

# CODERED SERVICES AGREEMENT

This Services Agreement ("Agreement") is made and effective as of the last date written below by and between Emergency Communications Network, Inc. a Florida Corporation ("Licensor") located at 9 Sunshine Boulevard, Ormond Beach, FL 32174 and **City of O'Fallon**, a body politic and corporate of the State of **Illinois** ("Licensee") located at **255 S Lincoln Ave, O'Fallon, IL 62269**

Licensor is the owner of a service identified as "CodeRED™ Emergency Notification System" (The "Service"), which allows users to place prerecorded telephone calls at high speed to call recipients. Licensee desires to utilize the "Service" for the purpose of communicating matters of public interest and concern.

In consideration of the promises set forth, the parties agree as follows:

1. **License:** Licensor grants Licensee a non-exclusive and non-transferable license to use the "Service" (hereinafter referred to as "The License") for Licensee's own purposes in accordance with the terms outlined in this Agreement. Licensee understands and agrees that they are fully responsible for the use of such services by anyone whom Licensee authorizes or permits to use the "Service", and anyone who accesses the "Service" by utilizing Licensee's Confidential access codes.
  - a. The Licensee may not modify the "Service", disable any license or control features of the "Service." Licensee may not (i) assign, license, sublicense, rent, sell, transfer the "Service", this agreement, or any portion thereof or (ii) utilize the "Service" except as expressly permitted in the Agreement between Licensee and Licensor. The License will include pass codes for up to **five (5)** authorized "Service" users. Additional users pass codes may be obtained at an additional annual fee as outlined in Exhibit A.
2. **Ownership:** The "Service" is owned and copyrighted by Licensor. The Licensee's license confers no title or ownership in the "Service" whatsoever.
3. **Copyright:** United States copyright laws and international treaty provisions protect the "Service". Except for the limited license provided, 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.
4. **Functionality:** The "Service" provides the ability for the Licensee to access pre-defined geographically selected calling areas or listed databases via an Internet-based software application. The "Service" also has the ability to select calling databases via a geographic mapping component. The Service will also utilize an interactive voice response telephone service used to record messages and initiate call out projects. The "Service" is designed to be active 24 hours per day 365 days per year.
5. **Costs for The "Service":** During the term of this agreement Licensee agrees to pay all costs for utilizing the "Service" as described in Exhibit A - Service Charges; attached to and made a part of this Agreement. Licensee will purchase prepaid "Service" (Prepaid System Minutes). Whenever Licensee utilizes the "Service" the actual calling minutes used by Licensor while utilizing the "Service" will be deducted from the balance of Prepaid System Minutes remaining in Licensee's Prepaid Minutes account. Licensee is responsible to maintain a sufficient balance of Prepaid System Minutes on account. Payment for the "Service" is due and payable upon 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. If a law which applies to this finance charge is interpreted so that the interest or other finance charges collected or to be collected in connection with this agreement exceed the permitted limits, then (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Licensee which exceed permitted limits will be refunded to Licensee. All payments due

under this agreement shall be paid to: Emergency Communications Network, Inc. at 9 Sunshine Blvd., Ormond Beach, FL 32174.

6. **Free Minute Blocks:** Licensee is allotted free time on the system for the purpose of testing and training. The following must be met in order for Licensee to utilize the free minute bank specified in Exhibit A:
  - a. Minutes will be deducted from Licensee's minute bank at the time of using the "Service".
  - b. Licensee must notify Licensor in writing within 60 days of the use of the "Service" specifying qualified project(s) to obtain eligible free minutes and restoration of the deducted minutes into Licensee's minute bank. If Licensee fails to notify Licensor within 60 days of the use of the "Service", the minutes used will not be eligible for consideration as free minutes and will remain as a deduction from Licensee's minute bank as described above in paragraph 6.
  - c. Any unused minutes remaining in these blocks are not transferable.
  - d. Licensor will have the final right to deem all free calling minutes eligible or ineligible.
  
7. **Term of Service Agreement:** The License will extend for a period of **one (1) year** beginning on the last date this agreement is signed by both Licensee and Licensor. On the date this agreement terminates, Licensee will forfeit all Prepaid System Minutes remaining on account.
  
