



Kenton County School District | It's about ALL kids.

Issue Paper

DATE:

10/27/2022

AGENDA ITEM (ACTION ITEM):

Consider/Approve the fire alarm and security monitoring agreements with Emergency Systems, LLC for all District buildings receiving their services for the period of one year with the option for month to month terms thereafter.

APPLICABLE BOARD POLICY:

Legal Status of the Board 01.1

HISTORY/BACKGROUND:

Emergency Systems, LLC is our current security monitoring company. They are requesting updated agreements for fire alarm and security monitoring services for all KCS D locations that are receiving their services.

FISCAL/BUDGETARY IMPACT:

None.

RECOMMENDATION:

Approve the fire alarm and security monitoring agreements with Emergency Systems, LLC for all District buildings receiving their services for the period of one year with an option for month to month service thereafter.

CONTACT PERSON:

Jennifer Weis-Smith

A handwritten signature in black ink, appearing to read "Jennifer Weis-Smith", written over a horizontal line.

Principal/Administrator

A handwritten signature in blue ink, appearing to read "David Lloyd", written over a horizontal line.

District Administrator

A handwritten signature in black ink, appearing to read "Superintendent", written over a horizontal line.

Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

EMERGENCY SYSTEMS, LLC.
7711 Ewing Boulevard, Suite 200
Florence, Kentucky 41042
(859) 525-8272

STANDARD FIRE ALARM AGREEMENT

Dated: _____

Subscriber's Name: _____ Telephone No.: _____

Property Address: _____

Billing Address: 1055 Eaton Dr. Ft. Wright, KY 41017 Email: _____

SALE AND INSTALLATION

EMERGENCY SYSTEMS, LLC. (hereinafter referred to as "ES" or "ALARM COMPANY") agrees to sell, install, and instruct Subscriber in the proper use of the Fire Alarm Equipment or System, at Subscriber's premises, and Subscriber agrees to buy, such system in accordance with this agreement, consisting of the following equipment: **See attached Schedule of Equipment and Services for included equipment, sale and installation charges.** Passcode to software remains the property of ES. Software programmed by ES is the intellectual property of ES and any unauthorized use of same, including derivative works, is strictly prohibited and may violate Federal Copyright Laws, Title 17 of the United States Code, and may subject violator to civil and criminal penalties. ES' signs and decals remain the property of ES and must be removed upon termination of this agreement.

() Check if Communication System, consisting of software, radio, cellular or communication connective devices, remains the property of ES.
The agreed value of the Communication System is \$1800.00.

() Check if Fire Alarm System to Code:
Fire alarm system is to be installed pursuant to filed plans and specifications filed by _____
filed with and approved by Authority Having Jurisdiction [AHJ].

() Check if system includes Area of Refuge two way communication system. If this service is included ES will install, pursuant to filed and approved plans and specification with the Building Department, AHJ requirements for a two-way communication system which shall have a timed automatic telephone dial-out capability to a monitoring location or 911. The two-way communication system shall include both audible and visible signals unless otherwise directed by the AHJ. All references to the fire alarm system in this agreement shall include the Area of Refuge system.

() Check if system includes In-Building Wireless Communications Systems for Emergency Responders, Signal Boosters and Bi-Directional Amplifiers (BDA), which systems require testing and service. See Schedule of Equipment and Services to determine if this service includes wireless system design, surveys, radio equipment installation, testing, coordination and permits with AHJ. All references to the fire alarm system in this agreement shall include the In-Building Wireless Communications Systems for Emergency Responders.

NOTICE: Unless a Fire Alarm System to Code is selected to be installed, ES makes no representation that the fire alarm detection equipment meets local code, fire department or any Authority Having Jurisdiction [AHJ] requirements, and it is not ES' responsibility to apply for any permits or fees in connection with such equipment. The law requires and ES recommends that Subscriber install a Fire Alarm System to code with plans and specifications filed with AHJ, properly permitted, inspected and approved by AHJ. Subscriber represents that existing fire alarm system is approved by AHJ and that any repairs or replacement parts installed by ES are not additional equipment which would require AHJ approval. ES may in its sole discretion notify AHJ if ES' services are to be terminated or have terminated or that the fire alarm system is not functioning and ES is unable to provide monitoring or the fire alarm system is otherwise non-compliant with applicable fire codes.

