

PART I – GENERAL TERMS AND CONDITIONS

**1. Definitions**

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Company”** means Cooks AVS Limited, its successors and assigns.
- 1.3 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. If the Customer does not wish to allow Cookies to operate in the background when using the Company’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.4 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Company to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:  
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and  
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and  
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and  
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.5 **“Extra Work”** means work authorised by the Customer and carried out by the Company for which an extra charge is payable at the Company’s normal rates in addition to work accepted by the Customer in a written quotation. Extra Work includes:  
(a) service work undertaken on a ‘do and charge’ basis and is not necessarily specified as exclusions in any quotation;  
(b) repairs and replacement parts, except in the event that such work is completed under warranty as agreed by the Company;  
(c) system maintenance, unless otherwise agreed by the Company in writing.
- 1.6 **“Hourly Rates”** will be payable by the Customer for any Services carried out by the Company which are not set out in the schedule of Services contained in any quotation or order, including Extra Work and any variation to the Services.
- 1.7 **“Products”** means all Products or Services (including ‘Monitoring Services’) supplied by the Company to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Products’ or ‘Services’ shall be interchangeable for the other).
- 1.8 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Products as agreed between the Company and the Customer in accordance with clause 6 below.

**2. Acceptance**

- 2.1 The parties acknowledge and agree that:  
(a) they have read and understood the terms and conditions contained in this Contract; and  
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Products or provision of the Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Products or Services on credit shall not take effect until the Customer has completed a credit application with the Company and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Products or Services requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, the Company reserves the right to refuse delivery.
- 2.6 It shall be the Customer’s responsibility to ensure that all security software and updates, any firewalls that should be activated, appropriate user practices and any other security measures recommended by the Company are carried out. Failure by the Customer to comply with the Company’s security recommendations which could then result in a breach of security measures (such as targeted cyber-attacks, internet outage or any other situations beyond anticipation by the Company), then the Company accepts no responsibility or liability for any loss (including loss of income), damages, or costs however resulting from these events.
- 2.7 Where the Customer is a tenant (and therefore not the owner of the site) then the Customer warrants that the Customer has obtained the full consent of the owner for the Company to deliver the Products to the site. The Customer acknowledges and agrees that they shall be personally liable for full payment of the Price for all Products and Services supplied under this Contract, and to indemnify the Company against any claim made by the owner of the site (howsoever arising) in relation to the supply of Products by the Company, except where such claim has arisen because of the negligence of the Company when supplying the Products.
- 2.8 In the event that the Company is required to provide the Services urgently, that may require the Company’s staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then the Company reserves the right to charge the Customer additional labour costs and Hourly Rates (penalty rates will apply at time and a half normal rates), unless otherwise agreed between the Company and the Customer.
- 2.9 Hourly Rates will be payable by the Customer for any Services carried out by the Company which are not set out in the schedule of Services contained in any quotation or order, including Extra Work and any variation to the Services.
- 2.10 These terms and conditions may be meant to be read in conjunction with the Company’s Service Level Agreement and Monitoring Service Agreement, and where the context so permits, the terms ‘Products’ and ‘Services’ shall include any supply of “Monitoring and Maintenance Services”, as defined therein.
- 2.11 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Errors and Omissions**

- 3.1 The Customer acknowledges and accepts that the Company shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

