



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 **All Area Access Card** means a photo identification card issued to a specific individual that provides access anywhere in a restricted area within the Local Jurisdiction.
- 1.3 **Card** means the CEAS credential allowing access to an otherwise restricted zone by an individual as a result of Your participation in the Plan.
- 1.4 **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.
- 1.5 **CEAS or System** means BNET's Corporate Emergency Access System.
- 1.6 **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.
- 1.7 **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.
- 1.8 **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.
- 1.9 **Essential Service Provider** means a contractor or vendor who provides goods or services that are essential to Your operations within the Local Jurisdiction.
- 1.10 **Flex Card** means non-photo, pre-paid authorized Cards: (i) issued in advance to You; (ii) held for appropriate employees of Yours; and (iii) later issued to such employees after they have been properly identified, trained, and certified. Unlike other Cards, Flex Cards are not issued in the name of a specific individual.
- 1.11 **including and its variants, e.g., include, etc.,** means including without limitation.
- 1.12 **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.
- 1.13 **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.
- 1.14 **Participants** mean all CEAS Participants, including Participants from other Local Jurisdictions who may become Participants after You join.
- 1.15 **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.
- 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.** For as long as You participate in CEAS, You must procure



and maintain the following applicable insurance policies ("Policies").

- 5.2 **CGL.** Each Participant with 100 or fewer employees shall procure and maintain commercial general liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence. Participants with 101 to 500 employees shall procure and maintain such insurance with an aggregate amount of not less than Two Million Dollars (\$2,000,000). Participants with 501 to 1,000 employees shall procure and maintain such insurance with an aggregate amount of not less than Five Million Dollars (\$5,000,000). Participants with more than 1,000 employees shall procure and maintain such insurance with an aggregate amount of not less than Ten Million Dollars (\$10,000,000).
- 5.3 **Additional Requirements for All Area Access Card Applicants.** In addition to the above insurance, if You receive All Area Access Cards, You shall procure and maintain Comprehensive Business Automobile Liability ("CBAL") insurance for liability arising out of any owned, non owned, leased, and hired vehicles, with coverage at least as broad as ISO Form CA0001, ed. 10/01. If autos are used for transporting hazardous materials, policies shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90. Such CBAL insurance shall have limits of not less than five million dollars (\$5,000,000) per accident as long as Participant participates in the System. Any Participant receiving All Area Access Cards shall ensure that all contractors or other entities which use such Cards shall procure and maintain the same CBAL insurance.
- 5.4 **Worker's Compensation.** To the extent required by law, You shall maintain at all times worker's compensation insurance with statutory limits of the state of the Local Jurisdiction and employer's liability with minimum limits of liability of (i) \$1,000,000 for bodily injury by accident, each accident, (ii) \$1,000,000 for bodily injury by disease, each employee and (iii) \$1,000,000 aggregate liability for disease.
- 5.5 **Additional Insureds.** The Local Jurisdiction and BNET shall each be named as an additional insured under the Policies (other than worker's compensation). The Policies shall be endorsed to protect the Local Jurisdiction and BNET from claims for property damage and/or bodily injury, including accidental death, which may arise from Your or any Affiliate's participation in CEAS. The coverage shall be at least as broad as Insurance Service Office (ISO) Commercial General Liability coverage "Occurrence" form CG0001, ed. 10/93. The coverage provided must be "Occurrence" based; "Claims-made" coverage will not be accepted. Insurance certificates evidencing the required coverage must be provided to BNET, which will maintain them on file. Certificates should be mailed to:

 CEAS Application Processing Center
 117 Cayuga St.
 Fulton, NY 13069
- 5.6 **Rating/Cancellation.** All insurance shall be underwritten by a company(ies) authorized to issue the Policies in the Local Jurisdiction and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least A. The insurance may not be cancelled, not renewed, or materially amended without 60 days' prior written notice to BNET, with the exception that nonpayment of premium will require at least 30 days' prior written notice if 60-day notice is not permitted under the applicable Policy.
- 5.7 **Severability of Interest.** Any insurance carried in accordance with this Agreement shall state that, inasmuch as the Policy(ies) is(are) written to cover more than one insured, all terms, conditions, insuring agreements, and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate Policy covering each insured.
- 5.8 **Failure to Comply.** Your failure to comply with Your obligations under this Section 5 shall be considered a material breach of this Agreement.
- 5.9 **No Limit of Liability.** Nothing contained in this Agreement relating to coverage and amounts of insurance shall operate as a limitation of Your liability in tort, contract, or otherwise.
- 5.10 **Exceptions.** If You are unable to procure insurance of the types or amounts required or if the premium costs for such insurance are so high as to cause a financial hardship to You, You may submit a written

request to BNET requesting that such insurance requirements be modified. Any such request shall set forth in detail the requested modification, the basis for such request, and the efforts made by You to procure the required insurance, with documentation of those efforts. In its sole discretion, BNET may grant such a request, subject to the prior written consent of the Local Jurisdiction.

- 5.11 **Self-Insurance.** If You are "self-insured" with respect to any required insurance, You may submit a written request to BNET that such insurance requirements be modified or waived. Any such request shall set forth in detail the basis for such request, sufficient evidence for BNET to fully consider the requested modification or waiver, and the following: (i) a letter from You documenting that You have sufficient assets to meet the liability requirements of the System; (ii) the name of the actual insuring entity, the organization administering the insurance, and/or the name of the umbrella trust fund that insures Your Affiliates; (iii) the dollar amount of the self-insured reserve fund or a copy of a current audited document showing the reserve amount; (iv) the name and title of the individual in charge of Your risk and insurance; and (v) to whom and where claims are sent.

