



## TERMS AND CONDITIONS OF SERVICE

### (SECURITY AND AUTOMATION SERVICES)

These Terms and Conditions of Service (“Terms and Conditions”) apply to security and automation services (the “Service”) provided by Planned Alert, Inc. (“Planned Alert”) on behalf of Empire Access Corporation (“Empire Access”) to the customer or its affiliates (“Customer”) named in the Service Contract into which these Terms and Conditions are incorporated.

1. The Premises. To allow Planned Alert to install the equipment being purchased and start providing service, Customer states that:

- it owns the premises or otherwise has the power to authorize Planned Alert to install the purchased equipment where it is being installed;
- the premises comply with all applicable codes, regulations and laws and will continue to do so during the Term (defined below);
- Customer will make the premises available without interruption during Planned Alert’s normal working hours and will maintain the premises in a safe and sanitary condition suitable for work to be performed by Planned Alert’s representatives without jeopardizing their health or safety;
- Customer will provide Planned Alert with 110 AC electrical outlets for power equipment in locations designated by Planned Alert;
- Customer will make arrangements for lifting and replacing carpeting, if required, for Planned Alert’s installation of floor mats or wiring;
- the installation will require drilling into various walls and other parts of the premises;
- Planned Alert may not be able to conceal any or all equipment or wiring; and
- Planned Alert is not responsible for property damage, personal injury, illness or other loss due to water intrusion, mold, fungi, wet or dry rot or bacteria that may result from the installation services.

2. Term. Unless the Service Contract states otherwise, the term of the Service commences when the required equipment is installed, operating, and communicating with Planned Alert’s customer monitoring center, and continues for the time period indicated in the Service Contract unless terminated early in accordance with these Terms and Conditions (the “Term”). At expiration, the Term will automatically renew for successive renewal terms of one (1) year each, unless either Planned Alert or Customer gives written notice to the other of its election not to renew the Term at least thirty (30) days before the expiration of the then-current Term.

3. Rates and Charges. The rates and charges for the Service are as set forth in the Service Contract. All rates and charges stated as a quote are subject to final approval by Planned Alert. Rates and charges may increase once per calendar year during the term. Planned Alert will invoice Customer monthly. All bills are due and payable upon receipt. If Customer does not pay the amount due within 30 days of the invoice date, Customer shall pay a late fee of 1.5% per month on the unpaid balance.



4. Taxes and Surcharges. In addition to the rates and charges for the Service, Customer shall pay all:

- local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Service (other than income taxes payable by Planned Alert, for which Planned Alert is responsible);
- surcharges in effect from time to time as required or permitted by applicable law, regulation or tariff and/or as specified on the Empire Access website;
- construction/alarm use permit fees;
- false alarm fines, fees or charges, whether directly or indirectly imposed;
- telephone or signal transmission company charges;
- other assessments, fees and charges relating to the monitoring system;
- service charges if Planned Alert responds to a service call or alarm at Customer's premises because Customer failed to follow operating instructions or properly lock and close a window, door or other protected point, or improperly adjusted CCTV cameras, monitors or accessories.

If Customer provides Planned Alert with a valid tax-exemption certificate, Planned Alert shall exempt Customer from the collection of taxes to the extent warranted by such certificate(s). No exemption will be available to Customer for any period prior to the date that the Customer presents a valid exemption certificate to Planned Alert.

5. Termination.

(a) Either party may terminate the Service upon written notice to the other party if (i) the other party dissolves or becomes insolvent or bankrupt, or (ii) any bankruptcy, reorganization, insolvency or similar proceeding is instituted by or against the other party and not dismissed within thirty (30) days, (iii) the other party makes an assignment for the benefit of creditors; (iv) the other party suspends the transaction of its usual business or consents to the appointment of a trustee or receiver; or (v) a trustee or receiver of the other party is appointed.

(b) Planned Alert may terminate the Service Contract and its provision of Service on written notice to Customer if Customer fails to timely pay amounts due or materially breaches any other obligation under the Contract Documents. In the event of termination under this section, Customer shall pay the amount due for termination liability in accordance with section 6 of these Terms and Conditions.

(c) Customer's breach of any other agreement with Planned Alert and its affiliates, including any payment obligation to Planned Alert, is a material breach of the Contract Documents and a basis on which Planned Alert may terminate the Service Contract under these Terms and Conditions. Likewise, Customer's breach of the Service Contract is a material breach by Customer of all other agreements it has entered into with Planned Alert and its affiliates and a basis on which Planned Alert and those affiliates may terminate any of those agreements under these Terms and Conditions. In the event of termination under this section, Customer shall pay the amount due for termination liability in accordance with section 6 of these Terms and Conditions.