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- (a) resulting from an inadvertent mistake made by the Company in the formation and/or administration of this Contract; and/or  
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Company in respect of the Services.
- 3.2 If such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Company; the Customer:  
(a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but  
(b) shall not be responsible for any additional costs incurred by the Company arising from the error or omission.
- 4. Change in Control**
- 4.1 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.
- 5. Specifications**
- 5.1 The Customer acknowledges and accepts that:  
(a) all descriptive specifications, illustrations, drawings, data, dimensions, and weights stated in the Company's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of this Contract, unless expressly stated as such in writing by the Company;  
(b) the Customer shall allow the Company to attach reasonable signage of the Company's, to the Customer's site, to identify the Company providing any Services on behalf of the Customer; and  
(c) the supply of Products for accepted orders may be subject to availability and if, for any reason, Products are not or cease to be available, the Company reserves the right to substitute comparable Products (or components thereof) and vary the Price as per clause 6.2. In all such cases the Company will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order on hold until such time as the Company and the Customer agree to such changes.
- 6. Price and Payment**
- 6.1 At the Company's sole discretion, the Price shall be either:  
(a) as indicated on any invoice provided by the Company to the Customer; or  
(b) the Company's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days, thereafter a revised quotation may be required.
- 6.2 The Company reserves the right to change the Price:  
(a) in the event of a variation to the Company's quotation. Any variation from the plan of scheduled Services or specifications of the Products (including, but not limited to, any variation as a result of Extra Work required due to the discovery of hidden or unidentifiable difficulties which are only discovered upon delivery, such as any existing cabling which does not comply with New Zealand Standards and causes the new installation to be non-compliant, poor weather conditions, limitations to accessing the site, obscured site defects which require remedial work, health hazards and safety considerations, prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.), or  
(b) due to increases to the Company in the cost of materials and labour (including additional transportation, packing, freight, storage, handling, insurance, or government, statutory or regulatory charges that relate to the supply of the Products or Services, or fluctuations in currency exchange rates, shipping, brokerage, freight, insurance, taxes or duties) which are beyond the Company's control, will be detailed in writing and charged for on the basis of the Company's quotation and will be shown as variations on the invoice.
- 6.3 Variations will be charged for on the basis of the Company's quotation, and will be detailed in writing, and shown as variations on the Company's invoice. The Customer shall be required to respond to any variation submitted by the Company within ten (10) working days. Failure to do so will entitle the Company to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 The Customer may not initiate variations to the Services unless the following procedure is adhered to:  
(a) the Customer must submit a written request to the Company outlining the requested variation;  
(b) the Company must within five (5) working days of receiving the request, notify the Customer in writing advising of, any problems arising from the proposed change (including timing), an estimate of any additional costs arising from carrying out the change to the Services and any change to the Price. The Customer will have five (5) working days from receiving the Company's notice to accept or reject the changes;  
(c) if the Customer:  
(i) does not provide notice of the above within the required time frame or accepts the changes contained in the Company's notice then the exchange of notices will together amount to a variation in accordance with clause 6.2;  
(ii) if the Customer rejects the changes contained in the Company's notice, then the Company shall continue to carry-out the Services according to the original quoted statement of Services.
- 6.5 At the Company's sole discretion, a reasonable non-refundable deposit may be required for special orders.
- 6.6 Time for payment for the Products being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:  
(a) on completion of the Services; or  
(b) before delivery of the Products; or  
(c) by way of instalments/progress payments in accordance with the Company's payment schedule;  
(d) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;  
(e) the date specified on any invoice or other form as being the date for payment; or  
(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Company.
- 6.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Customer and the Company.

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- 6.8 The Company may in its discretion allocate any payment received from the Customer towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Company may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Company, payment will be deemed to be allocated in such manner as preserves the maximum value of the Company's Purchase Money Security Interest (as defined in the PPSA) in the Products.
- 6.9 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by the Company is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.9 prevents the Customer from the ability to dispute any invoice.
- 6.10 Where the Customer holds a trade credit account with the Company, the total Price for the Services is payable without setoff or deduction before the twentieth (20<sup>th</sup>) day of the month following date of invoice.
- 6.11 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other contract for the sale of the Products. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 7. Extra Work and/or Varied Services

- 7.1 The Company agrees that there will be no charge in the preparation of the initial quotation, which may include Customer discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned Services may be charged to the Customer additionally (at the Company's sole discretion). In the event the Customer requires proofs, mock-ups, layouts, samples, or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at the Company's Hourly Rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per clause 6.2.
- 7.2 The Company reserves the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of the Company's standard Hourly Rates (and double such rate for any Services provided outside the Company's normal business hours) and will be shown as variations on the invoice. The Customer shall be required to respond to any variation as per clause 6.3.

### 8. Provision of the Services

- 8.1 Subject to clause 8.2 it is the Company's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Company claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Company's control, including, but not limited to, any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for installation; or
  - (c) notify the Company that the site is ready.
- 8.3 Where the Company has provided software, the Company retains ownership of the software, but grants a licence to the Customer for use of the software. The Customer will use any software supplied by the Company strictly in terms of the licence under which it is supplied and shall not modify, change, or copy any such software. The Customer will use any third-party software supplied by the Company, and identified as such, strictly in terms of the licence under which it is supplied.
- 8.4 Delivery ("**Delivery**") of the Products is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Products at the Company's address; or
  - (b) the Company (or the Company's nominated carrier) delivers the Products to the Customer's nominated address even if the Customer is not present at the address.
- 8.5 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 8.6 The Company may deliver the Products in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.7 Any time specified by the Company for Delivery of the Products is an estimate only and the Company will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Products to be delivered at the time and place as was arranged between both parties.
- 8.8 The Customer shall provide clear and reasonable access to the site on the date of installation, as agreed between the parties. Delays to the Company's technical staff waiting for access and/or clearing of obstacles, or other Customer causes, may result in additional fees to be added to the Price.
- 8.9 Any telecommunications connection required for the installation and/or maintenance of the Products will be arranged and paid for by the Customer unless otherwise agreed in writing.