8. **Discount Contract Extension:** Upon each annual anniversary of the effective date of this agreement, the term of this agreement will extend for additional one-year periods. This contract extension provision (the "extension provision") will continue to extend the contract period by one additional year annually. Either party may cancel this extension provision by submitting notice to the other no less than 30 days prior to the annual anniversary of the effective date of the agreement.

The activation of the extension provision will trigger the following events:

  - a) Licensee's System Minute bank will be replenished to the original **40,000** minute balance;
  - b) Licensor will update its systems to extend the active software license and associated access codes for one additional year of use;
  - c) Licensor will invoice Licensee for one additional year service extension at the rate of **seven thousand dollars (\$ 7,000)**.
  - d) Licensee will be responsible for payment of the contract extension fee upon receipt of invoice to the Licensor.
  
9. **Minute Bank Refill feature:** The parties recognize that Licensee may utilize the "Service" in a manner that results in the actual System Minute usage exceeding Licensee's active Prepaid Minute Bank. In the event using the "Service" completely exhausts Licensee's remaining Prepaid Minute Bank Licensor will immediately refill Licensee's Prepaid Minute Bank with a block of **40,000** System Minutes, and will invoice Licensee for this block of minutes at the Additional System Minute price as indicated in Exhibit A. Licensee will be responsible for payment of Additional System Minute blocks upon receipt of invoice from Licensor. Licensee agrees to purchase all such additional blocks of minutes as needed in order to maintain a positive Prepaid System Minute balance. The purpose of this refill feature is to ensure that calls being placed via the "Service" are not interrupted as the result of Licensee's depletion of their Prepaid Minute Bank.
  
10. **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 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 and liable for the content of the message(s) delivered by the "Service" on behalf of Licensee.

**11. Security:** Licensee understands that Internet communications are not secure, and may be subject to interception or loss. 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. 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. In the event of any disruption of service, Licensor will use its best efforts to notify Licensee and to expedite resumption of service.

**12. Warranty:** (a) Licensee acknowledges that software in general is not error-free and agrees that the existence of such errors in software used in conjunction with the "Service" shall not constitute a breach of this License.

(b) In the event that Licensee discovers a material error which substantially affects Licensee's use of the "Service" and notifies Licensor of the error, Licensor shall use reasonable measures to correct that part of the "Service" which does not so comply, provided that such non-compliance has not been caused by any modification, variation or addition to the "Service" not performed by Licensor, its agents or contractors, or caused by its incorrect use, abuse or corruption of the "Service" software, or by use of the "Service" with other software or on equipment with which it is incompatible.

(c) Licensee is responsible for maintaining access to the Internet. Licensor in no way warrants Licensee's access to the Internet via Licensee's Internet Service Provider(s).

**13. Warranty Disclaimer:** To the extent permitted by the applicable law, Licensor disclaims all other warranties with respect to the "Service", either express or implied, including but not limited to any implied warranties of merchantability or fitness for any particular purpose. In no event (even should circumstances cause any or all of the exclusive remedies to fail of its/their essential purpose and even if Licensor has been advised of the possibility of such damages) shall Licensor be liable for any special, indirect, 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 of 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, in contract, tort or otherwise, shall not exceed that total amount paid by Licensee for the most recently purchased block of Prepaid System Minutes.

**14. Indemnification:** Licensee understands that Licensor does not restrict the use of the "Service" by Licensee and therefore Licensee agrees that Licensor shall not be responsible and/or liable for the content of the message(s) created by Licensee delivered by the "Service" on behalf of Licensee. To the extent permitted by law Licensee agrees to defend, indemnify and hold harmless Licensor and its affiliates, employees and agents, including but not limited to Licensor's exclusive sales agent, The Broadcast Team, Inc., from any and all liabilities, costs, and expenses, including reasonable attorneys' fees, arising from any violation of this agreement by Licensee or those who access the "Service" through Licensee's account, or the use of the "Service" or the placement or transmission of any message, information or other materials by Licensee or by those who have access to 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 shall, to the extent permitted by law, 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. Licensee will be solely responsible and liable for any such violations. The provision of this Article shall survive termination of this Agreement.