CHECK FOR APPROPRIATE SERVICES: Only services selected are included:

SERVICES AND RECURRING CHARGES: All charges are billed in advance and are plus tax, if applicable [select one option]:

Billing shall be: () Monthly (☒) Quarter Annually () Semi-Annually () Annually

1. MONITORING CHARGES:

_____ per month for the monitoring of the FIRE ALARM system for the term of this agreement

2. SERVICE CHARGES: (Select a or b)

☒ (a) Subscriber agrees to pay ES on a per call basis. If this agreement provides for service on a per call basis, Subscriber agrees to pay ES for all parts and labor at the time of service.

() (b) **REPAIR SERVICE PLAN:** Subscriber agrees to pay ES the sum of \$_____ per month, for the term of this agreement for labor and material to service the fire alarm system for damage caused by ordinary wear and tear. Batteries, electrical surges, lightning damage, water, insects, vermin, software upgrades and repairs, communication devices no longer supported by communication pathways, obsolete components and components exceeding manufacturer's useful life are not included in the Repair Service Plan and will be repaired or replaced at Subscriber's expense payable at time of service.

☒ **3. INSPECTIONS: SYSTEMS TO BE INSPECTED:** ☒ Fire Alarm () Area of Refuge () In-Building Wireless Communication. Subscriber agrees to pay ES the sum of \$_____ once per year for the term of this agreement for inspection service. If this option is selected, ES will make 1 inspection(s) of the fire alarm system per year. Any additional inspections required by Authority Having Jurisdiction (AHJ) will be charged at \$125.00 per hour which Subscriber agrees to pay. Unless otherwise noted in the Schedule of Equipment and Services inspection will be performed to meet the minimum requirements of the applicable code or AHJ. ES will notify Subscriber 3 days in advance of inspection date, and it is Subscriber's responsibility to reschedule or permit access. Testing at inspection tests only that accessible components are in proper working order at time of inspection unless otherwise reported to Subscriber at time of inspection. Inspection does not include repair. If sprinkler alarm or other device monitoring water flow is inspected, the inspection does not include inspection or testing of sufficiency of water supply, for which ES has no responsibility or liability.

() **4. MONITORING CENTER CERTIFICATE:** Subscriber agrees to pay ES the sum of \$_____ per month for the term of this agreement, for an Underwriters Laboratories Inc. (UL) Fire Alarm Certificate service. If this option is selected ES will issue a UL Certificate for the fire alarm system. Subscriber acknowledges that UL is a separate AHJ that may want to inspect the fire alarm system. UL or the Local AHJ can require changes to the fire alarm system to keep the Certificate in force. Subscriber agrees to pay ES for any inspections or required changes at ES' then prevailing rates.

() **5. RUNNER SERVICE:** Subscriber agrees to pay ES the sum of \$_____ per month for the term of this agreement, for UL Runner Response Service for up to _____ Runs per year. If this option is selected ES' Runner upon notification from Monitoring Center of any alarm, supervisory or trouble signals, to the best of ES' ability will respond to Subscriber's location within 1 hour for alarm and supervisory signals and 4 hours for trouble signals. Subscriber agrees to issue ES 2 sets of all keys necessary for ES to enter into all locked areas of Subscriber's location. Subscriber agrees to pay ES for any additional Runs at ES' then prevailing labor rate. Subscriber acknowledges that Runner Service is for response only and does not cover any work or repairs once ES is on site.

☒ **IN LIEU OF SEPARATE RECURRING CHARGES IN PARAGRAPHS 1-5 ABOVE, SUBSCRIBER SHALL PAY \$_____ PER MONTH WHICH INCLUDES ALL THE CHECKED SERVICES IN PARAGRAPHS 1-5.**

