

CODERED NEXT SERVICES AGREEMENT

This CodeRED® NEXT Services Agreement (“Agreement”) is made and effective as **April 1, 2019** (the “Effective Date”) by and between ONSOLVE, LLC., a Delaware Limited Liability Company (“Licensor”) located at 780 W. Granada Boulevard, Ormond Beach, FL 32174 and the **County of Siskiyou**, a political subdivision of the State of **California** (“Licensee”) located at **806 South Main Street, Yreka, CA 96097**.

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 for the purpose of communicating matters of public interest and concern. 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. 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 **unlimited** unique user name(s) and password(s).

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 **County of Siskiyou, California (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 continue for a period of **three (3) years** (the “Term”) commencing on the Effective Date. Upon termination of this Agreement, Licensee’s access to the Service will be terminated. Licensee understands and agrees that, in the event it enters into a new agreement with Licensor after completion of the Term, that such new agreement may result in increased costs for the Service at Licensor’s then-current rates.
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, and as set forth in this paragraph. Licensee understands and agrees that pricing set forth on Exhibit A is based upon a multi-year, discounted rate and predicated on a population within the Calling Area not to exceed **49,999**. Licensee further understands and agrees that a deviation above 10% of such population, as listed in this Agreement, shall result in increased pricing at Licensor’s then-current rates. Payment for the Service is due and payable within forty-five (45) days from receipt of invoice (ROI). Finance charges at a rate of 1% per month (12% per annum), or up to the statutory maximum allowable by law, whichever is less, will be charged on all balances outstanding beyond 60 days. All payments due under this Agreement shall be paid to: ONSOLVE, LLC at 780 W. Granada Boulevard, Ormond Beach, FL 32174.

6. Termination: Upon termination of this Agreement, Licensee agree to return all Confidential Information (as hereinafter defined) and copies to Licensor and to remove from Licensee's computer(s), and any computers within Licensee's control, any and all files and documents related to the Service.

a) Licensor, in its sole discretion, may also terminate this Agreement: i) for any reason by providing no less than 30 days advance written notice, and in such case, Licensor will refund to Licensee 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 Exhibit A; or ii) immediately, and without further notice, as a result of Licensee's material breach of this Agreement, and in such case, no fees paid hereunder shall be refunded.

b) Licensee, in its sole discretion, may also terminate this Agreement: i) for any reason by providing no less than 30 days advance written notice, and in such case, no fees paid hereunder shall be refunded; or ii) immediately, and without further notice, as a result of Licensor's material breach of this Agreement, and in such case, Licensor will refund to Licensee 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 Exhibit A.

7. 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.

8. 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.

9. 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.

10. Disclaimer: In no event (even should circumstances cause any or all of the exclusive remedies to fail their essential purpose, and even if a party has been advised of the possibility of such damages) shall either

party hereto, 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 use of any item or products or services provided for in this Agreement. Each party hereto understands that the cumulative liability for any and all claims relating to the Service shall not exceed the annual access fee set forth on Exhibit A. Notwithstanding anything contained herein, the limitations in this paragraph shall not apply to any claims which arise due to Licensee's failure to use the Service in accordance with applicable law, rules, or regulations, including but not limited to any FTC or FCC claims or claims regarding the use of an automated dialing system or notifications using a pre-recorded message. **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.

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 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 be solely responsible for any and all lawsuits, demands, liabilities, damages, claims, losses, costs or expenses, including its own and any awarded attorneys' fees (whether by salary, retainer or otherwise), from any claim, 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; and from any violations of any laws by Licensee. Licensor shall indemnify and hold Licensee harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure of Licensor, its employees, or agents, including all claims relating to the injury or death of any person or damage to any property arising out of the performance of this Agreement, except to the extent that any such liability arose, in whole or in part, due to acts or omissions of Licensee, a third party not controlled by Licensor, or force majeure. It is understood that the duty of either party to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether any applicable insurance policies shall have been determined to apply. By execution of this Agreement, the parties acknowledge and agree to the provisions of this section and that it is a material element of consideration of this Agreement.

12. 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.

13. 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.

14. 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:** ONSOLVE, LLC, 780 W. Granada Boulevard, Ormond Beach, FL 32174

As to **Licensee:** County of Siskiyou, Attn: Deputy Director, 806 South Main Street, Yreka, CA 96097

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

15. Insurance: Licensor agrees to provide Licensee with a copy of Licensor's certificate of insurance and to add Licensee as an additional insured in exchange for Licensee's payment of the fees set forth on Exhibit A.

16. Governing Law: This Agreement and all matters relating to it shall be governed by the laws of the State of California and the County of Siskiyou and any action brought relating to this Contract shall be brought exclusively in a state court in the County of Siskiyou.

17. Termination of Funding: Licensee may terminate this Agreement in any fiscal year in that it is determined there is not sufficient funding. California Constitution Article XVI Section 18.