### 9. Customer's Warranties

- 9.1 The Customer:
- (a) shall provide, at the Customer's cost, mains power connection so as to enable installation and/or service work to be undertaken at the site. Any telecommunications connection required for the installation and/or maintenance of a security system will be arranged and paid for by the Customer unless otherwise agreed in writing;
  - (b) warrants that all information supplied to the Company in connection with the supply of Products is true and accurate, and acknowledges that the Company has relied on that information in supplying the Products;
  - (c) acknowledges that while the Company may have provided information to them about the performance of the Products generally, it has not made any representation or warranty concerning the performance of the Products or the suitability of the Products for the site;
  - (d) warrants that notwithstanding sub-clause (c), they have not relied upon any representation or warranty concerning the performance of the Products or the suitability of the site;

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- (e) warrants that any structures to which the Products are to be affixed are able to withstand the installation of the Products and that all electrical and plumbing infrastructure and installations at the site (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable (“**System**”)) are of suitable capacity to handle the Products once installed and complies with all laws, Acts, rules, regulations and codes and the requirements and directions of any relevant commonwealth, and Local Government departments and other bodies (“**Laws**”). If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), the Company reasonably forms the opinion that the site is not safe for the Services to proceed then the Company shall be entitled to delay the Services (in accordance with the provisions of clause 8.2 above) until the Company is satisfied that it is safe to proceed;
- (f) acknowledges that if the System is not compliant with all Laws, they may be required to repair or replace those parts of the System that are non-compliant at their own cost prior to Delivery.

### 10. Risk

- 10.1 Risk of damage to or loss of the Products passes to the Customer on Delivery and the Customer must insure the Products on or before Delivery.
- 10.2 If any of the Products are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by the Company is sufficient evidence of the Company’s rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 10.3 If the Customer requests the Company to leave Products outside the Company’s premises for collection or to deliver the Products to an unattended location then such Products shall be left at the Customer’s sole risk.
- 10.4 The Company acknowledges that the Company is only responsible for parts that are replaced by the Company, and in the event that other components/goods, subsequently fail, the Customer agrees to indemnify the Company against any loss or damage to the goods, or caused by the goods, or any part thereof howsoever arising.
- 10.5 The Company shall accept no responsibility for any damage which may arise during installation of the power points, switches, data ports in the event that any third party contractor employed by the Customer has removed any or all reference to the positioning thereof by either plastering or erecting GIB board over the designated area. The Customer accepts that the installation thereof will then be at the sole discretion of the Company, and if the Customer believes they have any claim in relation to the work undertaken by that third party then said claim must be made against the third party contractor in the first instance.
- 10.6 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify the Company immediately upon any proposed changes. The Customer agrees to indemnify the Company against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 10.7 The Company shall not be responsible for the removal of rubbish from, or clean-up of, the site, unless otherwise agreed in writing, and it is the responsibility of the Customer, or the Customer’s agent.
- 10.8 In the event that the Company discovers asbestos/hazardous materials whilst supplying the Services, the Company shall immediately advise the Customer of the same and shall be entitled to suspend the Services pending a risk assessment. The Customer shall be liable for all additional costs incurred by the Company (howsoever arising) as a result of the discovery of asbestos/hazardous materials and/or any suspension of the Services in relation thereto. Where the Company agrees to remove any asbestos/hazardous materials on the Customer’s behalf then the Customer shall be liable for all costs incurred by the Company in the removal and disposal those materials.
- 10.9 The Customer agrees to indemnify the Company from any damage caused by any other tradesmen during and after the completion of the Services. If the Customer instructs the Company to rectify any damage caused by any other tradesmen, this will be considered a variation to the Price as per clause 6.2 and will be charged at the Company’s normal hourly rate.
- 10.10 The Customer accepts that all Products and/or electronic security systems, smoke detectors, heat detectors and any similar devices installed at or attached at the site are:
  - (a) for monitoring and detection purposes only and should not be regarded as life saving devices; and
  - (b) do not guarantee that the site will be free from malicious damage or loss caused by attack and/or breaking or entering.
- 10.11 It shall be the Customer’s responsibility:
  - (a) to ensure the security system equipment is tested and maintained to full operational condition;
  - (b) for all phone calls emanating from the security system panel; and
  - (c) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.