6. MONITORING SERVICES PROVIDED: Upon receipt of a fire alarm signal from Subscriber's fire alarm system, ES or its designee Monitoring Center shall make every reasonable effort to notify Subscriber and the appropriate municipal fire department and comply with AHJ dispatch procedures. Only Subscriber will be notified of fire trouble, fire supervisory or other off normal signals as soon as may be practical. Subscriber acknowledges that signals transmitted from Subscriber's premises directly to fire departments are not monitored by personnel of ES or its Monitoring Center and ES does not assume any responsibility for the manner in which such signals are monitored or the response, if any, to such signals. Subscriber acknowledges that signals which are transmitted over telephone lines, wire, air waves, internet, Managed Facilities Voice Networks, VOIP, or other modes of communication pass through communication networks wholly beyond the control of ES and are not maintained by ES except ES may own the radio network and ES shall not be responsible for any failure which prevents transmission signals or data from reaching the Monitoring Center or damages arising therefrom, or for data corruption, theft or viruses to Subscriber's computers if connected to the communication equipment. The fire alarm system and communication pathway may not function during a power failure or not maintain functionality for a 24 hour period as required by NFPA-72 for fire alarm systems and Subscriber is responsible for verifying operation of the communication pathway with the communications pathway provider. Subscriber agrees to furnish ES with a written Call List of names and telephone numbers of persons Subscriber wishes to receive notification of fire alarm signals. Unless otherwise provided in the Call List ES will make a reasonable effort to contact the first person reached or notified on the list either via telephone call, text or email message. No more than one call to the list shall be required and any form of notification provided for herein, including leaving a message on an answering machine, shall be deemed reasonable compliance with ES' notification obligation. All changes and revisions to the account information shall be supplied to ES in writing. Subscriber authorizes ES to access the control panel and/or communicator to input or delete data and programming. If Subscriber requests ES to reprogram system functions remotely, Subscriber shall pay ES \$120.00 for each such service, and any change in programming requires a full physical test of all fire alarm components pursuant to NFPA 72 and AHJ requirements which testing shall be at Subscriber's expense at ES' customary charges. ES may, without prior notice, suspend or terminate its services, in ES' sole discretion, in the event of civil unrest, rioting or natural disaster which renders monitoring or first responder response impractical, or in event of Subscriber's default in performance of this agreement or in event Monitoring Center's facility or communication network is nonoperational or Subscriber's system is sending excessive false alarms, without relieving Subscriber's obligation to make payments required in paragraphs 1-5. Upon suspension or termination of services ES will notify Subscriber of such termination and the balance owed by Subscriber for the term of this agreement. ES is authorized to notify Subscriber by email, First Class Mail delivered by the US Postal Service or text message to Subscriber's cell phone. Monitoring Center is authorized to record and maintain all data, voice and alarm communications and shall be the exclusive owner of such property. If AHJ requires a technician to be sent to Subscriber's premises after a fire alarm is dispatched, or if Runner service exceeds maximum Runs per year, Subscriber agrees to pay \$225.00 per call.

7. TERM OF AGREEMENT / RENEWALS: The term of this agreement shall be for a period of one year. This agreement shall renew month to month thereafter upon the same terms and conditions, unless either party gives written notice to the other by certified mail, return receipt requested, of their intention not to renew the agreement at least 30 days prior to the expiration of any term. Termination shall comply with local law. Unless otherwise specified herein, all recurring charges for 1-5 services shall commence on the first day of the month next succeeding the date hereof, all payments being due on the first day of the month.

8. INCREASES OF MONTHLY CHARGE: After the expiration of the two years from the date hereof ES shall be permitted from time to time to increase the monthly charges by an amount not to exceed nine percent per each year since date Agreement signed and Subscriber agrees to pay such increase as invoiced.

9. ALARM EQUIPMENT REMAINS PERSONAL PROPERTY: All equipment and material installed by ES shall remain Subscriber's personal property and shall not be considered or deemed a fixture, or an addition to, alteration, conversion, improvement, modernization, remodeling, repair or replacement of any part of the realty, and Subscriber shall not permit the attachment thereto of any apparatus not furnished by ES.

