

# COMPLETE PROTECTION TERMS AND CONDITIONS (Version 11-10)

## 1. Services and Equipment; Limited Warranty.

**1a.** Company agrees to furnish the monitoring, automation and/or maintenance services ("Services") and provide the material and equipment ("Equipment") selected by Customer on the Complete Protection Alarm System Agreement to which these Terms and Conditions are attached (such Complete Protection Alarm System Agreement together with these Terms and Conditions, the "Agreement"). The monitoring/automation services and related equipment will be collectively referred to herein as the "System."

**1b.** Company warrants to Customer that the Services will be provided, and the Equipment will be installed, in a good and workmanlike manner. For Equipment sold to Customer, Company warrants that the Equipment will be free from defects in materials or workmanship for a period of 90 days after delivery to Customer's premises. During the warranty period, Company will repair or replace, at its option and expense, any item of Equipment that is defective in materials or workmanship after examination by Company, subject to the exceptions, exclusions and limitations described below. If Company determines that repair or replacement of defective Equipment is not reasonably practical, Company may refund the purchase price for such Equipment. The remedies set forth in this Section are Customer's exclusive remedies for breach of warranty, and in no event will Company be liable for any consequential, incidental, special, punitive, or other indirect damages of any kind. Company's warranties are not assignable. **Company makes no other warranties, express or implied, regarding the System or any part or portion thereof and Company specifically disclaims the implied warranties of merchantability, fitness for a particular purpose, and freedom from infringement claims.**

**1c.** This warranty does not cover any damage to Equipment caused by accident, vandalism, customer negligence, flood, water, lightning, fire, intrusion, abuse, misuse, act of God or other casualty, attempted unauthorized repair, or modification or improper installation by any party other than Company.

**Customer acknowledges as follows: that no employee or agent of Company or its contractors has the authority to make any representations, statements or promises in addition to or in any way different than those contained herein, and that Customer is not entering into this agreement or transaction in reliance upon any representation, statement or promise of Company except as expressly stated herein; that any affirmation of fact or promise made by Company or its contractors shall not be deemed to create an express warranty; that the Equipment or Services may be compromised or circumvented and may not in all cases provide the signaling, automation, monitoring, or other functionality for which it was intended; and that Customer is not relying on Company's skill or judgment in selecting or furnishing a signaling, automation or monitoring system suitable for any particular purpose.**

**Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.**

## 2. Title to Equipment; Security Interest.

Any Equipment owned by Company that is installed at Customer's premises shall at all times remain Company's property. With respect to any Equipment sold to Customer hereunder, Company hereby retains a security interest in the Equipment until it is fully paid, and Customer agrees to perform all acts which may be necessary to assure Company's perfected security interest in the Equipment. All Equipment shall remain personal property and in no event shall be deemed to be realty, whether or not affixed to the premises. Should Customer default in any payment or other obligations to Company, Company may disconnect the Equipment or otherwise render it unusable, remove the Equipment from the premises, and enforce any and all of Company's rights under applicable law. Such removal and/or disconnection shall not be deemed a waiver of Company's right to damages sustained as a result of Customer's default, and Company shall have the right to enforce any other legal remedy or right. Furthermore, Company shall be in no way obligated to repair, restore, or redecorate the premises if Equipment is removed as a result of Customer's breach of this Agreement. Customer hereby releases Company from all damages (direct or indirect), losses and liability arising out of or resulting from such removal and/or disconnection. Risk of loss or damage to the Equipment shall pass to Customer upon delivery to the premises.