### 11. Access and Damage

- 11.1 The Customer shall ensure that the Company has clear and free access to the site at all times to enable them to affect Delivery. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Company. The Customer agrees to ensure that the site shall at all times be a safe working environment and (without limitation) shall not contain asbestos or any other such similar hazard of any infections or building disease.
- 11.2 The Customer shall advise the Company in the event of any changed circumstances, or planned changes to the site which might affect the Company’s ability to affect Delivery in a safe manner.
- 11.3 The Company shall not be held responsible for any damage to dug up/cut cabling caused by outside agents. Where the Customer requests the Company to provide additional Services where such damage occurs, then the Company reserves the right to charge the Customer for any costs incurred in doing so.

### 12. Compliance with Laws

- 12.1 The Customer and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 12.2 Both parties acknowledge and agree:
  - (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Services; and
  - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.

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- 12.3 The Customer shall obtain (at the expense of the Customer) all permits, authorisations, licenses, consents and approvals that may be required for the Services.
- 12.4 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Company agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the site or where they may be acting as a sub-contractor for the Customer who has engaged a third party head contractor.
- 13. Underground Locations**
- 13.1 Prior to Delivery, the Customer must advise the Company of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- 13.2 Whilst the Company will take all care to avoid damage to any underground services the Customer agrees to indemnify the Company in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 13.1.
- 14. Title**
- 14.1 The Company and the Customer agree that ownership of the Products shall not pass until:
- (a) the Customer has paid the Company all amounts owing to the Company; and
  - (b) the Customer has met all of its other obligations to the Company.
- 14.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that until ownership of the Products passes to the Customer in accordance with clause 14.1:
- (a) the Customer is only a bailee of the Products and must return the Products to the Company on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Products on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Products being lost, damaged or destroyed;
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand;
  - (d) the Customer should not convert or process the Products or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs;
  - (e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Products are kept and recover possession of the Products;
  - (f) the Company may recover possession of any Products in transit whether or not Delivery has occurred;
  - (g) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of the Company; and
  - (h) the Company may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Customer.
- 15. Personal Property Securities Act 1999 ("PPSA")**
- 15.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Products that have previously been supplied and that will be supplied in the future by the Company to the Customer, and the proceeds from such Products as listed by the Company to the Customer in invoices rendered from time to time.
- 15.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products or the proceeds of such Products in favour of a third party without the prior written consent of the Company; and
  - (d) immediately advise the Company of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- 15.3 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.4 The Customer shall unconditionally ratify any actions taken by the Company under clauses 15.1 to 15.3.
- 15.5 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of the Company agreeing to supply the Products, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

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- 16.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 16.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

### 17. Defects and Returns

- 17.1 The Customer shall inspect the Products on Delivery and shall within three (3) days of Delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Products within a reasonable time following Delivery if the Customer believes the Products are defective in any way. If the Customer fails to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Products or repairing the Products.
- 17.2 Products will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) the Company has agreed in writing to accept the return of the Products; and
  - (b) the Products are returned at the Customer's cost within fourteen (14) days of the Delivery date; and
  - (c) the Company will not be liable for Products which have not been stored or used in a proper manner; and
  - (d) the Products are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.3 If the Company accepts that the Customer is entitled to reject the Products following their return pursuant to clause 17.2(b) the Company will reimburse the Customer's actual and reasonable costs of return Delivery.
- 17.4 The Company will not accept the return of Products for credit.
- 17.5 The Company may (in its discretion) accept the return of Products for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Products plus any freight.
- 17.6 Subject to clause 17.1, non-stocklist items or Products made to the Customer's specifications are not acceptable for credit or return.

### 18. Warranty

- 18.1 Subject to the conditions of warranty set out in clause 18.2 the Company warrants that if any defect in any workmanship provided by the Company becomes apparent and is reported to the Company within twelve (12) months of the date of Delivery (time being of the essence) then the Company will either (at the Company's sole discretion) replace or remedy the defect.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Products or serviced item; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Company or the manufacturer; or
    - (iii) any use of any Products or serviced item otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Products or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
    - (v) loss or damage caused by the Company altering the location of the Products due to structural, electrical, safety or other concerns as to the location; or
    - (vi) fair wear and tear, any accident, act of God or Force Majeure event.
  - (b) the warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled by a third party without the Company's consent.
  - (c) in respect of all claims the Company shall not be liable to compensate the Customer for any delay in either replacing or remedying the defective Products or Services or in properly assessing the Customer's claim.
- 18.3 For Products not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Products. The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products.

### 19. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

- 19.1 If the Customer is acquiring Products for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Products by the Company to the Customer.
- 19.2 The Company agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").

### 20. Intellectual Property

- 20.1 Where the Company has designed, drawn or developed Products for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Company. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Company.
- 20.2 The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.
- 20.3 The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Products which the Company has created for the Customer.

