

SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT ("Agreement") is made as of <<____ DATE _____>> ("Effective Date") by and between Codespear, LLC ("Codespear"), a Michigan corporation with offices located at 370 E. Maple, Suite 350, Birmingham, MI 48009 and <<____ LICENSEE NAME____ >> ("Licensee"), having a principal place of business at <<____ LICENSEE ADDRESS _____>>.

ARTICLE I: WITNESSETH:

WHEREAS, Codespear, LLC. Owns certain computer software for initiating and managing urgent alert notifications, communications interoperability and information collaboration ("SmartMsg"); and

WHEREAS, Licensee requires software for initiating and managing urgent alert notifications, communications interoperability and information collaboration; and

WHEREAS, Licensee has had an opportunity to review SmartMsg and is familiar with SmartMsg; and

WHEREAS, Licensee has read the TERMS AND CONDITIONS and desires to license SmartMsg under this Agreement and the TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual benefits of the covenants and restrictions herein contained, Codespear, LLC. and Licensee hereby agrees as follows:

Section 1 -- Recitals: The above recitals and identification of parties are true and correct.

Section 2 -- TERMS AND CONDITIONS: The TERMS AND CONDITIONS attached hereto are incorporated herein by this reference and shall apply to this Agreement.

Section 3 -- Terms: The following terms shall apply to this Agreement:

I. License Terms

- A. Software: The term "Software" shall mean the following version of the SmartMsg Client, Administrator, and Server Components - Version 5.1.
- B. Computer: The term "Computer" shall mean any computer server(s) owned, leased, or used in a hosted service bureau environment by Licensee.
- C. Maximum Users: The term "Maximum Users" shall mean the following maximum number of Users authorized to simultaneously access the Software: XX Users
- D. Licensee Facility: The term "Licensee Facility" shall mean the principal place of business, as defined by the Licensee Address, above.

II. Payment Terms

- A. License Fee: The term "License Fee" shall mean the following amount of funds in U.S. Dollars:
- B. Payment Terms: The term "Payment Terms" shall mean the following payment terms for the applicable License Fee and Implementation Services Fees:

Net 15 Days from the Date of License Fee or Implementation Services Invoice.

- XXXXXX
- XXXXXX
- XXXXXX

TERMS AND CONDITIONS

These TERMS AND CONDITIONS apply to the Software License Agreement (“Agreement”) made as of the Effective Date by and between Codespear, LLC, a Michigan corporation with offices located at 370 E. Maple, Suite 350, Birmingham, MI 49008 (“Codespear, LLC.”) and the Licensee identified thereunder.

ARTICLE I: DEFINITIONS

Section 1.01 -- Definitions: The following definitions shall apply:

- (1) Access: The term “access” and variants thereof shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
- (2) Authorized Person: The term “Authorized Person” shall mean a person or organization who is authorized in writing by Codespear, LLC. by either party to receive Confidential Information and who agrees to maintain the confidentiality of such Confidential Information.
- (3) Cancellation Notice: The term “Cancellation Notice” shall mean that written notice sent by the non-breaching party to the breaching party seeking to cancel the Agreement because of breach.
- (4) Computer: The term “Computer” shall mean that certain computer system owned, leased, or used in a hosted service bureau environment by Licensee and identified in the Agreement.
- (5) Confidential Information: The term “Confidential Information” shall mean all information disclosed by either party which is identified by the disclosing party as proprietary or confidential at the time such information comes into the possession or knowledge of the non-disclosing party, including such information concerning the Contract, Agreement, the Software Documentation, and which is not: (i) already known to the non-disclosing party; (ii) in the public domain; (iii) conveyed to the non-disclosing party by a third party; (iv) released by the disclosing party without restriction; (v) independently developed by the non-disclosing party; and (vi) required by Court Order, or by law to be released by the non-disclosing party.
- (6) Defect Notice: The term “Defect Notice” shall mean that certain written notice from Licensee to Codespear, LLC. identifying discrepancies between the actual performance of the Software and the performance represented in the Documentation.
- (7) Delivery Date: The term “Delivery Date” shall mean the date the Software is delivered to Licensee.
- (8) Documentation: The term “Documentation” shall mean that certain SmartMsg User, Administration, and Technical Guides as made available to Licensee by Codespear, LLC. Documentation is provided in “soft-copy” in Adobe Acrobat format and may also be accessed at the following web site link: <http://www.codespear.com/helpcentral.asp> .
- (9) Effective Date: The term “Effective Date” shall mean the date the Agreement is signed by Codespear, LLC.
- (10) Enhancement: The term “Enhancement” shall mean an Enhancement as defined under the Maintenance Agreement.
- (11) Implement: The term “implement” and variants thereof (including, but not limited to, the terms “implementation,” “implementing” and “implemented”) shall mean to load and make available for user access.
- (12) Implementation Date: The term “Implementation Date” shall mean the date the Software is implemented on a Computer.
- (13) Implementation Fee: The term “Implementation Fee” shall mean an amount of money specified as the Implementation Fee in the Agreement.