## 3. Company is Not an Insurer; Liquidated Damages; Limitation of Liability.

CUSTOMER AGREES AND UNDERSTANDS: THAT COMPANY IS NOT AN INSURER AND THAT INSURANCE COVERING PERSONAL INJURY (INCLUDING DEATH) AND PROPERTY DAMAGE IN, ABOUT AND TO THE PREMISES SHALL BE OBTAINED BY CUSTOMER; THAT THE AMOUNTS BEING CHARGED BY COMPANY REFLECT THE LIMITATIONS OF LIABILITY AND ALLOCATION OF RISKS SET FORTH IN THIS AGREEMENT (AND NOT THE VALUE OF ANY PROPERTY IN CUSTOMER'S PREMISES), AND THAT COMPANY WOULD NOT BE WILLING TO PROVIDE THE EQUIPMENT OR THE SERVICES IN THE ABSENCE OF SUCH LIMITATIONS OF LIABILITY AND ALLOCATION OF RISKS; THAT COMPANY IS NOT LIABLE FOR ANY LOSS OR DAMAGE WHICH MAY OCCUR PRIOR TO, CONTEMPORANEOUSLY WITH, OR SUBSEQUENT TO THE EXECUTION OF THIS AGREEMENT EVEN IF DUE TO THE IMPROPER PERFORMANCE OF AND/OR FAILURE TO PERFORM OF THE EQUIPMENT OR SERVICES, OR BREACH OF THIS AGREEMENT BY COMPANY; THAT CUSTOMER WILL LOOK ONLY TO ITS OWN INSURANCE, AND NOT TO COMPANY, IN THE EVENT OF ANY LOSS OR INJURY TO ANY PERSON OR PROPERTY; THAT, BECAUSE IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE, SHOULD THERE ARISE ANY LIABILITY ON THE PART OF COMPANY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, COMPANY'S ENTIRE LIABILITY SHALL BE LIMITED TO THE SUM OF \$1,000.00. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES OF ANY KIND.

## 4. Indemnity.

Customer agrees to indemnify and hold harmless Company from and against all claims, demands, liabilities, damages, losses, and expenses (including reasonable attorneys' fees) which may be asserted against or incurred by Company by or due to any person not a party to this Agreement, including Customer's insurance or bonding company, arising out of any use or failure of the Equipment or Services. Notwithstanding anything contained herein to the contrary, this paragraph shall not apply to claims for loss or damage caused directly and solely by the negligence of any employee of Company while on Customer's premises.

## 5. System Installation and Maintenance; Access to Premises.

Customer will provide Company with access to Customer's premises for installation, repair and/or maintenance of the System (or any portion thereof). Customer agrees to the following installation and maintenance conditions: (a) Customer's premises will be available without interruption during Company's normal working hours; (b) Customer acknowledges that installation will require drilling into various parts of Customer's premises; (c) Customer will provide 110 AC electrical outlets for power equipment in locations reasonably designated by Company; (d) Customer will make arrangements for lifting and replacing carpeting, if required, for installation of floor mats or wiring; (e) Customer will maintain traditional wireline phone service with calling features required to make use of the System and (f) Customer warrants that Customer (1) requested the Equipment and Services for Customer's own use and not for the benefit of any other party, (2) owns the premises where the Equipment is being installed or has the authority to allow installation of the Equipment in the premises, and (3) will comply with all laws, codes and regulations pertaining to the Equipment or Services. Company reserves the right to substitute equipment of equal or better performance at its discretion. Customer acknowledges that Company has no knowledge of existing hidden pipes, wires or other like objects within walls, flooring, ceilings and other concealed spaces, and it is Customer's obligation to advise Company of such hidden objects. Company shall have no liability whatsoever for any damages, losses or expenses for personal injury (including death) or damage to real or personal property caused by or involving such hidden objects during installation, repair, service or maintenance of the System, even if due to the negligence of Company and/or its agents, employees, suppliers or subcontractors. Company makes no representation, promise, warranty or guarantee of delivery and installation of Equipment or commencement of Services by any particular date, and Customer agrees that Company shall have no liability for any loss, damage or expense to Customer due to any delay in delivery, installation, commencement or completion of Equipment or Services. Customer agrees to pay Company's minimum service call charge if Customer does not provide access to Customer's premises as required by Company. The Equipment is not transferable to a new location unless Company, in its sole discretion, determines that it may provide the Services at the new location. If Company determines that the Equipment may be transferred to Customer's new location, Customer agrees to pay a reasonable transfer fee imposed by Company.

