

## CODERED NEXT SERVICES AGREEMENT

Emergency Only Plan  
Global Connect Upgrade

This CodeRED® NEXT Services Agreement ("Agreement") is made and effective as of the last date written below (the "Effective Date") by and between Emergency Communications Network, LLC, a Delaware Limited Liability Company ("Licensor") located at 9 Sunshine Boulevard, Ormond Beach, FL 32174 and the **Township of West Orange Police Department**, a body politic and corporate of the State of **New Jersey** ("Licensee") located at **60 Main Street, West Orange, NJ 07052**.

Licensor is the owner of a service identified as "CodeRED® Emergency Notification System" (the "Service"), which is designed to allow authorized licensed users to have access 24 hours a day, 7 days a week for the purpose of generating high-speed notifications to targeted groups via an Internet-hosted software application. Licensee desires to utilize the Service solely for the purpose of communicating matters regarding immediate harm to life or property (each an "Emergency" and collectively, the "Emergencies"). The parties agree as follows:

1. **License:** Licensor grants Licensee a non-exclusive and non-transferable license (the "License") to use the Service for Licensee's own purpose, in accordance with the terms of this Agreement. Licensor reserves the right to either charge additional fees or terminate this Agreement if other parties not contemplated in this Agreement are granted access to the Service by Licensee or Licensee uses the Service for non-Emergencies. Licensee assumes full and complete responsibility for the use of the Service by anyone whom Licensee permits to use the Service or who otherwise uses the Service through Licensee's access codes.

Licensee may not assign, license, sublicense, rent, sell or transfer the License, the Service, those codes used to access the Service, or any rights under this Agreement. To access the Service, Licensor will provide Licensee with up to **five (5)** unique user name(s) and password(s). Additional users pass codes may be obtained at an additional annual fee as outlined in Exhibit A, attached hereto and incorporated by reference.

2. **Ownership:** Licensee agrees that it shall not duplicate, translate, modify, copy, printout, disassemble, decompile or otherwise tamper with the Service or any software provided. The Licensee's License confers no title or ownership in the Service or its underlying technology.

3. **Functionality:** The Service provides the ability for Licensee to generate high-speed notifications to geographically selected calling areas and/or listed databases via an Internet-hosted software application. The Service utilizes an interactive voice response telephone service to record Licensee voice messages and initiate telephone call-out projects. Licensee's community database(s) shall be limited to containing contact data located within the geographic boundaries (determined by Lat/Lon coordinates) of the following **Township of West Orange, New Jersey (the "Calling Area")**. Licensee may only place calls via the system to telephone numbers assigned within the 48 contiguous United States of America. International call rates may be set by separate agreement. Any additional Service functions will be charged at the rates on Exhibit A.

4. **Term:** This Agreement, and the License extended herein, **will commence on the Effective Date and continue through December 31, 2014 (the "Initial Term")**. Upon termination of this Agreement, whether by expiration of the Initial Term, any Renewal Term (as hereinafter defined)(the Initial Term and any Renewal Term, collectively, the "Term"), or as otherwise set forth herein, Licensee's access to the Service will be terminated.

5. **Costs for the Service:** During the Term of this Agreement, Licensee agrees to pay all costs and fees for utilizing the Service, as described in Exhibit A, including but not limited to any applicable taxes, and as set forth in this paragraph. Licensee understands and agrees that the pricing set forth on Exhibit A is predicated on a population within the Calling Area not to exceed **47,499**. Licensee further understands and agrees that a deviation **above 10%** of such population, as is listed in this Agreement, shall result in increased pricing at Licensor's then-current rates. Payment for the Service is due and payable upon Licensee's receipt of invoice (ROI). Finance charges at a rate of 1% per month (12% per annum) will be charged on all balances outstanding beyond 60 days. All payments due under this agreement shall be paid to: Emergency Communications Network, LLC at 9 Sunshine Blvd., Ormond Beach, FL 32174. Licensee understands and

agrees that the prices set forth on Exhibit A are not final until this Agreement has been fully executed, and that it is at Licensor's discretion to honor such prices in the event this Agreement has not been returned to the Licensor within 90 days from the date this Agreement was drafted for the Licensee.

