



Business Network of Emergency Resources

CEAS Application Processing Center
 117 Cayuga St.
 Fulton, NY 13069
 1-888-353-BNet
 Fax: 888-353-2630

This PARTICIPATION AGREEMENT ("Agreement") is entered into between Business Network of Emergency Resources, Inc., a New York non-profit corporation ("BNET"), and the undersigned entity ("Participant" or "You").

Participant agrees to participate in BNET's CEAS on the following terms and conditions:

1. DEFINITIONS

- 1.1 **Affiliate** means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with Participant, so long as such Control exists.
- 1.2 **Card** means the CEAS credential allowing access to an otherwise restricted zone by an individual as a result of Your participation in the Plan.
- 1.3 **Cardholder** means a director, officer, employee, consultant, or other individual who directly or indirectly received a Card as a result of Your participation in the Plan.
- 1.4 **CEAS or System** means BNET's Corporate Emergency Access System.
- 1.5 **Confidential Information** means information which: (i) is marked as "confidential", (ii) if disclosed without such a notice or similar marking, is described as confidential in a notice to the receiving party ("Receiver") within 30 days of such disclosure, or (iii) Receiver should reasonably know is considered confidential by the disclosing party ("Discloser"), including information about: names and contact information of Corporate Coordinators and their alternates, any Participant or any Affiliate's facility(ies), meeting minutes of a BNET working group, etc.
- 1.6 **Control** means beneficial ownership of more than fifty percent (50%) of the voting power or equity in an entity or otherwise the power to direct the affairs of such entity.
- 1.7 **Corporate Coordinator** means the individual designated by You, in your on-line enrollment application to BNET, to be responsible for the internal administration of, and Your overall coordination with BNET regarding CEAS. Alternate Corporate Coordinator means the individual designated by You or Your Corporate Coordinator to act as the Corporate Coordinator's substitute.
- 1.8 **Essential Service Provider** means a contractor or vendor who provides goods or services that are essential to Your operations within the Local Jurisdiction.
- 1.9 **including and its variants, e.g., include, etc.,** means including without limitation.
- 1.10 **Local Jurisdiction** means the jurisdiction(s), identified in Exhibit A, which has accepted the CEAS Program within which You are located or transiting through, or for which You are an Essential Service Provider.
- 1.11 **Participant or You** means the undersigned Participant and any of its Affiliates in the Local Jurisdiction that have been expressly included in Your application to join BNET; however, Affiliates may register as separate Participants.
- 1.12 **Participants** mean all CEAS Participants, including Participants from other Local Jurisdictions who may become Participants after You join.
- 1.13 **Plan of Administration or Plan** means the Plan of Administration for the local jurisdiction, a copy of which is available from BNET upon request. Terms used but not defined in this Agreement have the same meanings as such terms are used in the Plan of Administration.

2. PARTICIPATION

- 2.1 **Support for Mission.** During Your participation in CEAS, You will support the development and improvement of the System as adopted and implemented by BNET.
- 2.2 **Benefits.** BNET shall furnish You with materials, training, and other benefits of participation in CEAS, all as determined by BNET from time to time.
- 2.3 **Use of Name.** You may publicly disclose that You are a CEAS

Participant. However, You may not identify any product or service as being sanctioned by, sponsored by, or associated with BNET without BNET's express prior written consent. Unless otherwise agreed, BNET has the right to include Your name in a Participant list indicating that You have joined CEAS and support BNET.

- 2.4 **CEAS Enrollment Information.** The information required from You, i.e. corporate name and address, Your Corporate Coordinator, Alternate Corporate Coordinator, site or facility information, Cardholders, etc., are set forth on Exhibit B.