10. EQUIPMENT LIMITED WARRANTY: In the event that any part of the equipment becomes defective, ES agrees to make all repairs and replacement of parts without costs to the Subscriber for a period of ninety (90) days from the date of installation. ES reserves the option to either replace or repair the equipment, and reserves the right to substitute materials of equal quality at time of replacement, or to use reconditioned parts in fulfillment of this warranty. ES' warranty does not include damage caused by electric, plumbing or construction, nor damage by lightning, electrical surge, or misuse. ES is not the manufacturer of the equipment and other than ES' limited warranty Subscriber agrees to look exclusively to the manufacturer of the equipment for repairs under its warranty coverage if any. **Except as set forth in this agreement, ES makes no express warranties as to any matter whatsoever, including but not limited to, unless prohibited by law, the condition of the equipment, its merchantability, or its fitness for any particular purpose, and ES shall not be liable for consequential damages. ES does not represent nor warrant that the equipment may not be compromised or circumvented, or that the system will prevent any loss by fire, smoke or water or otherwise; or that the system will in all cases provide the protection for which it is installed. ES expressly disclaims any implied warranties, including implied warranties of merchantability or fitness for a particular purpose.** The warranty does not cover any damage to material or equipment caused by accident, misuse, attempted or unauthorized repair service, modification, or improper installation by anyone other than ES. ES shall not be liable for consequential damages. Subscriber acknowledges that any affirmation of fact or promise made by ES shall not be deemed to create an express warranty unless included in this agreement in writing; that Subscriber is not relying on ES' skill or judgment in selecting or furnishing a system suitable for any particular purpose and that there are no warranties which extend beyond those on the face of this agreement, and that ES has offered additional and more sophisticated equipment for an additional charge which Subscriber has declined. Subscriber's exclusive remedy for ES' breach of this agreement or negligence to any degree under this agreement is to require ES to repair or replace, at ES' option, any equipment which is non-operational. Some states do not allow the exclusion or limitation of consequential or incidental damages, or a limitation on the duration of implied warranties, so the above limitations or exclusions may not apply to you. The warranty gives you specific legal rights and you may also have other rights which may vary from state to state. Fire Alarms are required to be approved by AHJ and may require plans and specifications designed, signed and submitted by a licensed architect or professional engineer, which must be engaged by Subscriber. If ES is installing a Fire Alarm System to code installation must be approved by the AHJ. This Limited Warranty is independent of and in addition to repair service contracted under paragraph 2b of this agreement.

11. DELAY IN DELIVERY / INSTALLATION / RISK OF LOSS OF MATERIAL: ES shall not be liable for any damage or loss sustained by Subscriber as a result of delay in delivery and/or installation of equipment, equipment failure, or for interruption of service due to electric failure, strikes, walk-outs, war, acts of God, or other causes, including ES' negligence or failure to perform any obligation. The estimated date work is to be substantially completed is not a definite completion date and time is not of the essence. In the event the work is delayed through no fault of ES, ES shall have such additional time for performance as may be reasonably necessary under the circumstances. Subscriber agrees to pay ES the sum of \$1,000 per day for each business day the work is re-scheduled or delayed by Subscriber or others engaged by Subscriber through no fault of ES on less than 24 hour notice to ES. If installation is delayed for more than one year from date hereof through no fault of ES, Subscriber agrees to pay an additional 5% of the contract Purchase Price upon installation. Subscriber assumes all risk of loss of material once delivered to the job site. ES is authorized to make preparations such as drilling holes, driving nails, making attachments or doing any other thing necessary in ES' sole discretion for the installation and service of the equipment, and ES shall not be responsible for any condition created thereby as a result of such installation, service, or removal of the equipment, and Subscriber represents that the owner of the premises, if other than Subscriber, authorizes the installation of the equipment under the terms of this agreement. In the event installation of any equipment requires the shut off of any utility service or equipment, including but not limited to gas, electric, boiler, range, oven, gas fireplaces, gas supplied kitchen or household appliances, Subscriber shall be responsible to engage a licensed professional independent of ES to shut off the utility service or equipment. ES has no responsibility or liability for shutting down utility service or equipment. Subscriber agrees to have such service performed within 48 hours upon request by ES.

12. REPAIR SERVICE: The parties agree that the equipment, once installed, is in the exclusive possession and control of the Subscriber, and it is Subscriber's sole responsibility to notify ES if any equipment is in need of repair. ES shall not be required to service the equipment unless it has received notice from Subscriber, and upon such notice, ES shall, during the warranty period or if service has been contracted under paragraph 2b of this agreement, service the equipment to the best of its ability within 48 hours, exclusive of Saturday, Sunday and legal holidays, during the business hours of 9 a.m. and 5 p.m.