- 6. Non-Emergency Calls:** Licensee acknowledges and agrees that the License granted herein is limited such that, pursuant to the terms of this Agreement, Licensee may solely make Emergency calls and Test calls using the Service. Licensee further acknowledges and agrees that it has received a discount under this Agreement on the basis of such limited License, as set forth on Exhibit A. Licensee understands and agrees that, in the event Licensee, or any person using Licensee's access codes, launches a non-Emergency call which does not qualify as a Test call, that the pricing for this Agreement shall automatically be increased to the non-discounted rate set forth on Exhibit A, or Licensor's then-current pricing for a standard, minute-bank plan, which shall be calculated in accordance with the then-current population of the Calling Area, whichever is higher, for the full Term. Licensee agrees that, in the event the pricing for this Agreement is increased in accordance with this paragraph, that Licensee shall pay such increase upon receipt of invoice, in accordance with the provisions of paragraph 5 herein. Licensee further understands and agrees that, in the event of such increase, Licensor reserves the right to require Licensee to execute a new agreement governing Licensee's use of the Service for non-Emergency and Emergency calls.
- 7. Free Testing and Training Minute Blocks:** Licensee is allotted five hundred (500) minutes of free time on the system which runs the Service for the purpose of testing and training. Licensee understands and agrees that the following conditions must be met in order for Licensee to utilize the free minute bank specified in Exhibit A:
- a) Minutes used for testing and training shall be designated as a non-Emergency call;
  - b) Licensee must notify Licensor in writing within 60 days from the date the Service was used for testing or training, specifying qualified project(s), to request that such call be changed from a non-Emergency call to a Test call. Licensee understands and agrees that, if Licensee fails to notify Licensor within 60 days of the use of the Service, that the call will be designated as a non-Emergency call subject to the terms herein; and
  - c) Licensor will have the final right to determine whether a call is a non-Emergency call or Test call as set forth in this paragraph.
- 8. Discount Contract Extension:** Upon completion of the Initial Term, the Term of this Agreement will automatically extend for an additional **one-year** period (each a "Renewal Term"), except as otherwise set forth herein. This contract extension provision will continue to extend the Agreement period by one (1) additional year upon the completion of the Initial Term and each Renewal Term. **Either party may cancel this renewal provision by submitting written notice to the other no less than 30 days prior to the end of the then current Initial Term or Renewal Term.** In the event the Agreement is extended:
- a) Licensor will update its systems to extend the active software License and associated access codes for one additional year of use;
  - b) Licensor will invoice Licensee for additional year(s) of service at the rate of **sixteen thousand dollars (\$16,000) per year**; and
  - c) Licensee agrees to pay the fee set forth in this paragraph upon receipt of invoice from the Licensor, subject to the same terms as set forth in paragraph 5.
- 9. Termination:** Licensee or Licensor may terminate this Agreement at the completion of the Initial Term or the then-current Renewal Term by providing Licensor with no less than 30 days advance written notice prior to the end of the Term. Licensee understands and agrees that failure to provide notice as set forth herein shall result in automatic renewal. Upon termination of this Agreement, Licensee will return all Confidential Information (as hereinafter defined) and copies to Licensor. Licensor, in its sole discretion, may also terminate this Agreement: a) for any reason by providing no less than 30 days advance notice, and in such case, Licensor will refund to an amount equal to the monthly-prorated balance of the annual fee based on the number of days left in the term of the Agreement less the rate of \$0.09 cents times each minute used by

Licensee; or b) immediately, and without further notice, as a result of Licensee's breach of this Agreement, and in such case, no fees paid hereunder shall be refunded. Upon termination, Licensee agrees to remove from Licensee's computer(s), and any computers within Licensee's control, any and all files and documents related to the Service.

