

  
**James Skow**  
**General Counsel**

## CODERED SERVICES AGREEMENT

This Services Agreement ("Agreement") is made and effective as of July 1, 2011 by and between Emergency Communications Network, Inc. a Florida Corporation ("Licensor") located at 9 Sunshine Boulevard, Ormond Beach, FL 32174 and the Village of Lombard, a body politic and corporate of the State of Illinois ("Licensee") located at 255 East Wilson Avenue, Lombard, IL 60148. The Licensor and Licensee being sometimes referred to herein individually as a "Party" and collectively as the "Parties."

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" (the "License") for Licensee's own purposes in accordance with the terms outlined in this Agreement. Licensee understands and agrees that it is 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, or disable any license or control features of the Service. Licensee may not (i) assign, license, sublicense, rent, sell or transfer the Service, this Agreement, or any portion thereof or (ii) utilize the Service except as expressly permitted in this Agreement between Licensee and Licensor. The License will include pass codes for up to five (5) authorized Service users. Additional user pass codes may be obtained at an additional annual fee as outlined in Exhibit A, attached hereto and made part hereof.
  - b. **Licensee recognizes that all communications will be with Licensee indicated above only. The License will cover the following Licensee affiliates in Illinois: Glenbard Fire Protection District. Licensee will be responsible for all contact with affiliates covered by this Agreement.**
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 Licensee the ability to access pre-defined geographically selected calling areas or listed databases via an Internet based software application. The Service has the ability to select calling databases via a geographic mapping component. Licensee's database(s) shall be limited by Licensor to the geographic boundaries (determined by Lat/Lon coordinates) of the following Illinois entities: Village of Lombard and Glenbard Fire Protection District. The Service will also allow Licensee to utilize an interactive voice response telephone service to record messages and initiate call out projects. The Service is designed to be active twenty-four (24) hours per day/ three hundred sixty-five (365) days a 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 ("System Minutes"). Whenever Licensee utilizes the Service the actual calling minutes used by Licensee while utilizing the Service will be deducted from the balance of System Minutes remaining in Licensee's account. Licensee is responsible to maintain a sufficient balance of System Minutes on account. Payment for the



Service is due and payable upon receipt of Invoice ("ROI"). Finance charges at a rate of one percent (1%) per month twelve percent (12% per annum) will be charged on all balances outstanding beyond sixty (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 Service system for the purpose of testing and training. The following must be met in order for Licensee to utilize the free System Minutes bank specified in Exhibit A:
  - a. System Minutes will be deducted from Licensee's System Minutes bank at the time of using the Service.
  - b. Licensee must notify Licensor in writing within sixty (60) days of the use of the Service specifying qualified project(s) to obtain eligible free System Minutes and restoration of the deducted System Minutes into Licensee's minute bank. If Licensee fails to notify Licensor within sixty (60) days of the use of the Service, the System Minutes used will not be eligible for consideration as free System Minutes and will remain as a deduction from Licensee's System Minutes bank as described above in paragraph 5.
  - c. Any unused System Minutes remaining in these blocks are not transferable.
  - d. Licensor will have the final right to deem all free calling System Minutes eligible or ineligible.
- 7. **Term of Service Agreement:** The License will extend for a period of three (3) years beginning on July 1, 2011. On the date this Agreement terminates, Licensee will forfeit all prepaid System Minutes remaining on account. It is at the Licensor's discretion to honor the service agreement quoted fees for an agreement which has not been returned to the Licensor for over ninety (90) days from the date it was drafted for the Licensee.
- 8. **Annual System Minute Bank Replenishment:** Each year, Licensee will have access to 62,500 System Minutes. The System Minute bank will be refilled every year, to 62,500 System Minutes, upon the anniversary of the effective date of this Agreement. System Minutes are not transferable and do not rollover from year to year. 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 Minutes bank refill feature described in paragraph 10.
- 9. **Discount Agreement Extension:** Upon completion of the original term of this Agreement as outlined above in paragraph seven (7), the term of this Agreement will extend for an additional three-year period. This agreement extension provision (the "extension provision") will continue to extend the agreement period by three (3) additional years at the end of each three (3) year contract period. **Either Party may cancel this renewal provision by submitting written notice to the other no less than thirty (30) days prior to the end of the current term 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 annual 62,500 minute balance;
  - b) Licensor will update its systems to extend the active software license and associated access codes for the additional year(s) of use;
  - c) Licensor will invoice Licensee for additional year(s) of service at the rate of seventeen thousand five hundred dollars (\$17,500) per year for a total amount of fifty-two thousand five hundred dollars (\$52,500) over the three (3) year term. Note: Licensee will be responsible for payment of the contract extension fee upon receipt of invoice from the Licensor.