3. OBLIGATIONS OF PARTICIPANTS

- 3.1 **CEAS.** On behalf of You and Your Affiliates and all applicable Cardholders, You have reviewed, hereby approve, and agree to abide by the Plan. You will provide the indemnity and insurance required by this Agreement.
- 3.2 **Fees.** You shall pay fees and other assessments as established from time to time by BNET. Fees shall be nondiscriminatory, but may be based on the number of Cards issued to You or for which You are eligible. BNET may establish reasonable additional fees or charges for other benefits of participation. All fees and charges are non-refundable.
- 3.3 **Expenses.** You shall bear Your and Your Affiliates and Cardholders' costs and expenses for participation in CEAS, such as travel, employee compensation, and incidentals.
- 3.4 **Antitrust Policy.** You shall comply with all applicable antitrust laws pertaining to participation in an organization like BNET. Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable antitrust or other law. You consent to the disclosure of Your name as a Participant of CEAS for the purpose of permitting BNET to invoke the protection of the National Cooperative Research and Production Act of 1993 (15 U.S.C. § 4301, et seq.).
- 3.5 **Information.** You shall, and shall cause all Affiliates and Cardholders to, provide accurate information in connection with enrollment in the System and related information, including employee populations and facility locations.

4. CONFIDENTIAL INFORMATION

- 4.1 **Confidential Information.** Confidential Information is confidential and shall be maintained in confidence by Receiver (including its Affiliates and Cardholders) with at least the same degree of care that Receiver uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. Receiver will neither disclose nor distribute Confidential Information except as necessary for its employees or contractors (under a comparable confidentiality agreement restricting the contractor's right to use to be solely with respect to work done for Receiver) with a need to know the same for the purpose of implementing the System. Any copies made shall be marked "confidential," "proprietary," or with a similar legend as on the original. However, Receiver will not be liable for the disclosure of any information that is: (i) in the public domain other than by Receiver's breach of a duty of confidentiality; (ii) rightfully received from a third party without any obligation of confidentiality; (iii) rightfully known to Receiver without any limitation on use or disclosure prior to its receipt from Discloser; (iv) developed independently by employees or contractors of Receiver without reliance on the Confidential Information; or (iv) disclosed as required by law. The obligations of this Section shall survive termination of this Agreement and the withdrawal of You or any Affiliate from CEAS.

5. INSURANCE

- 5.1 **General.** Subject to the availability of lawful appropriations and to the extent authorized by Section 8 of the New York Court of Claims Act and Section 17 of the Public Officers Law, Participant shall hold BNET harmless from and indemnify BNET for any final judgment in a court of competent jurisdiction to the extent attributable to the negligence of Participant or of its officers or employees when acting within the course and scope of their employment.
- 5.2 **Survival.** The obligations in this Section shall survive the expiration or termination of this Agreement, the withdrawal for any reason of You or



Your Affiliate from the Plan, and the revocation of any Card(s), and shall not be limited in any way by any insurance carried by You or Your Affiliate.

6. CERTAIN RULES FOR CARDS

- 6.1 **Card Authorization and Payment.** Pursuant to the Plan, BNET will validate the maximum number of Cards that You may apply for. You will pay for at least one but as many Cards as You choose up to Your maximum number determined pursuant to the Plan. Upon receipt of payment, proof of the applicable insurance, receipt by BNET of a fully executed Participant's Agreement, and satisfaction of any then current requirements of BNET or the Local Jurisdiction, the Cards will be deemed authorized but not issued.
- 6.2 **Card Issuance and Term.** Once at least one Card has been authorized for You, Your Corporate Coordinator may assign the Card to an appropriate individual any time up to twenty-five (25) months after such authorization. The term of each Card will begin expiring after a thirty (30) day grace period from the date of its authorization, regardless whether the Card has been issued to an employee. In other words, once You have been authorized in the System, purchased Cards will expire twenty-five (25) months from that date, e.g., if a Card is authorized and issued to an employee three (3) months after the authorization date, the term of that Card will be twenty-two (22) months. If no approved Cards have been assigned and issued by the Corporate Coordinator in any two-year period or if You do not pay for and renew at least one issued Card, this Agreement will terminate pursuant to Section 8.1. You shall be responsible for the failure by any individual Cardholder to receive or complete any required training and, in any event, for the acts and omissions of such individual. You acknowledge that Your indemnity obligations under Section 6 extend to any failure, in whole or in part, of You to abide by Your obligations under this Agreement, and to the acts and omissions of Cardholders.
- 6.3 **Permitted Cards.** You must abide by and obey the rules applicable to the Cards purchased by You and allowed by the Local Jurisdiction.
- 6.4 **Individual Card Renewal.** If an individual has been issued a Card, You must pay for its renewal in the ordinary course for as long as such individual is expected to hold a Card. You may not use an authorized but unissued Card for such renewal.
- 6.5 **Return of Deactivated Cards.** You shall return any damaged or deactivated Card promptly to BNET. Furthermore, if a Card is stolen, lost, or otherwise not returned to BNET, You shall cause a police report of such loss or theft to be prepared and filed in the Local Jurisdiction of loss if required by such Jurisdiction. No replacement Cards will be issued until BNET has received authentication of such report.

