

2016-24

CODERED® NEXT SERVICES AGREEMENT

This CodeRED® NEXT Services Agreement ("Agreement") is made a part of that CodeRED® NEXT Master Services Agreement, effective March 9, 2016 (the "Master Agreement") by and between Emergency Communications Network, LLC, a Delaware Limited Liability Company ("Licensor") located at 780 W. Granada Boulevard, Ormond Beach, FL 32174 and the Nebraska North Central Emergency Management Region, a body politic and corporate of the State of Nebraska ("Licensee") located at 511 North Spruce Street, Ogallala, NE 69153.

This Agreement is entered into by and between Keith County (hereinafter "Licensee") a body politic and corporate of the State of Nebraska, located at 511 North Spruce Street, Ogallala, NE 69153 and Licensor, and shall be made a part of, and subject to, the Master Agreement, for so long as the Master Agreement is in effect. This Agreement shall be effective as of the Effective Date of the Master Agreement. Capitalized terms used herein which are not otherwise defined shall have the meanings given to them in the Master Agreement. Licensee and Licensor agree as follows:

This Agreement is being offered at a discounted rate to Licensee. As a precondition to the discount, the Purchasing Agent has purchased Licensee's CodeRED Weather Warning® service ("CRWW") to cover the Calling Area (as hereinafter defined). If the Master Agreement is terminated for any reason, or the Purchasing Agent otherwise ceases to purchase CRWW for the Calling Area, the fees for Licensee for any Licensee Renewal Term in paragraph 8.b)iii) will change to fourteen thousand and ten dollars (\$14,010.00).

1. **License:** Licensor grants Licensee a non-exclusive and non-transferable license (the "License") which may be used by Licensee in accordance with the terms of this Agreement and the Master 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. 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.
 - a) 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 ten (10) unique user name(s) and password(s). Additional user pass codes may be obtained at an additional annual fee as outlined in Schedule "A," which is attached hereto and incorporated by reference.
 - b) Licensee recognizes that all communications under this Agreement will be with the above-named Licensee only. The License will cover the following Licensee affiliates in Nebraska: Logan County, McPherson County, Arthur County, Hooker County, Grant County, Deuel County and Perkins County. Licensee will be responsible for all contact with affiliates covered by this Agreement.**
2. **Ownership:** Licensee also 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 entities in Nebraska: Keith County, Logan County, McPherson County, Arthur County, Hooker County, Grant County, Deuel County and Perkins County (the "Calling Area"). Licensee may only place calls 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 Schedule A.
4. **Term:** This Agreement, and the License extended herein, will continue for a period of three (3) years and one hundred fourteen (114) days (the "Initial Term") commencing on the Effective Date, so long as the Master Agreement remains in effect. Upon termination of the Master Agreement, Purchasing Agent and each Licensee's access to the Service will be terminated, absent separate purchase as set forth herein. Upon termination of this Agreement, whether by expiration of the Initial Term, Grant Renewal Period, and/or any Licensee Renewal Term (as hereinafter defined) (the Initial Term, Grant Renewal Period and/or any Licensee Renewal Term, collectively, the "Term"), or as otherwise set forth herein, Licensee's access to the Service will be terminated, and any System Minutes on account shall be transferred solely to Licensor.

5. **Costs for the Service:** During the Term of this Agreement, Licensee agrees to pay for any portion of the Service, including without limitation additional System Minutes or any extra features not paid for by Purchasing Agent, as set forth on Schedule A. Licensee understands and agrees that prepaid minutes for the Service ("System Minutes") will be purchased under the Master Agreement and/or this Agreement. Licensee further understands and agrees that whenever Licensee utilizes the Service, the actual calling minutes used by Licensee will be deducted from the balance of System Minutes remaining in Licensee's System Minutes account or bank. Licensee agrees to pay for its use of System Minutes which are not otherwise paid for by Purchasing Agent. Payment for the Service or System Minutes 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. All payments due under this Agreement shall be paid to: Emergency Communications Network, LLC at 780 W. Granada Boulevard, Ormond Beach, FL 32174.
6. **Free Testing and Training Minute Blocks:** Licensee is allotted 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 Schedule A:
- a) Minutes used for testing and training 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 from the date the Service was used for testing or training, specifying qualified project(s) and minutes used, to request that such minutes be designated as free minutes and restored to the minutes that were deducted from Licensee's System Minute bank. Licensee understands and agrees that, if Licensee fails to notify Licensor within 60 days of the use of the Service, the minutes used will not be eligible for restoration as free minutes, and will remain deducted from Licensee's System Minute bank as described above;
 - c) Any unused minutes are not transferable, and shall only roll over by written agreement; and
 - d) Licensor will have the final right to deem all free calling minutes eligible or ineligible for reimbursement under this paragraph.
7. **Annual System Minute Bank Replenishment:** During the first one (1) year and one hundred fourteen (114) days of the Initial Term, Licensee will have access to 24,606 System Minutes. On July 1, 2017 (the "Renewal Date") and on each annual anniversary of the Renewal Date, for so long as this Agreement is in effect, the System Minute bank will be re-set to 18,750 System Minutes. System Minutes are not transferable and do not rollover from year to year, unless otherwise paid for and agreed in writing. If the entire bank of System Minutes is exhausted during the given year, Licensee will be required to repurchase System Minutes according to the System Minute bank refill provisions described herein.
8. **Discount Contract Extension:**
- a) Upon completion of the Initial Term or any Grant Renewal Period (as hereinafter defined), the Purchasing Agent may renew the Master Agreement and this Agreement for one (1) additional year, (each a "Grant Renewal Period"). In the event Purchasing Agent elects to renew this Agreement for a Grant Renewal Period, Licensee will remain responsible for all additional costs as set forth in paragraph 5. In the event Purchasing Agent elects not to renew the Master Agreement and this Agreement for a Grant Renewal Period, Licensor shall provide Licensee with the option to continue with the terms of this Agreement, as set forth in paragraph 8.b) of this Agreement. In the event Purchasing Agent renews this Agreement for a Grant Renewal Period:
 - i) Licensee's System Minute bank will be re-set to 18,750 System Minutes;
 - ii) Licensor will update its systems to extend the License and associated access codes for an additional one (1) year of use;
 - iii) Licensor will invoice Purchasing Agent for one (1) additional year of Service at the rate of seven thousand and five dollars (\$7,005) per each one (1) year Grant Renewal Period; and
 - iv) Licensee agrees to pay any additional fees for using the Service, as set forth in paragraph 5.
 - b) In the event Purchasing Agent does not renew the Master Agreement, or otherwise does not pay for a Grant Renewal Period, Licensee may renew this Agreement, at Licensee's sole costs, for additional one-year period(s) (each a "Licensee Renewal Term"). Licensee's extension of the Agreement for a Licensee Renewal Term shall be deemed activated upon Licensor's acceptance of any of the following prior to the end of the then-