13. SUBSCRIBER'S DUTY TO SUPPLY ELECTRIC AND TELEPHONE SERVICE: Subscriber agrees to furnish, at Subscriber's expense, all 110 Volt AC power, electrical outlet, circuit breaker and dedicated electrical feed, internet connection, high speed broadband cable or DSL and IP Address, telephone hook-ups, RJ31x Block or equivalent, as deemed necessary by ES.

14. SUBSCRIBER RESPONSIBLE FOR FALSE ALARMS / PERMIT FEES / NON-SOLICITATION / ADDITIONAL COSTS / OTHER LICENSED TRADES / CO AND ECB VIOLATIONS / AND EXPERT WITNESS FEES: Subscriber is responsible for all alarm permits and permit fees, agrees to file for and maintain any permits required by applicable law and AHJ and indemnify or reimburse ES for any fees or fines relating to permits, code compliance or false alarms. ES shall have no liability for permit fees, false alarms, false alarm fines, fire response, any damage to personal or real property or personal injury caused by fire department response to alarm, whether false alarm or otherwise, or the refusal of the fire department to respond. In the event of termination of fire response by the fire department this agreement shall nevertheless remain in full force and Subscriber shall remain liable for all payments provided for herein. Should ES be required to perform any service or furnish or replace any equipment or material not specifically covered by the terms of this agreement, because of change in existing or hereafter enacted law, change in technology, obsolete or manufacturer's end of life equipment, Subscriber agrees to pay ES for such service or material. The pricing to be paid by Subscriber in this agreement is based on current pricing by ES' suppliers and vendors. In view of supply shortage and inflation Subscriber agrees to pay any increase for equipment or services to ES by ES' suppliers and vendors in connection with equipment and services to be provided by ES to Subscriber. ES will notify Subscriber of any such increase, and Subscriber shall have the option of paying the increase or selecting alternative equipment and services, if available, for the prices set forth in this agreement. Subscriber agrees that it will not solicit for employment for itself, or any other entity, or employ, in any capacity, any employee of ES assigned by ES to perform and who performs any service for or on behalf of Subscriber during the term of this agreement, any renewals thereof and for a period of 2 years thereafter. In the event of Subscriber's violation of this provision, in addition to injunctive relief, ES shall recover from Subscriber an amount equal to such employee's salary based on the average three months preceding employee's termination of employment with ES, times twelve, together with ES' counsel and expert witness fees. Subscriber is responsible for engaging licensed trades to perform any work which ES is not licensed to perform interconnecting the fire alarm to HVAC, elevators, appliances and other electronic and mechanical systems. It is Subscriber's responsibility to obtain a Certificate of Occupancy for the intended use of the premises affected by the fire alarm or obtain a Letter of No Objection from the AHJ if a Certificate of Occupancy is not available. It is Subscriber's sole responsibility to cure any building or

Environmental Control Board violations. In the event Subscriber or any third party subpoenas or summons ES requiring any services or appearances, Subscriber agrees to pay ES \$150 per hour for such services and appearances. Subscriber shall reimburse ES for any Monitoring Center charges for excessive signals.

15. Parties agree that there are no third-party beneficiaries of this agreement. Subscriber on its behalf and any insurance carrier waives any right of subrogation Subscriber's insurance carrier may otherwise have against ES or ES' subcontractors arising out of this agreement or the relation of the parties hereto. Subscriber shall not be permitted to assign this agreement without written consent of ES, which shall not unreasonably be withheld. ES shall have the right to assign this agreement to a company licensed to perform the services and shall be relieved of any obligations created herein upon such assignment.

16. EXCULPATORY CLAUSE: ES is not an insurer and no insurance coverage is offered herein. The fire alarm and ES' services are designed to detect and reduce certain risks of loss, though ES does not guarantee that no loss or damage will occur. ES is not assuming liability, and, therefore, Subscriber agrees ES, shall not be liable to Subscriber or any other third party, and Subscriber covenants not to sue ES, for any loss, economic or non-economic, business loss or interruption, consequential damages, in contract or tort, data corruption or inability to retrieve data, personal injury or property damage sustained by Subscriber or others as a result of equipment failure, human error, fire, smoke, water or any other cause whatsoever, regardless of whether or not such loss or damage was caused by or contributed to by ES' breach of contract, negligent performance to any degree in furtherance of this agreement, any extra contractual or legal duty, strict products liability, or negligent failure to perform any obligation pursuant to this agreement or any other legal duty, except for gross negligence and willful misconduct. Subscriber releases ES from any claims for contribution, indemnity or subrogation.