- 10. Copyright:** Licensee understands and agrees that United States copyright laws and international treaty provisions protect the Service. Except for the limited License provided for herein, Licensor reserves all rights in and to the Service and all underlying data, compilations, and information maintained by Licensor relating to the Service, including but not limited to, the source or object code. Licensee shall not make any ownership, copyright or other intellectual property claims related to the Service or data processed through the Service.
- 11. Representations and Warranties:** Licensee acknowledges and agrees that: (a) the Service is run by software that is designed to be active 24 hours per day, 365 days per year; software in general is not error-free and the existence of any errors in Licensee's software used in conjunction with the Service shall not constitute a breach of this Agreement; (b) in the event that Licensee discovers a material error which substantially affects Licensee's use of the Service, and Licensee notifies Licensor of the error, Licensor shall use reasonable measures to restore access to the Service, provided that such error has not been caused by incorrect use, abuse or corruption of the Service or the Service's software or by use of the Service with other software or on equipment with which it is incompatible by Licensee or a third party accessing the Service through Licensee's passcodes; (c) Licensee is responsible for maintaining access to the Internet in order to use the Service; Licensor in no way warrants Licensee's access to the Internet via Licensee's Internet Service Provider(s); (d) Under certain rare instances not all technologies are compatible without manual intervention by both parties. Licensee agrees that its staff will cooperate with Licensor's staff to make necessary modifications to allow the Service to perform; and (e) the individual signing on behalf of Licensee is an authorized officer, employee, member, director or agent for Licensee and has full authority to cause Licensee to enter into and be bound by the terms of this Agreement and this Agreement fully complies with all laws, ordinances, rules, regulations, and governing documents by which Licensee may be bound.
- 12. Security:** Licensor will use commercially reasonable practices and standards to secure and encrypt data transmissions. Licensee understands and acknowledges that Licensor is providing the Service on the World Wide Web through an "upstream" third party Internet Service Provider, utilizing public utility services which may not be secure. Licensee agrees that Licensor shall not be liable to Licensee in the event of any interruption of service or lack of presence on the Internet as a result of any disruption by the third party Internet Service Provider or public utility. Licensee agrees that Licensor cannot guarantee the integrity of any Licensee supplied or user supplied data. Any errors, duplications, or inaccuracies related to Licensee or user supplied data will be the responsibility of the Licensee.
- 13. Disclaimer:** In no event (even should circumstances cause any or all of the exclusive remedies to fail their essential purpose, and even if Licensor has been advised of the possibility of such damages) shall Licensor, its officers, directors, managers, members employees or agents, be liable for any indirect, punitive, special, incidental or consequential damages of any nature (regardless of whether such damages are alleged to arise in contract, tort or otherwise), including, but not limited to, loss of anticipated profits or other economic loss in connection with or ensuing from the existence, furnishing, function, or Licensee's use of any item or products or services provided for in this Agreement. Licensee understands that the cumulative liability of Licensor for any and all claims relating to the Service provided by Licensor shall not exceed that total amount paid by Licensee for the most recent payment made by Licensee to Licensor. **The Service is provided as-is, and Licensor disclaims all warranties, express or implied, and does not warrant for merchantability or fitness of a particular purpose.** Licensee recognizes that once email and text messages have been released from Licensor's equipment, the ultimate delivery of the messages depends on the message recipient's local network. As a result Licensor cannot guarantee the delivery of email and text messages to a recipient.
- 14. Appropriate Use of The Service:** To access the Service, Licensor will provide Licensee with unique user name(s) and password(s). Licensee agrees to maintain such user name(s) and password(s) as private and confidential information. Licensee agrees to use the Service in a way that conforms with all applicable laws and regulations. Licensee agrees not to initiate a call, such that the same call is to be delivered to two (2) or