(d) Customer may terminate the Service before expiration of the Term, but only by (a) providing Planned Alert with written notice to that effect at least thirty (30) days prior to the effective date of termination, and (b) paying to Planned Alert the amounts due for termination liability in accordance with section 6 of these Terms and Conditions.

6. Termination Liability. If the Service is terminated before expiration of the Term, then except as provided in the next sentence, Customer shall pay to Empire Access, immediately upon demand, termination liability in an amount equal to the sum of (a) all amounts then due and owing for the Service under the Service Contract, plus (b) an amount equal to the applicable monthly charges (as listed in the Service Contract) multiplied by the number of months left in the Term. Despite the preceding sentence, Customer will not be liable for termination liability in the case of non-renewal of the Term by Planned Alert or Customer in accordance with section 2 of these Terms and Conditions, in which case Customer shall pay all charges incurred prior to the effective date of expiration or non-renewal of the Service Contract.

7. Compliance with Laws. Each party shall comply with all applicable laws, regulations, court decisions and administrative rulings regarding the provision or use of the Service, and its failure to do will be a material breach of the Service Contract.

8. Warranty. THE QUALITY OF SERVICE PROVIDED HEREUNDER SHALL BE CONSISTENT WITH FIRE AND INTRUSION MONITORING INDUSTRY STANDARDS AND APPLICABLE GOVERNMENT REGULATIONS. PLANNED ALERT MAKES NO OTHER WARRANTIES ABOUT THE SERVICE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND CUSTOMER SHALL NOT RELY ON ANY STATEMENT TO THE CONTRARY BY ANY PERSON. THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE CONTRACT DOCUMENTS.

9. Limitations of Liability.

(a) *Service Provided by Planned Alert*. Planned Alert is solely responsible for providing the Service. Neither Empire Access nor any of its other affiliates will have any liability to Customer on account of the Service.

(b) *No insurance; waiver of subrogation*. Planned Alert is not an insurer and is not providing Customer with insurance of any type. The fees and charges paid by Customer under the Service Contract are based upon the value of the equipment and services provided by Planned Alert and the limited scope of Planned Alert's responsibilities and potential liabilities under the Service Contract. Customer shall purchase insurance as it deems appropriate, and in the event of any loss, damage or injury, will look exclusively to its insurer (if any) for compensation. Customer waives, for itself and its insurer, all claims of subrogation and recovery against Planned Alert arising out of the payment of any claim for loss, damage or injury.

*No guarantee; no liability*. Planned Alert's equipment and the Service neither cause nor eliminate the events they are designed to detect or avert, including (by way of example and not limitation) fires, floods, burglaries, robberies, and medical problems. PLANNED ALERT MAKES NO GUARANTY OR WARRANTY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THAT THE EQUIPMENT AND SERVICE PROVIDED WILL DETECT OR



AVERT SUCH EVENTS OR THEIR CONSEQUENCES. Planned Alert does not undertake any risk that Customer or its property, or the person or property of any third party, may be subject to injury or loss if such an event occurs. Customer shall bear the risk of such events, and waives, discharges, and promises not to sue or bring any claim of any type against Planned Alert for loss, damage or injury relating in any way to the equipment or Service provided by Planned Alert.

(d) IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES INCLUDING DAMAGES FOR LOSS, DAMAGE OR INJURY RELATING IN ANY MANNER FROM THE CONTRACT DOCUMENTS AND/OR THE PERFORMANCE OR NONPERFORMANCE THEREUNDER. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY TO PAY ALL CHARGES THAT COME DUE UNDER THE CONTRACT DOCUMENTS. THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE CONTRACT DOCUMENTS.

(e) PLANNED ALERT'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICE (INCLUDING THE MAINTENANCE, INSTALLATION, DELAY, TERMINATION, INTERRUPTION, OR RESTORATION OF ANY SUCH SERVICE) OR BREACH OF THE CONTRACT DOCUMENTS, WHETHER IN AN ACTION FOR OR ARISING OUT OF CONTRACT, TORT, INDEMNITY OR STRICT LIABILITY, IS LIMITED THE AMOUNT OF PROVEN DIRECT DAMAGES NOT TO EXCEED THE AMOUNT OF CHARGES APPLICABLE UNDER THE SERVICE CONTRACT DOCUMENTS FOR THE PERIOD DURING WHICH SERVICES WERE AFFECTED. IN NO EVENT SHALL PLANNED ALERT'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF THE CONTRACT DOCUMENTS EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO PLANNED ALERT THEREUNDER. THIS SECTION WILL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

(f) The provisions of this section 9 apply no matter how the loss, damage, injury or other consequences occurs, even if due to the performance or nonperformance by Planned Alert of its obligations under the Contract Documents or from negligence (active or otherwise), strict liability, violation of any applicable consumer protection law or any other theory of liability or alleged fault on the part of Planned Alert, its agents or employees.