### 21. Default and Consequences of Default

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 21.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies the Company may have under this Contract, if a Customer has made payment to the Company, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Company under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 21.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by the Company;
  - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 22. Cancellation

- 22.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Products to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 22.2 If the Company, due to reasons beyond the Company's reasonable control, is unable to deliver any Products and/or Services to the Customer, the Company may cancel any Contract to which these terms and conditions apply or cancel Delivery of Products and/or Services at any time before the Products and/or Services are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Products and/or Services. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 The Customer may cancel Delivery of the Products and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Products and/or Services shall place the Customer in breach of this Contract.
- 22.4 Cancellation of orders for Products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 23. Dispute Resolution

- 23.1 Where a dispute arises between the parties, it will be referred to the Company and the Customer for resolution. The Company and the Customer agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the dispute resolution channel provided in this clause has been exhausted.
- 23.2 The dispute resolution process will be as follows:
- (a) a party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) business days of receipt of the Dispute Notice ("Negotiation Period"). Should the parties fail to determine the dispute within the Negotiation Period, the parties may seek within a further period of ten (10) business days (or such longer period as agreed in writing between the parties) to reach agreement on:
    - (i) a mediation procedure out of courts and arbitration proceedings, (such as mediation, reconciliation or expert determination process);
    - (ii) the steps to be taken by each party and the timing of those steps;
    - (iii) who will be the independent person/body conducting the mediation process and who will pay for such independent person's/ body's professional fees and expenses.
  - (b) if the parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) business days (or any other period agreed in writing) from the date of the Dispute Notice, either the Company or the Customer may commence court proceedings or arbitration proceedings to resolve the dispute.

### 24. Privacy Policy

- 24.1 All emails, documents, images or other recorded information held or used by the Company is "**Personal Information**" as defined and referred to in clause 24.3 and therefore considered confidential. The Company acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Company that may result in serious harm to the Customer, the Company will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to the Company in respect of Cookies where the Customer utilises the Company's website to make enquiries. The Company agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Company when the Company sends an email to the Customer, so the Company may collect and review that information ("collectively Personal Information").

If the Customer consents to the Company's use of Cookies on the Company's website and later wishes to withdraw that consent, the Customer may manage and control the Company's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

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- 24.3 The Customer authorises the Company or the Company's agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 24.4 Where the Customer is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 24.5 The Customer shall have the right to request (by e-mail) from the Company, a copy of the Personal Information about the Customer retained by the Company and the right to request that the Company correct any incorrect Personal Information.
- 24.6 The Company will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 24.7 The Customer can make a privacy complaint by contacting the Company via e-mail. The Company will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

### 25. Suspension of Services

- 25.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) the Company has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
    - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Company by a particular date; and
    - (iv) the Company has given written notice to the Customer of its intention to suspend the carrying out of work under the construction Contract.
  - (b) if the Company suspends work, it:
    - (i) is not in breach of Contract; and
    - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
    - (iii) is entitled to an extension of time to complete the Contract; and
    - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - (c) if the Company exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to the Company under the Contract and Commercial Law Act 2017; or
    - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Company suspending work under this provision;
  - (d) due to any act or omission by the Customer, the Customer effectively precludes the Company from continuing the Services or performing or complying with the Company's obligations under this Contract, then without prejudice to the Company's other rights and remedies, the Company may suspend the Services immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Company as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 25.2 If pursuant to any right conferred by this Contract, the Company suspends the Services and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, the Company shall be entitled to terminate the Contract, in accordance with clause 22.

### 26. Service of Notices

- 26.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 26.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 27. Trusts

- 27.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Company may have notice of the Trust, the Customer covenants with the Company as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;



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- (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust, the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not during the term of the Contract without consent in writing of the Company (the Company will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust fund or trust property.

### 28. General

- 28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 28.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Napier, New Zealand.
- 28.3 Subject to the CGA, the liability of the Company and the Customer under this Contract shall be limited to the Price.
- 28.4 The Company may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 28.5 The Customer cannot licence or assign without the written approval of the Company.
- 28.6 The Company may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Company's sub-contractors without the authority of the Company.
- 28.7 The Customer agrees that the Company may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Company to provide Products and/or Services to the Customer.
- 28.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make any payment due to the Company, following cessation of a Force Majeure.
- 28.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