more lines of a business. Licensee specifically agrees not to make any attempt to gain unauthorized access to any of Licensor's systems or networks. Licensee agrees that Licensor shall not be responsible or liable for the content of the message(s) created by Licensee, or by those who access the Service using Licensee's codes, or otherwise delivered by the Service on behalf of Licensee. Licensee agrees to defend, indemnify and hold harmless Licensor and its affiliates, employees, officers, directors, managers, members and agents from any and all liabilities, costs, and expenses, including reasonable attorneys' fees, whether brought by a third party, arising from any violation of this Agreement by Licensee; from the content, placement, or transmission of any messages or materials sent or maintained through Licensee's accounts, or use of the Service through Licensee's account. Licensee shall be responsible for compliance with all applicable laws regarding outbound telemarketing, which may include, but are not limited to the Federal Telephone Consumer Protection Act of 1991, The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1999 and the rules and regulations promulgated thereunder, as well as State and Local telemarketing laws and requirements. Licensee will be solely responsible and liable for any such violations and shall defend, indemnify and hold Licensor harmless from all lawsuits, demands, liabilities, damages, claims, losses, costs or expenses, including attorneys' fees (whether by salary, retainer or otherwise), arising out of or resulting from, in whole or in part, a violation of such laws.

**15. Confidentiality:** Licensor acknowledges the confidential nature of Licensee and user supplied data and files that it is to prepare, process or maintain under this Agreement, and agrees to perform its duties in such a manner as to prevent the disclosure to the public or to any persons not employed by Licensor, any confidential data and files. Data collected by Licensor will remain secured on Licensor's equipment and will only be released upon mutual agreement by both parties or a court order of sufficient jurisdiction. Licensee understands and agrees that private citizens and other persons in the Calling Area may voluntarily contribute their contact information to be used in the Service, and that Licensor shall develop and maintain a database of such information, along with other information privately developed by Licensor (the "Data"). Licensee acknowledges and agrees that Licensor desires to maintain the privacy of the Data, and that Licensee shall take no steps to compromise the privacy of the Data. Licensee further acknowledges that Licensor shall disclose to Licensee certain confidential, proprietary trade secret information of Licensor (along with the Data, "Confidential Information"). Confidential Information may include, but is not limited to, the Service, computer programs, flowcharts, diagrams, manuals, schematics, development tools, specifications, design documents, marketing information, user data, Calling Area data, financial information or business plans. Licensee agrees that, at all times during and after the termination of this Agreement, Licensee will not, without the express prior written consent of Licensor, disclose any Confidential Information or any part thereof to any third party. Nothing in this Agreement will be deemed to require Licensor to disclose any Confidential Information to Licensee or to prohibit the disclosure of any information in response to a subpoena or other similar order by a court or agency. The Licensee will promptly notify the Licensor of the receipt of any subpoena or other similar order and of any request under the Public Information Act or any other similar law, and will assist Licensor in preventing the disclosure of the Confidential Information pursuant to same to the extent required by Licensor.

**16. Entire Agreement:** This Agreement supersedes all prior understandings or agreements, whether oral or written, on the subject matter hereof between the parties. Only a further writing that is duly executed by both parties may modify this Agreement. The terms and conditions of this Agreement will govern and supersede any additional terms provided by Licensee, including but not limited to additional terms contained in standard purchase order documents and third party application terms, unless mutually agreed to, via written signature, by Licensor. The terms of this Agreement shall not be waived except by a further writing executed by both parties hereto. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall any waiver under this Agreement constitute a waiver of any subsequent action.

**17. Notices:** All notices or requests, demands and other communications hereunder shall be in writing, and shall be deemed delivered to the appropriate party upon: (a) personal delivery, if delivered by hand during ordinary business hours; (b) the day of delivery if sent by U.S. Mail, postage pre-paid; (c) the day of signed receipt if sent by certified mail, postage pre-paid, or other nationally recognized carrier, return receipt or signature provided and in each case addressed to the parties as follows:

As to **Licensor:** Emergency Communications Network, LLC, 9 Sunshine Blvd. Ormond Beach, FL 32174

As to **Licensee: Township of West Orange Police Department, Attn: Robert Martin/Lieutenant, 60 Main Street, West Orange, NJ 07052**

Either party may change the address provided herein by providing notice as set forth in this paragraph.