## 6. Customer Responsibilities.

**6a.** Customer shall test the System periodically; at least monthly and whenever changes are made to telephone service for the premises. Any claimed inadequacy or failure of the System shall be immediately reported to Company.

**6b.** Customer shall pay all charges made by any telephone company or other utility for installation, leasing and service charges for equipment necessary to connect the Equipment to the public telephone network. Customer acknowledges that the charges set forth herein reflect currently existing federal, state and local laws and utility charges, and that Company shall have the right, at any time, to prospectively increase the monthly rate for Services to reflect any new or additional taxes or charges which may hereafter be imposed by any utility, local, state or federal government or governmental agency, relating to the Services and which Company pays; and Customer agrees to pay the same. If the System is activated for any reason whatsoever, Customer agrees to pay without recourse, or to reimburse Company for, any fines, fees, costs, expenses, and penalties assessed against Customer or Company as a result thereof.

**6c.** In the event of any default by Customer or failure to pay any amount when due or the termination, cancellation, or rescission of this Agreement by Customer, Customer shall immediately pay to Company (a) all payments then due and payable and all future installment payments, and (b) all costs and expenses of collection and litigation, including reasonable attorney's fees incurred by Company, and Company shall have no further obligation to perform under this Agreement. This Agreement becomes binding upon Company only when signed by an authorized representative of Company.

## **7. No Waiver.**

**IF COMPANY WAIVES ANY BREACH BY CUSTOMER, IT SHALL NOT BE CONSTRUED AS A WAIVER OF ANY SUBSEQUENT BREACH, AND COMPANY'S FAILURE TO EXERCISE ANY RIGHTS HEREUNDER SHALL NOT BE CONSTRUED AS A WAIVER OF ANY SUCH RIGHTS. COMPANY'S RIGHTS HEREUNDER SHALL BE CUMULATIVE, AND ANY RIGHTS HEREUNDER MAY BE EXERCISED CONCURRENTLY OR CONSECUTIVELY AND SHALL INCLUDE ALL REMEDIES AVAILABLE AT LAW AND IN EQUITY EVEN THOUGH NOT EXPRESSLY REFERRED TO HEREIN.**

## **8. Service Orders; Maintenance Plans.**

**8a.** Company makes no representation, promise, warranty or guarantee that there will be no interruptions of service or delay in performing service. Company's sole obligation after receiving a service request is to dispatch a service employee to the equipment location within a reasonable time after a service employee becomes available during normal business hours excluding Saturdays, Sundays and holidays, after receipt of Customer's request to do so. Customer agrees that Company shall have no liability for any loss, damage or expense to Customer, including any general, special, incidental or consequential damages sustained by Customer due to the loss or theft of any keys, or to any delay in (1) dispatching any employee, (2) arrival at Customer's premises, or (3) in servicing the equipment, regardless of whether the delay is due to the sole, joint or several negligence of Company or its agents, servants, employees, suppliers or subcontractors.

**8b.** Customer agrees that all repair, replacement or installation of additional goods or equipment to the System shall be supplied and installed only by Company (on a time and material basis at Company's then-current charges). Installation of additional equipment to the System may result in an additional charge for repair, maintenance and/or other services at Company's then-current charges.

**8c.** If Customer has purchased a maintenance plan offered by Company, then this Agreement also will govern the maintenance plan (in addition to the specific terms applicable to the plan). Customer acknowledges that deductibles and additional recurring charges may apply for maintenance plans. Maintenance plans cover the cost of travel, labor and equipment to service/repair the System during Company's normal business hours only. Repair is limited to ordinary wear and tear, excluding battery replacement, thermostats, alarm screens, wiring, light bulbs, L.E.D.'s, L.C.D.'s and foil tape. Maintenance plans do not cover System damage or degradation caused by events of the type described in Section 10. Customer will pay for any repair service not covered by its maintenance plan (if any) on a time and materials basis at Company's then-current rates. Customer agrees that Company has no responsibility for the condition or operation of any equipment, device, or property of any sort of Customer, the telephone company, or others to which the System is attached.