- (14) License Fee: The term “License Fee” shall mean the amount of money specified as the License Fee in the Agreement.
- (15) License Term: The term “License Term” shall mean a period of time starting with the Effective Date and continuing twenty years thereafter.
- (16) Licensee Facility: The term “Licensee Facility” shall mean the office facility of Licensee identified in the Agreement.
- (17) Maintenance Agreement: The term “Maintenance Agreement” shall mean that certain Software Maintenance Agreement between Codespear, LLC. and Licensee (as Customer thereunder). See SmartMsg Maintenance Agreement
- (18) Maximum Users: The term “Maximum Users” shall mean the maximum number of Users authorized by Codespear, LLC. to simultaneously access the Software, as specified in the Agreement.
- (19) Payment Terms: The term “Payment Terms” shall mean the payment terms for the applicable License Fee and Implementation Fee as specified in the Agreement.
- (20) Remote Access: The term “Remote Access” shall mean telecommunications access to the Software using a modem.
- (21) Software: The term “Software” shall mean the executable code for that certain software commonly referred to as SmartMsg™ as identified in the Agreement, including Enhancements and Updates thereto.
- (22) Termination Notice: The term “Termination Notice” shall mean that written notice sent by Licensee to Codespear, LLC. seeking to terminate the Agreement.
- (23) Unauthorized Access: The term “Unauthorized Access” shall mean any access to the Software or Documentation except for the exclusive purposes of configuring or managing the software application, evaluating the performance, utility and functions of the Software, and training employees of Licensee in the use of the Software.
- (24) Unauthorized User: The term “Unauthorized User” shall mean any individual who accesses the Software or Documentation except for: (1) employees of Licensee authorized by Licensee to access the Software for the purposes configuring or managing the software application, evaluating the performance, utility and functions of the Software, and training employees of Licensee in the use of the Software and (2) Authorized Persons who are authorized in writing by Codespear, LLC. to access the Software and Documentation on behalf of the Licensee.
- (25) Update: The term “Update” shall mean an Update as defined under the Maintenance Agreement.
- (26) Users: The term “Users” shall mean employees of Licensee authorized by Licensee to access the Software for the purposes of managing the software life cycle development process, evaluating the performance, utility and functions of the Software, and training employees of Licensee in the use of the Software.

ARTICLE II: SCOPE OF LICENSE

Section 2.01 -- Grant of License: Codespear, LLC. hereby grants to Licensee a non-exclusive and non-transferable license to use the Software on the Computer and to use the Documentation for the License Term.

Section 2.02 – User Restriction: Licensee shall prevent more than the Maximum Users from simultaneously accessing the Computer or Software.