- 10. **System Minutes Bank Refill Feature:** The Parties recognize that Licensee may utilize the Service in a manner that results in the actual System Minutes usage exceeding Licensee's active System Minutes bank. In the event using the Service completely exhausts Licensee's remaining System Minutes bank, Licensor will immediately refill Licensee's System Minutes bank with a



block of 6,250 System Minutes, and will invoice Licensee for this block of System Minutes at the Additional System Minutes price as indicated in Exhibit A. Licensee will be responsible for payment of Additional System Minutes blocks upon receipt of an invoice from Licensor. Licensee agrees to purchase all such additional blocks of System Minutes as needed in order to maintain a positive System Minutes 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 System Minutes bank.

11. **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.
12. **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 (ISP), 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 ISP 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 the Service.
13. **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 ISPs. (d) 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. (e) 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 as required for satisfaction.

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, subcontractors, employees and agents 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.

The Licensor shall indemnify and hold harmless the Licensee, and their respective officers, agents and employees, with respect to any claim or loss, including, but not limited to, attorney's fees, costs and expenses of litigation, claims and judgments in connection with any and all claims for damages of any kind which may arise, either directly or indirectly, out of the acts or omissions of the Licensor, or its officers, agents, employees, consultants or contractors, arising from the use of the Service. The Licensor further agrees to require any contractor to include the Licensee and their respective elected officials, officers, agents and employees, as additional insured's on the insurance policies required of the contractor relative to the Service, which insurance policies shall be written with insurers and in amounts reasonably satisfactory to the Licensee.

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 thirty (30) days in advance of the desired termination date. Licensee will return all Confidential Information and copies to Licensor. Licensee will forfeit all prepaid 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. The terms and conditions of this Agreement will supersede any additional terms provided unless mutually agreed to by both Parties, including additional terms contained in standard purchase order documents and third party application terms.

18. **Confidential Data:** Licensors 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: Village of Lombard, Attn: Michael Torrence/Fire Chief, 255 East Wilson Avenue, Lombard, IL 60148

Notices shall be deemed given under personal service, or three (3) days after depositing same in the U.S. Mail, with proper first class postage for certified mail, return receipt requested.

21. **General:** In regard to any disputes between the Parties relative to the terms of this Agreement, venue shall be in DuPage County, Illinois, and the laws of the State of Illinois shall apply. 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, in Arbitration, a Court of first jurisdiction and all Courts of Appeal.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) indicated below.

Licensee: Village of Lombard, Illinois

By:



Printed Name: William J. Mueller

Title: Village President

Date: June 16, 2011

Licensor: Emergency Communications Network, Inc.

By:



Printed Name: Dominic Bongo  
Title: CFo  
Date: 6/17/11

## Exhibit A - Service Charges

Initial Purchase (s)	Quantity	Cost
CodeRED License Agreement	3 years	\$52,500
Installation Payment Schedule	Annual	\$17,500
Annual CodeRED System Minutes	62,500	Included
Additional System Minutes		\$0.28
Minutes for testing and training	500	Included
CodeRED User pass codes	Up to 5	Included
<i>Additional pass codes may be purchased for an annual fee of \$180.00 per pass code</i>		
Distance training session	1	Included
<i>Additional distance training sessions may be purchased for \$150.00 per hour (one hour minimum)</i>		
Initial Residential database upload	1	Included
Data/Record Management		Included
CodeRED data collection website	1	Included
CodeRED mapping interface	1	Included
System Setup		Included
Standard mapping data layers		Included
Standard Geocoding		Included
Email		No Charge
Text messaging		No Charge
Annual System Maintenance		Included
Software updates		Included
System Wide kick off call		Included
Universal Callback Number Feature		Included
	TOTAL:	\$52,500

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

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

3¢ per record in final updated database population.

Licensee Supplied Database: A service labor fee of One Hundred Twenty-Five Dollars (\$125.00) 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 Licenser.

\$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 Licensee's discretion.  
 GIS Customer Street "single layer" Upload and Hosting upon request: \$250.00