## **9. Takeover Systems.**

If the System is a "takeover", in whole or in part, from another service provider, Company reserves the right, at its sole option, to terminate this Agreement at any time upon ten (10) days written notice to Customer if Company determines, in its sole discretion, that there have been excessive activations of the System, that Customer has abused the System or that the number of problems or cost of service has been or may become excessive, and Customer shall be entitled to reimbursement of the pro rata cost paid for the then current period on request of Customer. Further, Customer warrants that it is the owner of the system and authorizes Company to provide the Services utilizing the takeover system. Company may inspect any "takeover" system to determine its eligibility for maintenance plan coverage, and Company may refuse to include any such system in its maintenance plan.

## **10. No Liability for Certain Occurrences.**

Company shall have no liability of any kind if the System fails to operate properly due to problems with the public telephone network, the Internet, or any wireless network (including, in each case, if any connecting wires, equipment or facilities necessary to operate the System are destroyed, damaged, or inoperable for any reason), and Customer's sole remedy in such circumstances shall be reimbursement of the pro rata cost paid for the period of interruption on request of Customer. Further, Customer agrees that Company will have no liability of any kind (including for loss or damage to property or for personal injury or death) due to (a) any failure of the System; (b) any defective or damaged equipment, device, telephone line or connecting circuit; (c) any act or omission of Customer or its employees or agents (including failure to properly close or secure a door, window or other point protected by an alarm device); (d) trouble in a telephone line, use of non-traditional telephone line or service (including without limitation DSL, ADSL, VOIP, etc.) or loss or interruption of power; (e) any unauthorized repair or modification of the System; or (f) any flood, fire, act of God, or other cause beyond Company's reasonable control. Company has no obligation to supply substitute services in any such circumstances.

## **11. False Alarms.**

Company may implement industry-recognized measures to help reduce the amount of false alarm signal activations. These measures include, without limitation, default settings on alarm panels authorized under ANSI-SIA CP-01-2000; default settings for "swinger shutdown" of specific alarm zones; implementation of "partial clear time bypass" procedures and other similar measures as Company may determine from time to time. THESE MEASURES CAN RESULT IN NO ALARM SIGNAL BEING SENT FROM AN ALARM ZONE IN CUSTOMER'S PREMISES AFTER THE INITIAL ALARM ACTIVATION UNTIL CUSTOMER MANUALLY RESETS THE ALARM SYSTEM. Customer shall pay all directly or indirectly imposed false alarm assessments, taxes, fees or other charges of any police or fire department, or of any other governmental agency or body.