## PART II – SERVICE, MAINTENANCE, MONITORING, PATROL, ALARM RESPONSE SERVICES

### 29. Fixed Term Agreements

- 29.1 The commencement date shall be on the date of commissioning. Fixed terms agreements shall be for the period ("initial term") as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least one (1) months required notice as defined in the agreement prior to the expiration date of the initial term or any additional term.
- 29.2 The Customer acknowledges and accepts that the Price stated will remain fixed for an initial period of twelve (12) months from the date of this agreement and will then be subject to revision on the basis of the movement in the Consumer Price Index (CPI).
- 29.3 Either Party may terminate the fixed term agreement for Services or any one or more schedules immediately by written notice being not less than thirty (30) days of their intent to terminate at any time after the initial agreement period (as specified in the Company's quotation, Monitoring or Maintenance Service Agreement) is ended.
- 29.4 Where the Customer wishes to terminate the fixed term agreement during the term stipulated, the Customer must pay to the Company the remaining fixed term fees which would otherwise have been payable to the Company during the fixed agreement term unless otherwise agreed.
- 29.5 The Customer shall pay an establishment fee on the commissioning date or no later than the twentieth (20th) day of the month following the date when commissioned.
- 29.6 No fees paid during this term shall be refundable unless the Company agrees the refund is reasonable under the circumstances.
- 29.7 The Company reserves the right to terminate the Services in any given month, by written notice either via email or text, for any outstanding accounts over sixty (60) days.

### 30. Additional Grounds for Termination

- 30.1 The company may terminate this agreement by notice in writing to the Customer (and such termination shall not give rise to claim by the Customer against the Company. The conditions of termination may include:
  - (a) at anytime the Company is unable to obtain or retain the necessary rights and privileges for the transmission of signals between the Customer's premises and the Company's monitoring base; and
  - (b) the Company's monitoring base or the cabling, wiring and equipment were destroyed by fire, earthquake, or other events (known as a natural occurrence) or are so damaged that it is impossible or impractical for the Company to provide the Services.

### 31. Provision of Patrol Services

- 31.1 The Customer acknowledges that:

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- (a) patrol services are shared with other customers. There may be occasions when individual patrols are late or missed due to the need to respond to high priority events such as break and enters. Other unforeseen circumstances such as storms or vehicle breakdown may also cause individual patrol calls not to be undertaken. This is taken into consideration when setting patrol pricing. Any on-going problems related to the Company's inability to complete agreed patrols for more than ten percent (10%) of the agreed contract will be notified to the Customer and adjustments will be negotiated to patrol services and/or credit/refunds given for the undelivered Services exceeding this percentage;
  - (b) any associated patrol services shall be charged additionally to the Customer.
- 31.2 The Customer will inform the Company if there are any changes to the site if these changes have the potential to restrict the provision of the patrol services or cause any harm to the patrol officers.

### 32. The Company's Responsibilities

- 32.1 The Company agrees to use due care and skill to provide the Services for alarm signals and/or other recurring services selected by the Customer.
- 32.2 The Company shall action alarm signals emanating from the alarm in accordance with the Customer's documented instructions and the Company's standard operating procedures.
- 32.3 Whilst the Company shall endeavour to provide a timely response to actionable alarm signals, no warranty is given by the Company that patrol response will be available at any time, if at all. The Company shall not be liable for any loss or damage the Customer may suffer in connection with any response or the absence of any alarm response.
- 32.4 Whilst the Company uses due care when contacting and advising emergency services, they cannot guarantee prompt response times or attendance of such services.
- 32.5 The Customer acknowledges that the Company will retain archived security log and recordings for a period of seven (7) years, after which this information will be destroyed unless otherwise requested by the Customer.
- 32.6 The Company warrants that they shall comply with all requirements to maintain New Zealand Security Association (NZSA) grading certifications, and where the Customer so requests, provide such evidence of the certification for the Customer to view. Such requirements include, but is not limited to:
- (a) telephone calls associated with alarm events shall only be validated and actioned by a licenced operator situated within the monitoring shell;
  - (b) no provision or facility to pick up or action alarms from outside the monitoring shell;
  - (c) where there is facility for remove 'placing on test' by on-Customer-premises, Customer or licenced technicians, all Customers have contractually agreed to this facility in writing; and
  - (d) all 'indicating and recording equipment' is contained within a monitoring centre of the same grade certified or higher and applies to both the building and operation components of the grading.