17. INSURANCE / ALLOCATION OF RISK: Subscriber shall maintain a policy of Comprehensive General Liability and Property Insurance for liability, casualty, fire, theft, and property damage under which Subscriber is named as insured and ES is named as additional insured, proof of which shall be provided to ES, and which shall on a primary and non-contributing basis cover any loss or damage ES' services are intended to detect to one hundred percent of the insurable value or potential risk. The parties intend that the Subscriber assume all potential risk and damage that may arise by reason of failure of the equipment or ES' services and that Subscriber will look to its own insurance carrier for any loss or assume the risk of loss. ES shall not be responsible for any portion of any loss or damage which is recovered or recoverable by Subscriber from insurance covering such loss or damage or for such loss or damage against which Subscriber is indemnified or insured. Subscriber and all those claiming rights under Subscriber waive all rights against ES and its subcontractors for loss or damages caused by perils intended to be detected by ES' services or covered by insurance to be obtained by Subscriber, except such rights as Subscriber or others may have to the proceeds of insurance.

18. LIMITATION OF LIABILITY: SUBSCRIBER AGREES THAT, EXCEPT FOR ES' GROSS NEGLIGENCE AND WILLFUL MISCONDUCT, SHOULD THERE ARISE ANY LIABILITY ON THE PART OF ES AS A RESULT OF ES' BREACH OF CONTRACT, NEGLIGENCE PERFORMANCE TO ANY DEGREE OR NEGLIGENCE FAILURE TO PERFORM ANY OF ES' OBLIGATIONS PURSUANT TO THIS AGREEMENT OR ANY OTHER LEGAL DUTY, EQUIPMENT FAILURE, HUMAN ERROR, OR STRICT PRODUCTS LIABILITY, WHETHER ECONOMIC OR NON-ECONOMIC, IN CONTRACT OR IN TORT, THAT ES' LIABILITY SHALL BE LIMITED TO THE SUM OF \$250.00 OR 6 TIMES THE MONTHLY PAYMENT FOR SERVICES BEING PROVIDED AT TIME OF LOSS, WHICHEVER IS GREATER. IF SUBSCRIBER WISHES TO INCREASE ES' AMOUNT OF LIMITATION OF LIABILITY, SUBSCRIBER MAY, AS A MATTER OF RIGHT, AT ANY TIME, BY ENTERING INTO A SUPPLEMENTAL AGREEMENT, OBTAIN A HIGHER LIMIT BY PAYING AN ANNUAL PAYMENT CONSONANT WITH ES' INCREASED LIABILITY. THIS SHALL NOT BE CONSTRUED AS INSURANCE COVERAGE AND NOTWITHSTANDING THE FOREGOING, ES' LIABILITY SHALL NOT EXCEED ITS AVAILABLE INSURANCE COVERAGE.

SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS EXCULPATORY CLAUSE, INDEMNITY, INSURANCE, AND ALLOCATION OF RISK AND LIMITATION OF LIABILITY PROVISIONS.

19. LEGAL ACTION / ARBITRATION / SECURITY INTEREST / BREACH / LIQUIDATED DAMAGES / AGREEMENT TO BINDING ARBITRATION: The parties agree that due to the nature of the services to be provided by ES, the payments to be made by the Subscriber for the term of this agreement form an integral part of ES' anticipated profits; that in the event of Subscriber's default it would be difficult if not impossible to fix ES' actual damages. Therefore, in the event Subscriber defaults in any payment or charges to be paid to ES, Subscriber shall be immediately liable for any unpaid installation and invoiced charges plus 80% of the balance of all payments for the entire term of this agreement as LIQUIDATED DAMAGES. Upon suspension or termination of services ES will notify Subscriber of such termination. ES is authorized to notify Subscriber by email, First Class Mail delivered by the US Postal Service or text message to Subscriber's cell phone.

SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS A LIQUIDATED DAMAGE CLAUSE.