18. Workers' Compensation; General liability and Automobile Insurance; Certificate of Insurance and Endorsements:

a) Licensor shall maintain a worker's compensation plan covering all of its employees as required under Florida law either through worker's compensation insurance issued by an insurance company or through 'a plan of self-insurance certified by the State Director of Industrial Relations. If Licensor elects to be self-insured, the certificate of insurance otherwise required by this Agreement shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations. Proof of such insurance shall be provided before any work is commenced under this contract. No payment shall be made unless such proof of insurance is provided.

b) During the Term of this Agreement, Licensor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least (\$1,000,000) One Million Dollars, combined limit for bodily injury and property damage; the Licensee, its officers, employees, volunteers and agents are to be named additional insured under the policies, and the policies shall stipulate that this insurance will operate as primary insurance for work performed by Licensor and its sub-contractors, and that no other insurance effected by the Licensee or other named insured will be called on to cover a loss covered

thereunder. All insurance required herein shall be provided by a company authorized to do business in the State of California and possess at least a Best A:VII rating or as many otherwise be acceptable to Licensee. The general liability insurance shall be provided by an ISO Commercial General liability policy, with edition dates of 1985, 1988, or 1990 or other form satisfactory to Licensee. Licensee will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to Licensee.

c) Licensor shall obtain and file with the Licensee prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing additional insured coverage as set forth in paragraphs 22a and b above and which shall provide that no cancellation, reduction in coverage or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to Licensee prior to the effective date of such cancellation. **Naming the County as a •Certificate Holder or other similar language is NOT sufficient satisfaction of the requirement.** Prior to commencement of performance of services by Licensor and prior to any obligations of Licensee, Licensor shall file certificates of insurance with Licensee showing that Licensor has in effect the insurance required by this Agreement. Licensor shall file a new or amended certificate on the certificate then on file. **If changes are made during the term of this Agreement, no work shall be performed under this Agreement, and no payment may be made until such certificate of insurance evidencing the coverage this paragraph are provided to the Licensee.**

19. General: Licensor agrees that any dispute arising under this Agreement shall be submitted, prior to the initiation of any litigation or other legal proceeding, to the governing body of Licensee, pursuant to the rules set forth in California government code Section 900 et seq. 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 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 a 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.

23. Maintenance of Records. Licensor shall maintain records regarding any payments made by Licensee for services delivered against under this Agreement for a period of five (5) years from the date of final payment. Such records shall be made available to the Licensee upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.

24. Withholding for Non-Resident Contractor: Pursuant to California Revenue and Taxation Code Section 18662, payments made to nonresident independent contractors, including corporations and partnerships that do not have a permanent place of business in this state, are subject to 7 percent state income tax withholding. Withholding is required if the total yearly payments made under this contract exceed \$1,500.00.

Unless the Franchise Tax Board has authorized a reduced rate or waiver of withholding, and Licensee is provided evidence of such reduction/waiver, all nonresident contractors will be subject to the withholding. It is the responsibility of the Licensor to submit the Waiver Request (Form 588) to the Franchise Tax Board as soon as possible in order to allow time for the Franchise Tax Board to review the request.

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

LICENSOR:

By: _____

Name/Title: _____

Date: _____

TAXPAYER I.D. on file

COUNTY OF SISKIYOU

By: _____

Brandon A. Criss Chair

ATTEST:

Laura Bynum Clerk, Board
of Supervisors

License #: 45-3191493

By: _____

Deputy

ACCOUNTING:

Fund	Organization	Account
1015	207020	723000

Activity Code (if applicable)
1056

18/19	19/20	20/21
18,250 + rate .01	18,250 + + rate .01	18,250 + rate.01

Encumbrance number (if applicable)

If not to exceed, include amount not to exceed:

For multi-year contracts, please include separate sheet with financial information for each fiscal year.

Exhibit A – Service Charges

Three (3) year CodeRED NEXT Service Agreement **\$ 54,750.00**

Payment is due in three (3) annual installments as follows:

\$18,250.00 due on or before **April 1, 2019**

\$18,250.00 due on or before **April 1, 2020**

\$18,250.00 due on or before **April 1, 2021**

<u>Unlimited</u> CodeRED System Minutes	\$ <u>Included</u>
Email and Text Messaging	\$ <u>No Charge</u>
<u>Additional Insured</u>	\$ <u>Included</u>
Initial Residential Database Upload	\$ <u>Waived</u>
<u>Five (5) separate data views</u>	\$ <u>Included</u>
One (1) CodeRED distance training session	\$ <u>Included</u>
Additional distance training sessions may be purchased for <u>\$150.00</u> per hour (one hour minimum).	

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.

Four (4) 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.

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

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

Professional Services Upon Request: \$135/hour

Licensor shall perform professional services as requested from time to time by Licensee in its sole discretion.