- 18. General:** Each party to this Agreement agrees that any dispute arising under this Agreement shall be submitted to binding arbitration according to the rules and regulations of, and administered by, the American Arbitration Association, and that any award granted pursuant to such arbitration may be rendered to final judgment. If any dispute arises hereunder, the prevailing party shall be entitled to all costs and attorney's fees from the losing party for enforcement of any right included in this Agreement, whether in Arbitration, a Court of first jurisdiction and all Courts of Appeal.
- 19. Interpretation and Severability:** In the event any provision of this Agreement is determined by an arbitrator or court of competent jurisdiction to be void, the remaining provisions of this Agreement shall remain binding on the parties hereto with the same effect as though the void provision(s) had been limited or deleted, as applicable.
- 20. Counterparts and Construction:** This Agreement may be executed in counterparts, each of which shall constitute an original, with all such counterparts constituting a single instrument. The headings contained in this agreement shall not affect the interpretation of this Agreement and are for convenience only. Licensee agrees that this Agreement shall not be construed against the Licensor as the drafter, and that Licensee has read and understands this Agreement, and had the opportunity to review this Agreement with legal counsel.
- 21. Survival:** Certain obligations set forth herein represent independent covenants by which either party hereto may be bound and shall remain bound regardless of any breach of this Agreement and shall survive termination of this Agreement.

**IN WITNESS WHEREOF**, the parties execute this Agreement on the date(s) indicated below.

**Licensee:**  
**Township of West Orange Police Department,**  
**New Jersey**

**Licensor:**  
**Emergency Communications Network, LLC**

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

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

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

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

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

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

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

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

## Exhibit A – Service Charges

|                                                                         |                       |
|-------------------------------------------------------------------------|-----------------------|
| CodeRED NEXT Service Agreement through December 31, 2014                | \$ 44,652.80          |
| Credit for prior payment made to Global Connect for 01/01/13 – 12/31/13 | (\$ 8,742.80)         |
| <u>Emergency Only Discount:</u>                                         | <u>(\$ 19,910.00)</u> |

**AMOUNT DUE FROM LICENSEE ON OR BEFORE JANUARY 1, 2014: \$ 16,000.00**

**Unlimited** CodeRED Emergency System Minutes \$ Included

Up to **500** System Minutes for Testing \$ Included

Up to **5** CodeRED user pass codes \$ Included

Additional pass codes may be purchased for an annual fee of \$150.00 per pass code.

One (1) CodeRED distance training session \$ Included

Additional distance training sessions may be purchased for \$150.00 per hour (one hour minimum).

On site training may be purchased for \$1,500.00 per trainer, per day, plus all travel, lodging and ground transportation

Initial Residential Database Upload \$ Waived

Standard CodeRED data collection website \$ No Charge

Standard CodeRED mapping interface and data layers \$ No Charge

Email and Text Messaging \$ No Charge

Annual System Maintenance, including all Software Upgrades \$ No Charge

**TOTAL: \$ 16,000.00**

### Database Accuracy Updates:

Licensors Supplied Database: "Database Accuracy Updates" ensure that the data population maintained by Licensors under this Agreement undergoes periodic accuracy checks using the Licensors's most current in-house compiled database including, but not limited to, household addresses and telephone numbers. It will be the sole responsibility of the Licensee to maintain database accuracy and request updates from the Licensors.

One annual "Database Accuracy Update" will be performed by the Licensors upon request by the Licensee at no charge. Additional updates requested by Licensee will incur charges at the rate listed below after the update service is completed by Licensors.

3¢ per record in final updated database population.

Licensee Supplied Database: A service labor fee of One Hundred Dollars (\$100.00) per hour will be billed to Licensee for any data importing, manipulating, and loading any database supplied by Licensee or on Licensee's behalf to Licensors.

\$100 per hour for database maintenance

***OPTIONAL: GIS Upload and Hosting upon request: \$ 2,500***

*GIS information must be in a standard format recognizable and electronically transferable to the CodeRED system. Up to 10 layers may be loaded for use in the System. Licensee may update up to 10 layers annually at Licensees discretion.*

*GIS Custom Street "single layer" Upload and Hosting upon request: \$250*