Additionally, in the event ES retained ownership of the communication system and Subscriber breaches this agreement or this agreement expires for any reason, ES may, at its option, either remove its Communication System or deem same sold to Subscriber for 80% the amount specified as the Agreed Value of the communication system. ES may, without prior notice, suspend or terminate its services in event of Subscriber's default in performance of this agreement and shall be permitted to terminate all its services under this agreement and deactivate the System without relieving Subscriber of any obligation herein and may notify AHJ of termination. In order to secure all indebtedness or liability of Subscriber to ES, Subscriber hereby grants ES a security interest in all of Subscriber's equipment, inventory and proceeds thereof, accounts receivables and cash on hand and ES may execute and file UCC-1 statement. SUBSCRIBER MAY BRING CLAIMS AGAINST ES ONLY IN SUBSCRIBER'S INDIVIDUAL CAPACITY, AND NOT AS A CLASS ACTION PLAINTIFF OR CLASS ACTION MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. ANY DISPUTE BETWEEN THE PARTIES OR ARISING OUT OF THIS AGREEMENT, INCLUDING ISSUES OF ARBITRABILITY, SHALL, AT THE OPTION OF ANY PARTY, BE DETERMINED BY BINDING AND FINAL ARBITRATION BEFORE A SINGLE ARBITRATOR ADMINISTERED BY ARBITRATION SERVICES INC., ITS SUCCESSORS OR ASSIGNS, PURSUANT TO ITS ARBITRATION RULES AT WWW.ARBITRATIONSERVICESINC.COM AND THE FEDERAL ARBITRATION ACT (FAA), EXCEPT THAT NO PUNITIVE OR CONSEQUENTIAL DAMAGES MAY BE AWARDED. The arbitrator shall be bound by the terms of this agreement, and shall on request of a party, conduct proceedings by telephone, video or submission of papers. A party requesting in-person discovery, in-person hearing or a transcript of the discovery proceeding or hearing, shall pay for the cost of such transcript and arbitrator fees charged in connection with the discovery request and in-person hearing, which may be allocated among the parties by the arbitrator in the final award. By agreeing to this arbitration provision the parties waive their right to a trial before a judge or jury, waive their right to appeal the arbitration award and waive their right to participate in a class action. In the event of any litigation between the parties they waive the right to a jury trial unless prohibited by law. Service of process or papers in any legal proceeding or arbitration between the parties may be made by First-Class Mail delivered by the U.S. Postal Service addressed to the party's address designated in this agreement, on file with an agency of the state, or any other address provided by the party in writing to the party making service. The parties submit to the jurisdiction and laws of Kenton County Kentucky, except for arbitration which is governed by the FAA and the arbitration rules. The parties are engaged in interstate commerce and the FAA and arbitration rules shall govern, notwithstanding any state law to the contrary. Any action or arbitration between the parties must be commenced within one year of the accrual of the cause of action or shall be barred. The prevailing party in any litigation or arbitration is entitled to recover its legal fees, costs and disbursements so that the party is made whole from the other party. In the event a party commences a proceeding to confirm an arbitration award, the prevailing party shall be entitled to attorney fees, costs and disbursements for such proceeding. All actions, arbitration or proceedings by either party must be based on the provisions of this agreement and any other action that Subscriber may have or bring against ES in respect to other services rendered in connection with this agreement shall be deemed to have merged in and be restricted to the terms and conditions of this agreement.

SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE DISPUTES AND THAT ARBITRATION IS BINDING AND FINAL AND THAT SUBSCRIBER IS WAIVING SUBSCRIBER'S RIGHT TO TRIAL IN A COURT OF LAW AND OTHER RIGHTS.

20. ES' RIGHT TO SUBCONTRACT SPECIAL SERVICES: Subscriber agrees that ES is authorized and permitted to subcontract any services to be provided by ES to third parties who may be independent of ES, and that ES shall not be liable for any loss or damage sustained by Subscriber by reason of fire or any other cause whatsoever caused by the negligence of third parties and that Subscriber appoints ES to act as Subscriber's agent with respect to such third parties, except that ES shall not obligate Subscriber to make any payments to such third parties. Subscriber acknowledges that this agreement, and particularly those paragraphs relating to ES' disclaimer of warranties, exemption from liability, even for its negligence, limitation of liability and indemnification, inure to the benefit of and are applicable to any assignees, subcontractors, manufacturers, vendors and Monitoring Center of ES.