After the above documentation is received and reviewed, in its sole discretion BNET may grant the requested waiver, subject to the prior written approval of the Local Jurisdiction.

6. INDEMNIFICATION

- 6.1 **General.** You shall defend, indemnify, and hold harmless the Local Jurisdiction (including its state and local police and fire departments and political subdivisions), BNET, and their respective directors, officers, employees, and agents from and against any and all claims, suits, judgments, liabilities, costs, and expenses, including reasonable attorneys' fees (whether incurred as the result of a third party claim or a claim arising under this Agreement), and other damages (collectively, "Losses") arising from Your or any Affiliate's participation in the Plan, including Losses that may arise as a result of the entry or presence of a Cardholder and any other representative of Yours or any Affiliate in an otherwise restricted zone to which access has been obtained as a result of use of a Card and/or participation in the Plan or revocation of any Card. Losses shall also include those arising from the failure of the Local Jurisdiction or other authorities to activate or use CEAS, even if the System has been previously approved. You acknowledge that sole responsibility for such activation and use lies with the Local Jurisdiction or other local authority.
- 6.2 **Survival.** The foregoing indemnification obligation for any Loss incurred before expiration or termination of this Agreement shall survive such expiration or termination, the withdrawal for any reason of You or any Affiliate from CEAS, and the revocation of any Cards, and shall not be limited in any way by any limit in any Policy.

7. CERTAIN RULES FOR CARDS

- 7.1 **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.
- 7.2 **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.

- 7.3 **Flex Card Issuance and Term.** If You intend to acquire Flex Cards, You shall, at a later date, identify, train, and certify those of its employees who will be designated for emergency access to Your facilities under the CEAS using Flex Cards. BNET shall issue, in advance, a mutually agreed number of Flex Cards (which shall not exceed Your permitted allotment) to Your Corporate Coordinator for later distribution to the appropriate individual employees of Yours. The two-year term of any Flex Card begins when it is printed for issuance. BNET shall also provide a printed or electronic summary of the basic principles of the CEAS to the Corporate Coordinator for later distribution to applicable individuals. Because Flex Card issuance is contrary to BNET's usual procedure, You shall ensure that each Flex Card Cardholder will receive and successfully complete the appropriate CEAS online, printed, or equivalent training in accordance with BNET's standards. Further, BNET shall provide You, upon request, with a CEAS training website location and password which You may use to ensure that individuals are properly trained. When an employee has successfully completed such training (and been certified by You), the Corporate Coordinator may issue a Flex Card to such employee.
- 7.4 **Permitted Cards.** You must abide by and obey the rules applicable to the Cards purchased by You and allowed by the Local Jurisdiction.
- 7.5 **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.
- 7.6 **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.

8. TERM AND TERMINATION

- 8.1 **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.
- 8.2 **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.
- 8.3 **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.
- 8.4 **Fees.** You shall pay all fees and other charges accrued prior to the effective date of termination.

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

- 9.1 **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.'
- 9.2 **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.

- 9.3 **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.
- 9.4 **HOLD HARMLESS.** ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, EACH PARTY ("INDEMNITOR") SHALL DEFEND, INDEMNIFY, AND HOLD THE OTHER PARTY ("INDEMNITEE") FULLY HARMLESS AGAINST ANY LOSS, DAMAGES, CLAIMS, OR EXPENSES OF ANY KIND WHATSOEVER (INCLUDING COSTS AND REASONABLE ATTORNEYS' FEES), SUSTAINED OR INCURRED BY A THIRD PARTY TO THE EXTENT CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF INDEMNITOR, AND FOR WHICH RECOVERY IS SOUGHT AGAINST INDEMNITOR BY THAT THIRD PARTY. INDEMNITOR ALSO SHALL INDEMNIFY INDEMNITEE FOR ANY COSTS AND REASONABLE ATTORNEYS' FEES INCURRED IN BY INDEMNITEE IN ITS DEFENSE OF ANY SUCH THIRD PARTY CLAIM IF INDEMNITOR DOES UNDERTAKE SUCH DEFENSE. AS A CONDITION OF INDEMNITOR'S OBLIGATIONS HEREUNDER, INDEMNITEE SHALL PROMPTLY NOTIFY INDEMNITOR OF ANY APPLICABLE THIRD PARTY CLAIM AND FULLY AND REASONABLY COOPERATE WITH INDEMNITOR IN THE DEFENSE THEREOF.
- 9.5 **LIMITATION OF LIABILITY.** LIMITATION OF LIABILITY. EXCEPT FOR THE PROVISIONS OF SECTION 9.4 (HOLD HARMLESS), ANYTHING IN THE AGREEMENT TO THE CONTRARY NOTWITHSTANDING, (i) UNDER NO CIRCUMSTANCES WHATSOEVER SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, AND (ii) IN NO EVENT WHATSOEVER SHALL EITHER PARTY'S TOTAL LIABILITY TO THE OTHER FOR ANY OTHER DAMAGES WHATSOEVER EXCEED IN THE AGGREGATE THE SUM OF ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

10. OTHER PROVISIONS

- 10.1 **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.
- 10.2 **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.
- 10.3 **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.
- 10.4 **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.
- 10.5 **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



EXHIBIT A

Description of Local Jurisdiction

City of Buffalo, NY
City of New York, NY
Erie County, NY
Nassau County, NY
Suffolk County, NY



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)