### 33. Customer's Responsibilities

- 33.1 Prior to commencement of the CCTV Services, the Customer must:
- (a) advise that the existing broadband has a fixed IP address;
  - (b) supply of correct username and passwords of the modem to be used;
  - (c) ensure the broadband modem is operational at the time of installation; and
  - (d) ensure the broadband modem is a suitable type and have the programming instructions readily available to permit "Port Forwarding" functions.
- 33.2 The Customer accepts and agrees that:
- (a) future faults with the Customer's modem are not covered under warranty;
  - (b) there may be additional data charges (charged by the Customer's telecommunication providers) for any data usage in setting up, testing and remote viewing the CCTV System, such charges are borne by the Customer;
  - (c) prior to the Company's attendance it is the Customers responsibility to ensure the upgrade their data plans (where applicable) for the Customer's mobile phones and internet to ensure that the Customer does not get overcharged for data usage; and
  - (d) any ongoing electrical power charges for running the CCTV equipment is additional to the Services provided.
- 33.3 The Customer shall:
- (a) immediately advise the Company, in writing, in the event of any changes to their contact details or alarm response requirements;
  - (b) at the Customer's own cost, maintain the alarm in good working order and in accordance with the manufacturer's requirements (including, but not limited to, recharging, or replacing batteries on a timely basis). The obligation of the Company to provide the Services and to action alarm signals, are conditional upon the alarm being operational, in accordance with the manufacturer's requirements, and to the satisfaction of the Company;
  - (c) supply at the Customer's expense keys, swipe cards, alarm codes, electronic access controls to the Site, to the Company to enable the Company to carry out alarm responses and/or patrols. The Company's liability for loss or damage of the Customer's keys, swipe cards, etc. is limited to the costs of obtaining a replacement.
- 33.4 In the event that the Customer does not claim their keys, swipe cards, alarm codes, electronic access controls within thirty (30) days of the termination or expiration of the Services, the Company shall be entitled to destroy them.
- 33.5 The Customer shall ensure that all voice codes, passwords, radio keys and other security devices are kept secure and provided only to those persons who reasonably require access to the site.
- 33.6 The Customer cannot transfer, or attempt to transfer, the right to receive the Services or any other right to any other party.
- 33.7 Upon termination of the Services, it is the Customer's responsibility to ensure that an alternative service is arranged, if required, and the panel is deprogrammed to stop reporting to the Company.
- 33.8 The Company will not be responsible for any communication costs post cancellation (including, but not limited to, telephone charges, etc.), and signals received after the termination of the Services will not be actioned by the Company.
- 33.9 The Customer agrees that any costs associated with the provision of services by the Police, Ambulance, Fire or other emergency services to the site shall be met by the Customer.

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### 34. Monitoring Services

- 34.1 The Services provided by the Company shall consist of the monitoring (including camera and video monitoring) of all signals that have been programmed into the Customer's system at the Company's monitoring station from the alarm system designated in the Customer Information Sheet which shall be supplied to the Customer.
- 34.2 Remote programming shall be made onto security devices by the Company's control room operators, technicians, or contractors on computer devices.
- 34.3 Remote arm and disarm shall be on the request of the Customer, technician, or guard.
- 34.4 The Company shall respond to such signals received in accordance with its normal operating practices and by making such telephone calls as may be required in accordance with the Customer's instructions. The Customer acknowledges that alarm responses are considered as Extra Work and charged at the Company's normal rates, subject to clause 34.11.
- 34.5 The Company shall endeavour to action the following alarm system signals generally as described below or as otherwise agreed or interpreted:
- (a) duress / panic – the Company shall call the site, as required by the police ("Police") first to verify the event. If deemed necessary, the Company shall contact and advise the Police;
  - (b) hold up – the Company shall notify the Police, and make a follow up call to the site after thirty (30) minutes (this clause assumes that the site comply with Police's protocols for hold up alarms);
  - (c) fire / smoke – the Company shall call the site to verify the event, if no answer the Company will advise Fire Department and contacts (the Company will dispatch a guard to the site if no contacts are available and keys are held);
  - (d) medical – the Company shall call the site to verify the event, if no answer the Company will advise Ambulance Service and contacts (the Company will dispatch a guard to the site if no contacts are available and keys are held); and
  - (e) system events – the Company shall contact the Customer and shall advise service department if necessary (this type of event is not necessarily actioned immediately).
- 34.6 In the event that the site is found to have been violated and the Customer is unable to be contacted by telephone, the Customer authorises the Company to arrange for a security guard to attend and remain at the site as an agent, if the Company considers it necessary, until the Customer is contacted, and the Company is given instructions. Alternatively, the Company is authorised to arrange temporary work to secure the site with the Customer agreeing to pay for such work as per clause 34.9.
- 34.7 The Customer shall be entitled to one (1) false alarm response per calendar year. The Company shall be entitled to charge the Customer for any response to any additional false alarms within that period.
- 34.8 The Customer acknowledges and accepts that, for various lawful reasons (including, security, training, and monitoring purposes), phone calls made to the Company may be recorded.
- 34.9 The Customer accepts and acknowledges that in the event the Company acts as an agent on behalf of the Customer with a third party, (including, but not limited to, locksmiths and/or glaziers) the Customer agrees to honour their obligation for payment for such transactions invoiced by the third party and shall ensure payment is made by the due date, thereby not limiting the Company in their obligations for payment as an agent acting on behalf of the Customer to third parties.
- 34.10 If the Customer believes that they have any claim in relation to Services undertaken by that third party, then said claim must be made against the third party contractor in the first instance.
- 34.11 The Customer acknowledges that independent contractors, where available, may provide patrol response. Accordingly, patrol response fees may vary from area to area and over time. The Customer agrees to pay or reimburse the Company for patrol response fees, which may include an administration fee. The Company shall advise the Customer of applicable patrol response fees upon request by the Customer.
- 34.12 The Company may be unable to monitor the system in the event of a communication failure between the alarm panel at the site and the monitoring centre, failures of this nature may be malicious or otherwise. The Customer acknowledges that the Company's obligation to action alarm events is suspended at any time the communications link is disrupted between the Site and the Company's monitoring room.
- 34.13 In the event the Customer wishes to cancel the Services, the Customer must provide the Company with one (1) months written notification, or in lieu of such, pay to the Company one (1) months charges which would have otherwise been payable to the Company for that period.
- 34.14 Where applicable, if the Customer does not have a body corporate for monitoring and billing purposes, the Company shall not be held responsible to notify the Customer. This remains the responsibility of the dealers or Customer's engaged operator for whom the Company is performing the Services, at all times.