7. TERM AND TERMINATION

- 7.1 **Term.** Unless terminated as provided herein, this Agreement shall remain in full force and effect for as long as You have at least one Card outstanding. It shall renew automatically bi-annually upon Your payment of the fee for at least one Card, but if BNET has changed the terms of its standard Participation Agreement, You may be required to execute the new agreement before renewing enrollment in CEAS. BNET will provide You written notice of any changes in advance of the renewal period.
- 7.2 **Termination by Participant.** You may withdraw from CEAS by terminating this Agreement at any time upon giving written notice to BNET and returning all Cards.
- 7.3 **Termination by BNET.** BNET may terminate this Agreement if You breach any obligation hereunder, provided BNET shall first give You written notice and thirty (30) days' opportunity to cure the breach.
- 7.4 **Fees.** You shall pay all fees and other charges accrued prior to the effective date of termination.

8. NO WARRANTY/PARTICIPANT'S REPRESENTATION/LIMITATION OF LIABILITY

- 8.1 **BNET.** BNET MAKES NO WARRANTY OF ANY KIND, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY

OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING CEAS AND BNET'S SERVICES. ALL INFORMATION PROVIDED HEREUNDER TO YOU OR ANY AFFILIATE BY BNET IS PROVIDED 'AS IS.'

- 8.2 **PARTICIPANT.** YOU REPRESENT AND WARRANT THAT ALL INFORMATION YOU, ANY AFFILIATE, OR ANY CARDHOLDER PROVIDES TO BNET BY SHALL BE TRUE TO THE BEST OF YOUR INFORMATION AND BELIEF.
- 8.3 **BACKGROUND CHECK.** YOU REPRESENT AND WARRANT THAT ALL YOUR CARDHOLDERS: (I) ARE ACTUAL EMPLOYEES OF YOURS, AN AFFILIATE, OR OF AN ESSENTIAL SERVICE PROVIDER, AND (II) HAVE BEEN VERIFIED USING PROCEDURES AT LEAST AS COMPREHENSIVE AS THOSE REQUIRED PURSUANT TO FEDERAL FORM I-9, EMPLOYMENT ELIGIBILITY VERIFICATION.
- 8.4 **LIMITATION OF LIABILITY.** [EXCEPT FOR YOUR INDEMNIFICATION OBLIGATION,] IN NO EVENT SHALL YOU, ANY AFFILIATE, OR BNET BE LIABLE TO OR AMONG EACH OTHER OR TO ANOTHER PARTICIPANT(S) FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. OTHER PROVISIONS

