

**MONITORING SERVICES AGREEMENT – Customer**

Dated:

Between: \_\_\_\_\_ – the “Customer”

And: \_\_\_\_\_ – the “Contractor”

The Contractor as agent for Automatic Fire Alarm Monitoring Limited (a New Zealand Fire Service approved alarm monitoring service provider) agrees to provide alarm monitoring services for the Customer in the Customer’s building. The Customer agrees to provide facilities, access and information and maintain a monitored Fire Alarm System to NZFS standards. Details and conditions of this agreement are contained in the attached Terms and Conditions.

**SIGNED for and on behalf of the Customer**

\_\_\_\_\_

Name of above signatory: \_\_\_\_\_

Position: \_\_\_\_\_ Owner / Occupier / Representative

Dated: \_\_\_\_\_ 20.....

**SIGNED for and on behalf of the Contractor**

\_\_\_\_\_

Name of above signatory: \_\_\_\_\_

Position: \_\_\_\_\_

Dated: \_\_\_\_\_ 20.....

**TERMS AND CONDITIONS OF CONNECTION TO THE FIRE ALARM MONITORING SERVICE**

**1.0 DEFINITIONS: In this Agreement unless the context otherwise requires:**

- (a) “AFAM” means Automatic Fire Alarm Monitoring Limited.
- (b) “AFAM Monitoring System” means the combination of CTU, servers, software, and various communication links on which AFAM rely to monitor fire alarm systems and send messages to NZFS and other users.
- (c) “AFAM Connection Fee” means the fee payable to AFAM for the configuration of its CTU and Network to monitor the CTU.
- (d) “CPI” means the New Zealand consumer price index (All Groups) published quarterly by Statistics New Zealand or its successor (or, if that index ceases to be published or otherwise becomes unavailable, means such other index as most closely resembles the manner in which the consumer price index measures inflation or deflation in New Zealand, immediately prior to ceasing to be published or becoming unavailable. Should the CPI be rebased during the Term, the appropriate conversion shall be made to the relevant CPI levels to preserve the intended continuity of calculations for the purposes of this Agreement.
- (e) “CTU” means the alarm monitoring equipment installed by the Contractor in the Customer’s building and which monitors the Customer’s Fire Alarm System.

- (f) “Fire Alarm System” means the Fire Alarm sensing equipment in the Customer’s building (including alarm monitoring equipment and other equipment installed by the Contractor or third parties) which is connected to the NZFS through AFAM’s equipment.
- (g) “Effective Date” means the date on which the equipment is commissioned by the Contractor in the Customer’s building, as notified to the Customer by the Contractor.
- (h) “False Alarms” means alarm signals generated from the Customer’s building which are of an unknown nature or Customer error.
- (i) “Fees” means the alarm monitoring fees in Schedule 2 payable to Contractor by the Customer subject to variation pursuant to this agreement
- (j) “Fire Service” or “NZFS” means the New Zealand Fire Service.
- (k) “Force Majeure” means any event beyond the reasonable control of a Party claiming the benefit of a Force Majeure clause in this Agreement and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost.
- (l) “Incident” means a fire or “off-normal” signal from the Fire Alarm System and which AFAM has agreed to monitor.

## MONITORING SERVICES AGREEMENT – Customer

- (m) “Monitoring Service(s)” means the monitoring of the Fire Alarm System and provision of Response Actions.
- (n) “Network” means a principal data telecommunications network used by AFAM to communicate Signals from the alarm monitoring equipment at the Customer’s building and may include a cellular network, mobile radio network, GPS satellite network or otherwise as designated from time to time by AFAM.
- (o) “PSTN Line” means a functioning (analogue) phone line in the Customer’s building connected to the alarm monitoring equipment, to enable a line grabber or other equipment to operate in the event signals cannot be transmitted by the alarm monitoring equipment along the primary network.
- (p) “Response Action” means that upon receipt of an Incident signal AFAM shall send a message to the Contractor (or relevant service agent) by pager, SMS, or other agreed means, advising them of the Incident and in the event of a fire signal, automatically advise the NZFS.
- (q) “Term” means the period beginning on the date of this Agreement and continuing until the expiry of the Initial Term as specified in Schedule 2. The Term shall thereafter be renewed automatically for successive periods of twelve months unless either party gives not less than three months written notice of termination to the other party prior to the last day of the then existing term. Any reference to “Term” in this Agreement shall include any such renewed term.