### 35. Special Conditions for CCTV

- 35.1 The Company reserves the right to abandon the setup of "remote view" functions if unreasonable delays are caused by factors out of the Company's control such as modem compatibility, router issues, IT department delays, data plans, unknown passwords, etc.
- 35.2 The Company will give basic training to one (1) staff member on system operation for up to one (1) hour, providing this person is on site at the time that the installation Services concludes.
- 35.3 If any existing cameras, wiring, etc. are found to be faulty or inadequate, the Company will continue with the installation and omit those items from the system. At the end of the Services, the Company will be entitled to receive full payment for the job even if the Company have omitted faulty items from the system.
- 35.4 Existing equipment (if faulty) will not be repaired for free. The Company will however provide the Customer with another quote for rectifying any such equipment – if applicable.
- 35.5 Training and commissioning will not occur until final payment is made.
- 35.6 Using the equipment is relatively simple for most people but if further retraining sessions or additional technician visits are required for any other reason which is not covered by warranty such as for example, to retrieve footage or for making good anything excluded in these terms and conditions, there will be additional charges equal to our normal rates for providing that Service.
- 35.7 It is expected that the Customer will make every effort to allow the installation of this equipment to go as rapidly and smoothly as possible by giving fair and unimpeded access to the job area during normal business hours. Unreasonable delays caused by factors out of the Company's control may incur an additional charge to cover that time if such delays cause us additional costs to carry out the Services.
- 35.8 Cameras require periodic cleaning (by others) to ensure proper operation.

**36. Customer's Acknowledgements**

- 36.1 The Customer acknowledges that the provision of Services may not prevent unlawful entry to the site occurring, and accordingly the Customer accepts that loss or damage to property and death or injury to persons may occur even though the Company's obligations under this Contract have been satisfied.
- 36.2 Unless stated otherwise in this Contract the supply of performance records, history or other reports shall only be issued direct to the Customer.
- 36.3 The Customer accepts and acknowledges that the Company during the course of the Services and in accordance clause 28.8:
- (a) telephone conversations shall be recorded between the Company, and the Customer and the Customer hereby authorises the Company to implement this procedure;
  - (b) the Company's employees shall not be required to carry out any duties of an illegal or strike breaking nature; and
  - (c) the Company is not an insurer of the site, and it is advisable for the Customer to effect and maintain all normal and prudent insurance policies in respect of all usual risks including fire, burglary, theft and consequential loss or damage;
  - (d) that in the event of an outage, the Company shall not be held responsible for external connections of network-based devices (including, but not limited to, medical alarms, video devices, network-based alarm systems, routers and modem-based systems);
  - (e) the Company will not be responsible for any external issues arising should telephone communications be disrupted to the Company's receivers; and
  - (f) where GPRS mobile devices are being used for panic, medical and loan workers, the Customer accepts that these devices can only be monitored while the device is within network coverage. The Company will not be held responsible for any loss, damage, or claim, should the Customer be out of range in the event of an emergency.
- 36.4 The Customer acknowledges that signs and stickers remain the property of the Company and on termination of the agreement the Company has the right to remove them.

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