- 9.1 **No Transfer.** You may not transfer, assign or sublicense any of Your rights or obligations under this Agreement without BNET's prior written consent. Any attempted violation of this Section is null and void.
- 9.2 **Corporate Coordinator.** You and Your Corporate Coordinator are designated to receive notice under this Agreement. We will send any notice to Your Corporate Coordinator at the address stated in your on-line enrollment application. Any notice made under this Agreement shall be deemed delivered on the next business day after being sent by electronic mail, by facsimile, by express mail or by overnight courier, or three (3) business days after being sent first-class mail, postage prepaid. Notice of a breach or termination of this Agreement shall be given by postage prepaid express mail, first class mail, or overnight courier.
- 9.3 **No Joint Venture.** Nothing contained in this Agreement and no action taken by You shall be deemed to render You or Your Affiliates as employees, agents or representatives of BNET or of any other Participant or its Affiliates, or shall be deemed to create a partnership, joint venture, or syndicate among or between any Participant or its Affiliates with BNET.
- 9.4 **Governing Law.** This Agreement shall be governed by and construed under, and the legal relations among the parties shall be determined in accordance with, the laws of the State of New York, excluding conflict-of-law principles that would cause the application of the laws of any other jurisdiction. The parties consent to the exclusive personal jurisdiction of the state and federal courts located in New York, if there is any dispute between them that cannot be amicably resolved.
- 9.5 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the parties' original intent shall be substituted in place of the invalid provision. A court shall make such substitution to the extent it is able to do so.
- 9.6 **Amendments.** This Agreement and the Plan may be amended on a nondiscriminatory basis by the affirmative vote of a majority of BNET's Board of Directors. Participant shall be given at least thirty (30) days' prior notice of the effective date of any material amendment. Amendments shall be prospective only. You shall be bound by a duly adopted amendment unless You have previously elected to terminate this Agreement and Your participation in BNET per Section 8.2.
- 9.7 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.



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- 9.8 **Integration.** This Agreement and Exhibits A and B, which are incorporated herein by reference supersede and replace any and all prior representations, agreements and understandings, relating to Your participation in BNET. If there is any difference, conflict, or ambiguity between this Agreement or the Plan, the terms of the Plan shall control.
- 9.9 **Survival.** Sections 1, 4, 6, 9, and 10 shall survive the termination or expiration of this Agreement for any reason.
- 9.10 **Authority.** Each party represents and warrants that it is authorized to enter into this Agreement and that the individual who executes this Agreement on its behalf is duly authorized to do so.
- 9.11 **Effective Date.** This Agreement shall be effective when it is signed by both parties.

In witness whereof, the parties have caused this Agreement to be signed by their duly authorized representatives.

By: _____
 (Company Name)

By: _____
 (Corporate Officer, Signed)

Date: _____

Printed Name: _____

Title: _____

Address: _____

Facsimile Number: _____

E-mail Address: _____

BUSINESS NETWORK OF EMERGENCY RESOURCES, INC.

Peter R. Picarillo 11/20/09
 Executive Director
 117 Cayuga St.
 Fulton, NY 13069
 Facsimile Number: 888-353-2630
 E-mail Address: support@ceas.com



EXHIBIT A

Description of Local Jurisdiction

City of Cambridge, MA



EXHIBIT B

User Administration and Application Process

To enroll in CEAS, You must designate a Corporate Coordinator to be responsible for the internal administration of CEAS and for overall business coordination with BNET. You will need to supply the following information during the on-line enrollment process:

1. Participant (Company) Name
2. Participant Company's physical address
3. Information for Corporate Coordinator:
 - Name
 - Primary phone number
 - Alternate phone number (24 hr contact)
 - Cell phone
 - Primary work address
 - Email address
4. Facility Information - required for all work locations enrolled in the System:
 - Your customary name for each Facility, e.g., Main Office, East Side Office, etc.
 - Physical address of each Facility
 - Number of full time employees at each Facility
 - Square footage of each Facility (applies ONLY to companies enrolled under the Industry Type - "Commercial Facilities")
5. Industry Type - As indicated on the enrollment drop-down menu and a description of the industry You are in.
6. Information to be provided for all Card-Holding Employees
 - Name
 - Primary work address
 - Email address
 - Photograph (headshot) - security department images can be used - (not required for Flex cards)