misleading in any material respect.
- f) Upon one or more of SMG's Facility's loss of certification as a Medicare provider

**4.3 Termination for Change of Laws.** If any legislation, regulation or government policy is passed or adopted, or if these laws, regulations or policies are interrupted in a manner that would materially affect either party's business or the implementation of this Agreement as written, the party shall provide notice of such law, regulation or policy to the other party and the parties agree to negotiate in good faith within thirty (30) days to modify the terms of this Agreement to comply with the applicable law, regulation or policy. If the parties cannot agree upon the necessary modification, either party may terminate this Agreement on thirty (30) days' advance written notice without consequence.

## **ARTICLE V OTHER PROVISIONS**

- 5.1 **Ownership of Information.** Except as otherwise specifically agreed, SCEMS agrees that it acquires no title or right to information disclosed by SMG to SCEMS under this Agreement.
- 5.2 **Indemnification.** To the fullest extent of the law, SMG shall defend, indemnify and hold harmless County and its elected and appointed officials, officers, managers, members, employees and agents, from any and all claims brought by any third-party person or entity whatsoever, arising from any act, error, or omission of SMG in connection with SMG's performance of this Agreement or any other agreements between SMG and the County entered into by reason of this Agreement. SMG shall defend, indemnify and hold harmless County and its elected and appointed officials, officers, managers, members, employees and agents, with respect to any third-party claim arising, or alleged to have arisen from negligence, and/or willful, wanton or reckless acts or omissions of SMG, its subcontractors, agents, servants, officers, or employees and any and all losses or liabilities resulting from any such claims, including, but not limited to, damage awards, costs, and reasonable attorney's fees. This indemnification shall not be affected by other portions of this Agreement relating to insurance requirements. SMG agrees that it will procure and keep in force at all times and at its own expense insurance in accordance with these specifications.
- 5.4 **Relationship of Parties.** It is agreed that the legal relationship between SCEMS and SMG is of a contractual nature. Both parties assert and believe that SCEMS is acting as an independent contractor in providing the services and performing the duties required by this Agreement.
- 5.5 **Governing Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
- 5.6 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, assigns or other legal representatives.
- 5.7 **Assignment.** Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.
- 5.8 **Severability.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.
- 5.9 **Incorporation of Documents.** Appendix A (Description of Services), Appendix B (SMG Financial Responsibility), Appendix C (Fee Schedule), and Appendix D (County Self-Insurance) are attached hereto and made a part hereof as if fully set forth herein.

- 5.10 **Notification.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

**SCEMS:**

Sedgwick County EMS  
Attn: EMS Director  
1015 Stillwell  
Wichita, Kansas 67213

and

Sedgwick County Counselor's Office  
Attn: Contract Notification  
Sedgwick County Courthouse  
525 N. Main, Suite 359  
Wichita, KS 67203-3790

**SMG:**

SMG  
Intrust Bank Arena  
500 E. Watermen  
Wichita, KS 67202

- 5.11 **Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.
- 5.12 **No Waiver.** No waiver of a breach of any provision of this Agreement will be construed to be a waiver of this Agreement, whether of a similar or different nature, and no delay in acting with regard to a breach shall be construed as a waiver of that breach.
- 5.13 **Authority to Contract.** Both parties assure that they possess legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of both SCEMS and SMG's governing bodies, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of both SCEMS and SMG to act in connection with the application and to provide such additional information as may be required.
- 5.14 **Amendments.** Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

- 5.15 **Exclusion of Certain Damages.** Notwithstanding any provision in this Agreement to the contrary, in no event shall SCEMS or any of its respective directors, officers, members, shareholders, employees, agents, or subcontractors be liable for lost profits, special, consequential, incidental, or punitive damages, regardless of the basis of the claim, whether in contract, tort, strict liability, or other legal or equitable theory.
- 5.16 **Notification of Actual or Potential Violation of Law.** If either party becomes aware of any actual or potential violations by the other party, whether intentional or inadvertent, of any applicable state or federal statutes or regulations, it shall promptly notify the other party.
- 5.17 **Protection of Patient Information.** The parties, each of which are "covered entities," shall carry out their obligations under this Agreement in compliance with the privacy and security regulations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), to protect the privacy and security 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. Both parties acknowledge that their relationship to patients receiving services hereunder is a "direct treatment relationship" as that term is defined in the Privacy Regulations and that this contractual relationship does not constitute a "business associate" agreement pursuant to the Privacy Rule. The parties also understand that it is permissible under HIPAA to freely exchange PHI for purposes of treatment, payment, or health care operations, including information to determine medical necessity. Both parties agree to a free exchange of PHI for purposes of treatment, payment, or health care operations, and SMG will provide all documents requested by SCEMS so that it may properly bill for covered transports.
- 5.18 **Information/Confidentiality.** As a governmental entity, the County's contracts are generally public records. Accordingly, no provision of this Agreement shall restrict County's ability to produce this Agreement in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 *et seq.*).
- 5.19 **Waiver and Consent.** The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the rights to require such performance of any other provision hereof, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. If the consent of either party is necessary pursuant to the terms of this Agreement, such consent shall not be unreasonably withheld.
- 5.20 **Regulatory Changes.** The parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws and shall be construed accordingly. The parties further recognize that this Agreement may become subject to or be affected by amendments in such laws and regulations or to new legislation or regulations. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the parties hereto to be in violation of law, shall be deemed to have superseded the terms of this Agreement

and, in such event, the parties agree to utilize their best efforts to modify the terms and conditions of this Agreement to be consistent with the requirements of such law(s) in order to effectuate the purposes and intent of this Agreement. In the event that any such laws or regulations affecting this Agreement are enacted, amended or promulgated, either party may propose to the other a written amendment to this Agreement to be consistent with the provisions of such laws or regulations. In the event that the parties do not agree on such written amendments within thirty (30) days of receipt of the proposed written amendments, then either party may terminate this Agreement without further notice, without consequence, unless this Agreement would expire earlier by its terms.

- 5.21 **Non-Discrimination.** All services provided under this Agreement shall be provided without regard to the race, color, creed, sex, age, disability status, payor source or national origin of the resident requiring such services. SCEMS agrees to comply with all applicable laws prohibiting discrimination in the provision of services hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SEDGWICK COUNTY, KANSAS:


SMG:

\_\_\_\_\_  
DAVID M. UNRUH, Chairman  
Fifth District

\_\_\_\_\_  


APPROVED AS TO FORM ONLY:

ATTESTED TO:

\_\_\_\_\_  
  
William F. Deer  
Assistant County Counselor

\_\_\_\_\_  
Kelly B. Arnold  
County Clerk



**APPENDIX A**  
**2018 Intrust Bank Arena EMS Standby Fee Schedule**

<b>Personnel &amp; Equipment</b>	<b>Standby Fees</b>
Paramedic (each)	\$35.00 per hour
Emergency Medical Technician (each)	\$17.50 per hour
Equipment Fee (per event)	\$55.00
Ambulance Fee (per event)	\$55.00