### 2.0 The Contractor acting as agent for AFAM agrees to:

- (a) Install and connect a CTU (owned by AFAM) to the Fire Alarm System and initiate monitoring by AFAM.
- (b) Provide Monitoring Services during the Term (subject to the Customer’s compliance with the terms and conditions in this Agreement).
- (c) Provide Monitoring Services with the intention of these being continuous 24 hours per day every day. In the event of a failure to provide monitoring services, to notify the Customer of the cessation and resumption as soon as reasonably possible.
- (d) Keep a log of all reported Incidents and Response Actions for a period of up to 12 months.
- (e) Maintain its approval as a NZFS Automatic Fire Alarm Monitoring Service Provider.
- (f) In the event of failure of the AFAM Monitoring System (whereby a signal cannot be received and passed on to the NZFS), the Contractor AFAM shall inform the building owner of this condition and also when the system is reinstated. AFAM shall not be liable to the Customer if the AFAM Monitoring System ceases to function for any reason.

### 3.0 The Customer shall:

- (a) Provide a suitable environment in which to install the CTU at an appropriate place in the Customer’s building. This shall include sufficient mains power outlets, access to a PSTN telephone connection and appropriate cell-phone coverage, adequate lighting and air temperature control. If the Customer requires an alternative location elsewhere on the site/building then suitable data and telephone cabling shall be provided at the Customer’s expense.

- (b) Make available a PSTN Line suitable for connection by a line grabber at its cost. No other line grabbing equipment shall be installed on this line.
- (c) Maintain the Fire Alarm System in good working order to the appropriate NZ Standards (NZS 4512 and others as appropriate) and only engage the Contractor or other AFAM approved contractor to undertake maintenance work on the Fire Alarm System (at the cost of the Customer).
- (d) Implement changes to CTU at the cost of the Contractor to better enhance the quality of Monitoring Services and the administration of Monitoring Services.
- (e) Provide keys and access codes as stipulated in Schedule 1 and keep up-to date the “Premises Access Location Contact Data” in Schedule 1 on a prompt basis.
- (f) Supply the Contractor, AFAM, or NZFS with all information requested in investigating any False Alarms.
- (g) Take all reasonable steps to ensure that the AFAM CTU is kept secure from damage, theft, or access by un-authorised persons at all times, and is not exposed to damage of any kind, fair wear and tear excepted.
- (h) Give at least five business days prior notice of any work on the Customer’s building which could affect the Fire Alarm System equipment.
- (i) The Customer shall immediately notify the Contractor if there is a problem with the Fire Alarm System equipment.
- (j) Be liable to maintain power supply and replace any standby batteries in the CTU at its costs as part of its regular maintenance of its Fire Alarm System.
- (k) Permit the Contractor to have access to the Customer’s building for the purpose of inspecting (and maintaining) the Fire Alarm System and where applicable disconnecting and removing AFAM equipment from the building.
- (l) Promptly notify the Contractor of any change in ownership of the Customer’s building where a Fire Alarm System is installed.
- (m) Not interfere or allow any third person to interfere with the CTU.

### 4.0 Customer Acknowledges, Understands and Agrees that:

- (a) Any subsequent expenses associated with the provision of the Monitoring Services outlined in 2.0.c including any Contractor callout charges, NZFS callout charges or damages caused by NZFS, shall be to the account of the Customer.
- (b) The obligations under this agreement may be suspended due to a Force Majeure event and will only be required to be completed when reasonably practicable.
- (c) AFAM does not guarantee that connection of the Fire Alarm System to the AFAM Monitoring System will be continuous or fault free. Circumstances beyond the control of AFAM may cause the connection to be interrupted.
- (d) The CTU uses a line grabber as a back-up in the event of a primary communications-path failure. The line grabber is equipment that momentarily seizes a customer nominated PSTN line to send a signal to the AFAM Monitoring System. This may result in a call in progress being terminated or momentarily prevent other calls.
- (e) AFAM makes no warranties or representations with respect to Response Action performance or timing.