## **12. Non-Traditional Telephone Service; Communication Facilities.**

CUSTOMER ACKNOWLEDGES THAT THE SYSTEM MAY NOT BE COMPATIBLE WITH SOME TYPES OF DSL, ADSL, VOIP, DIGITAL PHONE, INTERNET PROTOCOL BASED PHONE OR OTHER INTERNET INTERFACE-TYPE SERVICE OR RADIO SERVICE, INCLUDING CELLULAR SERVICE ("NON-TRADITIONAL TELEPHONE SERVICE"), AND THAT NON-TRADITIONAL TELEPHONE SERVICE MAY NOT PROPERLY TRANSMIT ALARM SIGNALS TO COMPANY. CUSTOMER ACKNOWLEDGES THAT TRANSMISSION OF FIRE ALARM SIGNALS BY MEANS OTHER THAN A TRADITIONAL TELEPHONE LINE MAY NOT COMPLY WITH NATIONAL HOUSEHOLD FIRE ALARM STANDARDS OR SOME LOCAL FIRE CODES. CUSTOMER FURTHER ACKNOWLEDGES THAT THE SYSTEM MAY NOT BE ABLE TO DETECT IF A NON-TRADITIONAL TELEPHONE SERVICE LINE IS CUT OR INTERRUPTED, AND THAT COMPANY MAY NOT BE ABLE TO PROVIDE CERTAIN MONITORING OR AUTOMATION SERVICES THROUGH A NON-TRADITIONAL TELEPHONE LINE OR SERVICE. CUSTOMER ACKNOWLEDGES THAT COMPANY WILL NOT RECEIVE ALARM SIGNALS WHEN THE TELEPHONE LINE OR OTHER TRANSMISSION MODE IS NOT OPERATING OR HAS BEEN CUT, INTERFERED WITH OR IS OTHERWISE DAMAGED OR IF THE SYSTEM IS UNABLE TO ACQUIRE, TRANSMIT OR MAINTAIN AN ALARM SIGNAL OVER CUSTOMER'S TELEPHONE SERVICE FOR ANY REASON (INCLUDING NETWORK OUTAGE OR OTHER NETWORK PROBLEMS SUCH AS CONGESTION OR DOWNTIME, ROUTING PROBLEMS, OR INSTABILITY OF SIGNAL QUALITY). Customer acknowledges that using a cellular telephones, personal computer and other equipment to remotely access the System entails a risk of unauthorized access to the System, as well as the risk of disclosure of Customer's data or information, and Customer expressly assumes such risks.

## **13. Miscellaneous.**

**13a.** All claims, actions or proceedings, legal or equitable, against Company must be commenced within one (1) year after the cause of action has accrued or be forever barred.

**13b.** This Agreement is the entire agreement between the parties with respect to the transactions described herein and supersedes all previous and contemporaneous negotiations, commitments, contracts, statements and representations, whether written or oral, pertaining thereto. Neither party has authority to make or claim any representation, term, promise, condition, statement, warranty, or inducement which is not expressed herein. Should any provision hereof, or its application to any circumstances, be held illegal, invalid or unenforceable to any extent, the validity and enforceability of the remainder of the provision and this Agreement, or of such provisions as applied to any other circumstances, shall not be affected thereby, and shall continue in full force and effect as valid, binding and subsisting. All changes or amendments to this Agreement must be in writing and signed by each party.

**13c.** The acceptance of this Agreement in writing or by course of conduct or payment by Customer waives all terms and conditions contained in any purchase order, acknowledgement or contract submitted by Customer and Customer agrees that no other terms or conditions contained in any Customer document, unless signed by an authorized officer of Company, whether those terms or conditions be additional to, different from, or conflicting with the terms and conditions hereof, shall be deemed, in law or in fact, a part of the Agreement between the parties, or agreed to by Company. Neither the failure of Company to object to any communication from Customer, nor any performance by Company shall be deemed an acceptance of any terms or conditions which are additional to, different from, or conflicting with the terms and conditions contained herein.

**13d.** This Agreement is binding on the customer as well as the heirs, executors, administrators, successors and assigns of the parties, and shall be governed by and construed according to the laws of the State of Ohio, without regard to conflict of laws principles.

**13e.** This Agreement is not assignable by Customer except upon the written consent of Company, which shall be at Company's sole option. This Agreement or any portion thereof is assignable by Company at its sole option.

**13f.** If, at any time after the date hereof, additional equipment or services are authorized by Customer, all sales, installation and services supplied by Company shall be subject to the terms of this Agreement only, except that additional charges shall be made for such additional sales, installation or services.

**13g.** Company reserves the right to subcontract for the provision of installation, maintenance or other services under this Agreement. The provisions of this Agreement will inure to the benefit of and are applicable to any subcontractors engaged by Company to provide any such service.

**13h.** Customer acknowledges that Company may record wire and oral communications and hereby consents and authorizes Company to so record all such communications between Company, Customer and/or Customer's agents, servants, employees and/or representatives.

**13i. Customer acknowledges responsibility for any agreement Customer may have with another security system vendor, which shall have no effect on this Agreement.**