Section 2.03 -- Acceptance: The Software shall be deemed accepted by Licensee thirty days after delivery of the Software, unless a Defect Notice is received by Codespear, LLC. by such thirtieth day. Upon receiving Defect

Notice from Licensee, Codespear, LLC., shall review the asserted discrepancy to determine if the discrepancy is valid. If, in the reasonable professional judgment of Codespear, LLC., the discrepancy is valid, Codespear, LLC., shall correct the discrepancy and resubmit the Software for acceptance by Licensee. If, in the reasonable professional judgment of Codespear, LLC., the discrepancy is not valid, Codespear, LLC. shall submit to Licensee a written explanation of the reasons why such asserted discrepancy is not valid. The written explanation of Codespear, LLC., set forth herein shall be deemed accepted by Licensee within ten business days after receipt by Licensee of the written explanation unless Codespear, LLC., receives from Licensee written notice rejecting such explanation and terminating the Agreement, effective immediately.

Section 2.04 -- Risk of Loss: Licensee assumes risk of loss to the Software and Documentation as of the Delivery Date.

Section 2.05 -- Authorized Use: Licensee shall make reasonable efforts to prevent Unauthorized Users from accessing the Software and Documentation and to prevent Unauthorized Access to the Software and Documentation.

Section 2.06 -- Site Only: Licensee shall use the Software only on the Computer and only at the Licensee Facility. Excepting access by Codespear, LLC., Licensee shall prevent Remote Access.

ARTICLE III: PAYMENT

Section 3.01 – License Fee: Licensee shall pay the License Fee to Codespear, LLC. in accordance with the Payment Terms. Net 15 Days from Date of Software Delivery.

Section 3.02 – Implementation and Training Fees: Licensee shall pay any contracted Implementation and Training Fees to Codespear, LLC. in accordance with the Payment Terms governing the delivery of services.

Section 3.03 -- Costs: Licensee shall pay all direct costs reasonably incurred by Codespear, LLC. in providing any services pursuant to the Agreement. Such direct costs shall include (without limitation) postage, telephone, travel, material and reproduction costs.

Section 3.04 -- Invoicing and Payment: Codespear, LLC., shall invoice Licensee upon “completing implementation” as defined in Article II, Section 2.03 – Acceptance. Licensee shall pay any such invoice in full within thirty days of receipt.

Section 3.05 -- Taxes: Licensee shall pay any and all applicable taxes (excluding income taxes assessed against Codespear, LLC.).

ARTICLE IV: TERMINATION

Section 4.01 -- Termination Limitations: The Agreement shall only be terminated or canceled as provided under this Article IV.

Section 4.02 -- Term: Notwithstanding the term of any awarded Contract between Codespear and Licensee, this The Agreement shall be valid for the License Term.

Section 4.03 -- Termination: Licensee may terminate the Agreement without cause at any time upon providing thirty days Termination Notice to Codespear, LLC.

Section 4.04 -- Cancellation for Cause: If either party breaches its obligations under the Agreement, the non-breaching party may cancel the Agreement by sending Cancellation Notice describing the noncompliance to the breaching party. Upon receiving Cancellation Notice, the breaching party shall have thirty days from the date of such notice to cure any such noncompliance. If such noncompliance is not cured within the required thirty day period, the non-breaching party, shall have the right to cancel the Agreement as of the thirty first day after the date of the Cancellation Notice. Notwithstanding the foregoing, with respect to the performance of the Software, an uncured breach shall be defined as the inability to perform the specifications as outlined in published User and Technical Reference Guide Documentation for the specific licensed version. In such an event, during the first year of use, Licensee shall be entitled to an immediate refund of all fees paid by Licensee. In the event of an uncured

breach by Codespear, LLC during subsequent years, Licensee shall be entitled to an immediate refund of all the prepaid annual maintenance fees.

Section 4.05 -- Destruction of Software upon Termination: Upon termination or cancellation of the Agreement, Licensee shall destroy all Software and Documentation provided to Licensee by Codespear, LLC. pursuant to the Agreement and shall provide Codespear, LLC. with a certificate of compliance with this Section 4.05 signed by an authorized representative of Licensee.

ARTICLE V: WARRANTY

Section 5.01 -- Representations: Codespear, LLC. represents and warrants that it is the lawful owner of the Software which shall perform substantially in all material respects as represented in the Documentation and this Agreement; and that the software is fit for the purpose for which Codespear and Licensee have entered into the Agreement.