## MONITORING SERVICES AGREEMENT – Customer

- (f) Title to the AFAM equipment included in the Fire Alarm System at all times remains with AFAM and the Customer shall advise any purchaser or mortgagee of the building or other holder of security interests over the Customer's assets accordingly. AFAM may register a financing statement in respect of the AFAM equipment.
- (g) The Contractor is authorised to act as an agent for AFAM for the sole purpose of executing AFAM's standard form monitoring services agreements with customers on behalf of AFAM. In all other respects, the Contractor acts as an independent third party and has no right or authority to assume or create any obligations of any kind or to make any representations or warranties, whether express or implied for or on behalf of AFAM or to bind AFAM in any respect without the express written authority of AFAM.

### 5.0 Termination or Disconnection:

- (a) The Contractor, reserves the right to disconnect (or cause to be disconnected) the Fire Alarm System from the CTU following at least one months written notice of intention to do so, for:
  - (i) Non-payment of any fees or charges payable to the Contractor within one calendar month of the due date;
  - (ii) Repeated False Alarms;
  - (iii) Failure to take reasonable steps to comply with New Zealand Standards;
  - (iv) The Fire Alarm System adversely affecting the operation or security of the CTU or the monitoring of other Fire Alarm Systems by AFAM;
  - (v) Breach by the Customer of any terms or conditions of this Agreement; or
  - (vi) Termination of this agreement by either the Customer or the Contractor.
- (b) Automatic termination of this agreement will occur should AFAM fail to maintain its NZFS approval as a Monitoring Service Provider.
- (c) Upon disconnection the Customer shall permit the Contractor access to the property at all reasonable times for the sole purpose of disconnecting and retrieving the CTU.
- (d) The Customer shall continue to be responsible for any charges incurred between the time of notice of disconnection or termination of this Agreement is given and the actual disconnection of the Fire Alarm System.
- (e) The Customer shall pay the Contractor or AFAM the costs of disconnecting the Fire Alarm System.
- (f) The Customer will indemnify AFAM and its Contractor on demand in respect of any costs or liabilities incurred by AFAM in exercising its rights to retrieve the CTU pursuant to this clause 5 and neither AFAM or its Contractor shall be liable for any damages to the Customer's building as a consequence of AFAM recovering the CTU pursuant to this clause 5, or as a consequence of alarm signals ceasing to be transmitted.
- (g) If, in the reasonable opinion of AFAM, the CTU cannot be reasonably removed and remain in a workable and reusable condition on disconnection pursuant to this clause 5, or if the Customer requests that the CTU not be removed from the

Customer's building, then the Customer shall pay to AFAM the cost price of the CTU within 14 days of invoice for such cost by AFAM.

### 6.0 Fees & Costs

- (a) The Customer shall pay the Contractor Monitoring Service fees and the AFAM Connection Fee described in Schedule 2.
- (b) The Customer shall pay:
  - (i) the Monitoring Service fees three monthly in advance commencing upon the Effective Date.
  - (ii) The AFAM Connection Fee on invoice.
- (c) The fees listed in Schedule 2 may be increased by the Contractor as follows:
  - (i) Annually from the Effective Date in accordance with any proportionate increase in the CPI level from the CPI level as at the Effective Date.
  - (ii) Upon notification to the Customer of any increase in fees charged to AFAM by the NZFS in respect of the Customer's connection to the Fire Alarm System.
- (d) Where the Customer is a body corporate in terms of the Unit Titles Act 1972 the Customer agrees and acknowledges that it is liable to pay any charges levied by the Contractor or NZFS, for attending False Alarms at the Customer's building, whether or not that False Alarm occurred in the common property, or any particular unit of the Protected Premises.
- (e) The Customer shall pay the Contractor for all other charges and costs the Contractor is entitled to charge to the Customer under this agreement on invoice by the Contractor.
- (f) Customer agrees to indemnify the Contractor against all costs incurred in recovering any money the Customer owes under this agreement and for NZFS charges for False Alarms or for breach of the terms of this agreement by the Customer.