current Initial Term, Grant Renewal Period, or Licensee Renewal Term: Licensor accepts a renewal letter, electronically or hard copy, from Licensee; Licensor accepts a Purchase Order for payment of the Service for a Licensee Renewal Term from Licensee; or Licensor accepts payment from Licensee for a Licensee Renewal Term. In the event the Agreement is extended for a Licensee Renewal Term by Licensee:

- i) Licensee's System Minute bank will be re-set to 18,750 System Minutes;
- ii) Licensor will update its systems to extend the License and associated access codes for an additional one (1) year of use;
- iii) Licensor will invoice Licensee for one (1) additional year of Service at the rate of seven thousand and five dollars (\$7,005) per each one (1) year Licensee Renewal Term; and
- iv) Licensee agrees to pay the fees set forth in this paragraph for each Licensee Renewal Term upon ROI from the Licensor, subject to the terms set forth in paragraph 5.

Licensee understands and agrees that its failure to extend the Agreement pursuant to this section may result in increased costs for the Service at Licensor's then-current rates.

- 9. Minute Bank Refill Feature:** The parties recognize that Licensee may utilize the Service in a manner that results in Licensee exceeding the amount of prepaid System Minutes in Licensee's System Minute bank. In the event that using the Service completely exhausts Licensee's remaining prepaid System Minute bank, Licensor will immediately refill Licensee's System Minute bank with a block of 1,875 System Minutes, and will invoice Licensee for this block of minutes at the Additional System Minute price as indicated in Schedule A. Licensee shall pay Licensor for all Additional System Minute blocks upon receipt of invoice from Licensor, subject to the same terms as set forth in paragraph 5. Licensee understands and agrees that it is required to maintain a System Minutes balance in its System Minutes bank at all times, and agrees to purchase Additional System Minute blocks as needed in order to maintain a positive 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 its System Minutes.
- 10. Termination:** 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 Purchasing Agent and/or Licensee (as applicable) an amount equal to the lesser of the monthly-prorated balance of the annual fee based on the number of days left in the term of the Agreement or the value of the balance of System Minutes in Licensee's System Minute bank as calculated by multiplying the remaining System Minutes by the additional system minute price on Schedule A; 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.
- 11. 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.
- 12. 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.

- 13. 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.
- 14. 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.
- 15. 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.
- 16. 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.

- 17. 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.
- 18. 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, 780 W. Granada Boulevard, Ormond Beach, FL 32174
- As to **Licensee:** Keith County, Attn: Pete Peterson/911 Director, 511 North Spruce Street, Oqallala, NE 69153
- Either party may change the address provided herein by providing notice as set forth in this paragraph.
- 19. 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.
- 20. 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.
- 21. 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.
- 22. 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.

[Remainder of page intentionally left blank. Signatures appear on following page.]

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

Licensee:

Kelth County, Nebraska

Signature: C.W. Battzell

Printed Name: C.W. Battzell

Title: _____

Date: _____

Licensor:

Emergency Communications Network, LLC

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Schedule A – Service Charges

Three (3) year, one hundred fourteen (114) day CodeRED® NEXT Services Agreement **\$ 23,202.86**

To be paid by Purchasing Agent. Subject to additional fees due from Licensee prior to the Effective Date, also to be paid by Purchasing Agent.

Initial one (1) year and one hundred fourteen (114) day period will include **24,606** CodeRED® System Minutes. Remainder of Initial Term and each Licensee Renewal Term will include up to **18,750** Annual CodeRED® System Minutes **\$ Included**

Additional System Minutes **\$ 0.40 per minute**

500 minutes for testing and training **\$ No Charge**

Up to **10** 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).
Additional on-site training sessions may be purchased for \$1,500.00 per trainer, per day plus all travel, ground transportation, and lodging expenses.*

Initial Residential Database Upload **\$ Waived**

Standard CodeRED® data collection website **\$ No Charge**

Email and Text Messaging **\$ No Charge**

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

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.

Database Accuracy Updates

Licensors Supplied Database: "Database Accuracy Updates" ensure that the data population maintained by Licensor under this Agreement undergoes periodic accuracy checks using 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 Licensee to maintain database accuracy and request updates from Licensor.

One annual "Database Accuracy Update" will be performed by Licensor upon request by 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.

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 Licensor.

\$100 per hour for database maintenance

Professional Services Upon Request: \$135.00 per hour
Licensor shall perform professional services as requested from time to time by Licensee in its sole discretion.