Section 5.02 -- WARRANTY LIMITATION: EXCEPTING THE WARRANTY EXPRESSLY ACKNOWLEDGED IN SECTION 5.01, Codespear, LLC. HEREBY DISCLAIMS AND LICENSEE HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY.

Section 5.03 -- Indemnification: Codespear, LLC. shall release, defend, indemnify and hold harmless Licensee from and against any claims, damages and liability arising from the negligence of Codespear, LLC. as well as any claim by any third party against Licensee for claimed violations of trade secrets, proprietary information, trademark, copyright or any patent rights resulting from use of the Software by Licensee. If a third party receives a judgment from a court of competent jurisdiction upholding any such claim, Codespear, LLC. shall promptly perform one or more of the following actions (as shall be reasonably determined by Codespear, LLC.)

- (1) Replacement Replace the Software with a non-infringing software product of equivalent functional and performance capability;
- (2) Modification: Modify the Software to avoid the infringement without eliminating the functional and performance capabilities of the Software;
- (3) Obtain License: Obtain a License for use of the Software from the third party claiming infringement for use of the Software.

The remedies set forth herein shall be the sole and exclusive remedies of Licensee under this Section 5.03.

Section 5.04 -- Limitation of Damages: Codespear, LLC. shall not be liable to Licensee under the Agreement for any consequential, exemplary, incidental or punitive damages, regardless of whether Codespear, LLC. has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.

Section 5.05 -- Force Majeure: Neither party shall be liable to the other party for failing to perform its obligations under the Agreement because of circumstances reasonably beyond its control. Such circumstances shall include, but not be limited to, any acts or omissions of any government or governmental authority, natural disaster, act of a public enemy, riot, sabotage, dispute or differences with workmen, power failure, delays in transportation or deliveries of supplies or materials, acts of God, terrorism, or any events reasonably beyond the control of the non-performing party.

Section 5.06 -- Indemnification: Except as to Codespear, LLC.'s own negligent acts or omissions, Licensee shall release, defend, indemnify and hold harmless Codespear, LLC., from and against any claims, damages and liability arising from the negligent use of the Software by Licensee.

ARTICLE VI: INTELLECTUAL PROPERTY

Section 6.01 -- Ownership and Title: Title to the Software and Documentation including ownership rights to patents, copyrights, trademarks and trade secrets therein shall be the exclusive property of Codespear, LLC..

Section 6.02 -- Confidential Information: Neither party shall disclose Confidential Information except to Authorized Persons. Neither party shall duplicate, use or disclose Confidential Information except as otherwise permitted under the Agreement.

Section 6.03 -- Trade Secrets: The parties hereby acknowledge and agree that the Confidential Information may derive independent economic value (actual or potential) from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use; are the subject of reasonable efforts under the circumstance to maintain their secrecy; and may be trade secrets as defined under the laws governing this Agreement.

Section 6.04 -- Reverse Engineering: Licensee shall not reverse engineer the Software.

Section 6.05 -- Copies: Licensee shall not copy the Software or Documentation and shall not allow the Software or Documentation to be copied without the prior written consent of Codespear, LLC. which consent shall not be unreasonably withheld. Codespear, LLC. shall make available to Licensee an additional copy of the Software for back-up use on the Computer.

Section 6.06 -- Modifications: Licensee shall not modify the Software and shall not allow the Software to be modified without the prior written consent of Codespear, LLC., which consent shall not be unreasonably withheld. Licensee shall not use the Software or any materials incident thereto to develop computer software without the prior written consent of Codespear, LLC.. If the Software is modified, such modifications shall be the sole and exclusive property of Codespear, LLC. and Codespear, LLC. shall own all of the rights, title and interests to such modifications and any resulting computer software, including (but not limited to) any and all copyrights, patents and trade secrets related thereto.