### 7.0 Limitation of Liability

- (a) While the Contractor and AFAM uses their best endeavours to provide full time Monitoring Services, they are not liable for any claims arising from the failure of any part of the AFAM Monitoring System, however those failures may occur.
- (b) Limited warranty: Subject to the provisions of this Agreement, the CTU will be replaced or repaired by the Contractor during normal working hours at no cost to the Customer for a period of 1 year from the date of this agreement. This obligation shall exclude damage to the CTU caused by:
  - (i) Any person other than a person authorised by the Contractor to repair or deal with the equipment;
  - (ii) The Customer or any third party; or
  - (iii) Power surges, lightening, blown fuses or any forces of nature outside of the Contractor's control;

And shall also exclude replacement of consumables including batteries.

- (c) The Contractor's and AFAM's total liability to the Customer or any person claiming through the Customer shall be limited to liability for breach of contract and shall be limited to a maximum amount equal to 12 months of the fees payable at the time.

## MONITORING SERVICES AGREEMENT – Customer

- (d) Neither AFAM nor the Contractor shall be liable for any delay, damage, loss or breach attributable to:
- (i) Force Majeure events
  - (ii) Any act or omission of the Customer
  - (iii) Disconnection pursuant to the terms of this agreement
  - (iv) Any requirement or action imposed by the NZFS
- (e) To the maximum extent permitted by law all warranties or terms implied by law are negated and shall not apply to this agreement. The Customer is acquiring the services under this Agreement for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of that Act do not apply to any service AFAM or the Contractor agree to supply under this Agreement.

### 8.0 Entire Agreement:

- (a) This Agreement and any valid amendments or variations thereto constitute the entire agreement between the parties concerning the Monitoring Services; this Agreement replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating concerning the Monitoring Services.

### 9.0 Amendment of Terms:

- (a) The Contractor may from time to time amend the terms of supply of this agreement. Twenty Eight days prior notice of any such amendments shall be given in writing.
- (b) Where the Customer objects to any of the amended terms, the Customer may within the said 28 days elect to terminate this Agreement by giving the Contractor AFAM 30 days' written notice of intention to terminate.
- (c) Upon receipt of a notice to terminate from the Customer, the Contractor may elect to:
- (i) Accept notice of termination; or
  - (ii) Elect to withdraw its notice of change of terms, in which event this Contract shall continue in accordance with the terms prior to such notice.

### 10.0 Assignment:

Neither this Agreement nor the rights and obligations of the Customer under this Agreement may be assigned or transferred to a third party without the prior written consent of the Contractor. The Contractor may assign and or subcontract part or all of its rights and obligations under this agreement.

### 11.0 Premises Access Location Contact Data: Prior to connection the Customer shall provide:

- (a) Names, email addresses and telephone/fax numbers of those individuals responsible for the Customer's building and its Fire Alarm System to allow contact to be made at any time by the NZFS, the Contractor, or AFAM.
- (b) Master keys or a duplicate set of keys (or equivalent, e.g. access cards or codes) allowing access to all parts of the Customer's building. The set of keys shall not exceed six and shall be delivered to the local NZFS station (or supplied to the Contractor for delivery if acceptable).
- (i) The Customer shall advise the NZFS (or via the Contractor if acceptable), of any changes to the security for which keys access cards or codes have been supplied and supply any further keys, access cards or codes as necessary.
  - (ii) Where access to the Customer's building is through part of a larger complex which does not have alarm monitoring, keys for those outer areas are required.
  - (iii) Where keys are not issued, AFAM, the Contractor or NZFS may effect entry as they consider appropriate in the circumstances requiring entry.
- (c) The Customer shall provide a plan of the Customer's building, to the Contractor for operational and alarm record purposes. This plan will show the extent of the Fire Alarm System coverage and shall be of a standard reasonably determined by AFAM.

### 12.0 Connection Data Required:

- (a) To enable Approval and Connection of the system for monitoring, the Customer shall provide data as required by the Contractor to complete a current Fire Alarm Connection Application form (AFAM Doc 12 – see web-site for current version). An example is shown in Schedule 1.