**15. Non-Disclosure:** (a) Licensee acknowledges and agrees that in providing the "Service", Licensor may disclose to Licensee certain confidential, proprietary trade secret information of Licensor ("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, financial information or business plans. During this Agreement and for a period of five (5) years thereafter, Licensee agrees that it will not, without the express prior written consent of Licensor, disclose any Confidential Information or any part thereof to any third party. At the termination of this Agreement, Licensee will cease utilizing the "Service" and will return all Confidential Information to Licensor unless Licensee renews the "Service" as outlined in this agreement. Nothing in this Agreement will be deemed to prohibit the disclosure of any information in response to a subpoena or other similar order by a court or agency with jurisdiction to issue it relevant to the resolution of any dispute between the parties. 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. The Licensee will cooperate with the Licensor in defending against disclosure of any confidential information under any such subpoena, order or request.

(b) Licensee also agrees that it shall not duplicate, translate, modify, copy, printout, disassemble, decompile or otherwise tamper with the "Service" or any software provided.

**16. Termination:** Licensee may terminate this Agreement by notifying the Licensor in writing no less than 30 days in advance of desired termination. Licensee will return all Confidential Information and copies to Licensor. Licensee will forfeit all Pre-Paid System Minutes upon termination of this Agreement. Licensee understands that Licensor reserves the right to terminate Licensee's account at any time for reasons including, but not limited to, failure to abide by the terms of this agreement or failure to pay any fees or charges when due. In the event that Licensor terminates this agreement for reasons other than Licensee's failure to abide by this agreement, Licensor will refund to Licensee an amount equal to the balance of Prepaid System Minutes in Licensee's account. Upon termination, Licensee agrees to remove from Licensee's computer(s) any files related to the "Service".

**17. Merger:** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. Only a further writing that is duly executed by both parties may modify this Agreement.

**18. Confidential Data:** Licensor agrees that in view of the confidential nature of Licensee supplied data and files that it is to prepare, process or maintain under this Agreement, it will perform its duties in such a manner as to prevent the disclosure to any persons not employed by Licensor of any such data and files unless Licensor and Licensee mutually agree in writing otherwise.

**19. Integrity of Data:** Licensor cannot guarantee the integrity of any Licensee supplied data. As such, any errors, duplications, or inaccuracies related to Licensee supplied data will ultimately reside with Licensee.

**20. Notices:** All notices or requests, demands and other communications hereunder shall be addressed to the parties as follows:

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

As to **Licensee:** **City of O'Fallon, Attn: City Administrator, 255 South Lincoln Ave, O'Fallon, IL 62269.**

**21. 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 the American Arbitration Association and arbitration would take place in St. Louis, Missouri. If any dispute arises the prevailing party shall be entitled to the costs and attorney's fees from the losing party for enforcement of any right included in this agreement, both a Court of first jurisdiction and all Courts of Appeal.

**22. No Construction Against Drafting Party:** Each party to this Agreement expressly recognizes that this Agreement results from a negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to this Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

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

**Licensee:**     *City of O'Fallon, IL*

By: \_\_\_\_\_

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

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

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

**Licensor:**     **Emergency Communications Network, Inc.**

By: \_\_\_\_\_

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

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

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

## Exhibit A – Service Charges

### Initial block purchase(s) of Prepaid System Minutes:

|   |                                       |
|---|---------------------------------------|
| One (1) year CodeRED Service Agreement      | \$ <u>Included</u>                    |
| <b>40,000</b> CodeRED System Minutes        | \$ <b><u>14,000.00</u></b>            |
| Additional System Minutes                   | \$ <b><u>35¢ per minute</u></b>       |
| <b>500</b> minutes for testing and training | \$ <u>No Charge</u> (see paragraph 6) |
| Up to 5 CodeRED user pass codes             | \$ <u>Included</u>                    |
| Initial Residential Database Upload         | \$ <u>No Charge</u>                   |
| Initial CodeRED distance training           | \$ <u>No Charge</u>                   |

System usage will be charged against Prepaid System Minutes at actual minutes of time connected while delivering prerecorded System calls. All calls will be billed in 6-second increments. Only connected calls (live connections, answering machine connections and fax tone connections) will result in connection charges being incurred.

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

### Database Accuracy Updates

**Licensor Supplied Database:** "Database Accuracy Updates" ensure that the data population maintained by Licensor under this Agreement undergoes periodic accuracy checks using the Licensor'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 Licensor.

*One annual "Database Accuracy Update" will be performed by the Licensor 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 Licensor.*

2.5¢ 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 Licensor.

\$100 per hour for database maintenance

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