Section 6.07 -- U.S. Government Restricted Rights: This Section 6.07 shall not apply unless Licensee is the U.S. Government or an agency or department thereof (collectively "Government"). The Software and Documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1) and (2) of the Commercial Computer Software Restricted Rights clause at 48 C.F.R. 52.227-19.

Section 6.08 -- Continuation: The terms and provisions of this Article VI shall survive termination and cancellation of the Agreement.

ARTICLE VII: MISCELLANEOUS

Section 7.01 -- Assignments: All assignments of rights under the Agreement by Licensee without the prior written consent of Codespear, LLC., shall be void.

Section 7.02 -- Entire License: Excepting the Maintenance Agreement, any awarded Contract and Agreement contains the entire understanding of the parties and supersedes previous verbal and written agreements between the parties concerning licensing of the Software. SmartMsg V5.1

Section 7.03 -- Amendments and Modifications: Waivers, alterations, modifications or amendments of a provision of the Agreement shall not be binding unless such waiver, alteration, modification or amendment is in writing and signed by Codespear, LLC..

Section 7.04 -- Severability: If a provision of the Agreement is rendered invalid, the remaining provisions shall remain in full force and effect.

Section 7.05 -- Captions: The headings and captions of the Agreement and the Terms and Conditions are inserted for reference convenience and do not define, limit or describe the scope or intent of the Agreement or any particular section, paragraph, or provision.

Section 7.06 -- Counterparts: The Agreement may be executed in multiple counterparts, each of which shall be an

original, but which together shall constitute one and the same instrument.

Section 7.07 -- Governing Law: The Agreement will be governed by the laws of the State of Michigan and venue shall be the County of Oakland.

Section 7.08 -- Notice: All communications shall be in writing. Notices shall be deemed delivered when delivered by Certified Mail or by hand to the address set forth below for Codespear, LLC. and to the address set forth on the signature page of the Agreement for Licensee. Notice shall be deemed given on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt.

Codespear, LLC. 370 E. Maple, Suite 350, Birmingham, MI 48009

Section 7.09 -- Pronouns/Gender: Pronouns and nouns shall refer to the masculine, feminine, neuter, singular or plural as the context shall require.

Section 7.10 -- Bankruptcy: if either party must institute, defend, appear or attend a bankruptcy proceeding as a result of the filing of bankruptcy by the other party, the filing party shall pay fees and expenses. If either party has a bankruptcy proceeding filed against it, the other party shall recover attorney fees, expert witness fees, and other costs incurred by such other party in connection with the bankruptcy proceeding, hearing or trial.

Section 7.11 -- Waiver: Waiver of breach of the Agreement shall not constitute waiver of another breach. Failing to enforce a provision of the Agreement shall not constitute a waiver or create an estoppel from enforcing such provision.

Section 7.12 -- Relationship of the Parties: It is agreed that the relationship of the parties is primarily that of licensee and licensor. Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party maintains its separate identity.

Section 7.13 -- No Contest: Licensee shall not contest or aid in contesting the ownership or validity of the trademarks, service marks, trade secrets or copyrights of Codespear, LLC..

Section 7.14 -- Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the Arbitration Rules of The State of Michigan. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The parties in accordance with the Arbitration Rules of The State of Michigan shall select qualified Arbitrators. Each party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure.

Section 7.15 -- Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to each other under the Agreement are true, correct and accurate as of the date of the Agreement to the best of their knowledge.

Section 7.16 -- Litigation Expense: In the event of litigation or arbitration arising out of the Agreement, the costs of such litigation or arbitration, including, but not limited to, attorney fees, travel expenses, deposition costs, expert witness expenses and fees, court costs, arbitration fees and other costs incurred in connection with bringing or defending such action whether or not incurred in trial or appeal shall be recovered by the prevailing party from the non-prevailing party.

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

LICENSEE:
Codespear, LLC.

By: _____
Paul E. Hodges, III CEO

Date: _____

LICENSEE:

<< LICENSEE ORGANIZATION NAME >>

By: _____

Print Name: _____

Title: _____

Date: _____