(g) If any other person, including Customer's subrogating insurer, makes any claim or files any lawsuit against Planned Alert in any way related to the equipment or Service provided by Planned Alert, Customer shall indemnify, defend and hold Planned Alert harmless from any and all such claims and lawsuits, including the payment of all damages, expenses, costs and attorneys' fee. Customer's duty to defend is separate and distinct from its duty to indemnify and hold harmless and arises upon the assertion of a claim or demand against Planned Alert regardless of whether Planned Alert has been found liable or incurred any expense.

(h) Customer shall not bring any claim, suit or action against Planned Alert more than one year after the date of the incident that resulted in the loss, damage or injury, or the shortest duration permitted under applicable law if great than one year.



(i) The provisions of this Section 9 apply to and benefit Planned Alert and Empire Access, and their agents, employees, contractors and affiliates.

10. Force Majeure. Except with respect to Customer's payment obligations, notwithstanding any other provision of the Contract Documents, neither Planned Alert nor Customer shall be liable to the other party for any delay or failure in performance of the Service Contract to the extent such delay or failure is caused by fire, flood, explosion, accident, war, strike, embargo, government requirement, civil or military authority, Act of God, inability to secure materials or labor or any other causes beyond its reasonable control (each, a Force Majeure). Any such delay or failure shall suspend the Service Contract until the Force Majeure ceases.

11. Relationship of Parties. Neither the Service Contract nor the provision of Service shall be deemed to create any joint venture, partnership or agency between Planned Alert and Customer, which are independent contractors and shall not be deemed to have any other relationship by virtue of the Service Contract or the provision of Service. Neither Planned Alert nor Customer shall have, or hold itself out as having, the power or authority to bind or create liability for the other, intentionally, negligently or otherwise.

12. Notices. All notices or other communications under the Contract Documents shall be in writing and shall be given by personal delivery, by certified mail, return receipt requested, or by nationally recognized overnight courier (with signature for receipt), addressed Planned Alert in care of Empire Access at 34 Main Street, PO Box 349, Prattsburgh, NY 14873, or to Customer at the address set forth in the Service Contract, or to such other address as either party may later designate in writing. Notice shall be deemed given upon receipt.

13. Entire Agreement; Interpretation. The Contract Documents, including any Addendum attached thereto, represent the entire agreement of the parties with respect to their subject matter and supersede all other agreements or understandings, written or oral, between the parties relating to the Service. Planned Alert and Empire Access are bound by modifications to the Contract Documents only if in writing signed by authorized representatives of Empire Access. In case of any conflict between the provisions of these Terms and Conditions and any other document, the provisions of these Terms and Conditions shall take precedence unless otherwise indicated in a writing signed by both parties, except that specific information in a Service Contract shall prevail as to that Service with respect to price, Term, renewal terms, locations and availability and other Service-specific terms contained in the Service Contract. The Service Contract, and any amendment of the terms thereof, may be signed in counterparts, each of which (including fax or PDF versions) shall constitute an original and all of which together shall constitute one and the same instrument. As used in the Contract Documents, with respect to any matter or thing, "includes," "including" and other words of like import mean "including without limitation" such matter or thing.

14. Waiver. No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the party to which it is attributed. No consent by a party to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to or waiver of any subsequent breach or default.

15. Assignment. Customer may not assign its rights or delegate its duties under the Contract



Documents without the prior written consent of Planned Alert. A change of control event affecting Customer is deemed an assignment of the Contract Documents that requires the prior written consent of Planned Alert.

16. Governing Law. The Contract Documents will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws. The parties each hereby consent to personal jurisdiction in the state and federal courts in Steuben County, New York.

17. Partial Invalidity. If a tribunal having jurisdiction holds any provision of the Contract Documents to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render the Contract Documents unenforceable in their entirety, but instead the Contract Documents will be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of such agreement, the parties shall promptly engage in good faith negotiations to agree upon a substitute for such provision.

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Ver. 02/01/14