21. MOLD, OBSTACLES AND HAZARDOUS CONDITIONS / FIRE STOP BREACH: Subscriber shall notify ES in writing of any undisclosed, concealed or hidden conditions in any area where installation is planned, and Subscriber shall be responsible for removal of such conditions. In the event ES discovers the presence of suspected asbestos or other hazardous material ES shall stop all work immediately and notify Subscriber. It shall be Subscriber's sole obligation to remove such conditions from the premises, and if the work is delayed due to the discovery of suspected asbestos or other hazardous material or conditions then an extension of time to perform the work shall be allowed and Subscriber agrees to compensate ES for any additional expenses caused by the delay but not less than \$1000.00 per day until work can resume. If ES, in its sole discretion, determines that continuing the work poses a risk to ES or its employees or agents, ES may elect to terminate this agreement on 3-day notice to Subscriber and Subscriber shall compensate ES for all services rendered and material provided to date of termination. ES shall be entitled to remove all its equipment and uninstalled equipment and material from the job site. Under no circumstances shall ES be liable to Subscriber for any damage caused by mold or hazardous conditions or remediation thereof. ES shall have no liability for any breach of fire stops or for inspection or certification of integrity of fire stops in the premises.

22. FULL AGREEMENT / SEVERABILITY: This agreement along with the Schedule of Equipment and Services constitutes the full understanding of the parties and may not be amended, modified or canceled, except in writing signed by both parties. Subscriber acknowledges and represents that Subscriber has not relied on any representation, assertion, guarantee, warranty, collateral agreement or other assurance, except those set forth in this Agreement. Subscriber hereby waives all rights and remedies, at law or in equity, arising, or which may arise, as the result of Subscriber's reliance on such representation, assertion, guarantee, warranty, collateral agreement or other assurance. To the extent this agreement is inconsistent with any other document or agreement, whether executed prior to, concurrently with or subsequent to this agreement the terms of this agreement shall govern. Should any provision of this agreement be deemed void, the remaining parts shall be enforceable.

SUBSCRIBER ACKNOWLEDGES RECEIVING A FULLY EXECUTED COPY OF THIS AGREEMENT AND SCHEDULE OF EQUIPMENT AND SERVICES AT TIME OF EXECUTION. READ THEM BEFORE YOU SIGN THIS AGREEMENT.

EMERGENCY SYSTEMS, LLC.:

SUBSCRIBER:

By: _____
Duly Authorized Representative

Name Must Be Printed – Use Full Business Name

Subscriber: Signature by Authorized Officer

Print Name

Tax ID or EIN

Address

The undersigned personally guarantees Subscriber's performance of this agreement and agrees to be bound by all terms as a party herein:

Signature (Name must be printed below)

Social Security Number

Residence Address

Print Name

EMERGENCY SYSTEMS, LLC.
7711 Ewing Boulevard, Suite 200
Florence, Kentucky 41042
(859) 525-8272

STANDARD COMMERCIAL SECURITY AGREEMENT

Date: _____

Subscriber's Name: _____

Telephone No.: _____

Address: _____

Cell Phone No.: _____

1. EMERGENCY SYSTEMS, LLC. (hereinafter referred to as "ES" or "ALARM COMPANY") agrees to sell, install, and program, at Subscriber's premises, and Subscriber agrees to buy an electronic security system consisting of the equipment and services described in the **attached Schedule of Equipment and Services**.

Purchase Price: \$ _____

Approximate date work to begin _____

Taxes: \$ _____

Estimated date work to be substantially completed _____

Total: \$ _____

Down Payment: \$ _____

Balance due upon completion of installation: \$ _____

2. DESCRIPTION OF EQUIPMENT AND SERVICES:

Check Services Provided:

- ☐ Monitoring Center Services ☐ Repair Service ☐ Inspection ☐ Remote Subscriber Access ☐ Cameras ☐ Access Control
☐ Access Control Administration ☐ Alarm Signal Verification ☐ Guard Response ☐ Self-Monitoring ☐ Cyber Security: Compliant Encryption
☐ Thermal Imaging Device ☐ Other: (See Attached Schedule of Equipment and Services.)

3. **PASSCODE TO CPU SOFTWARE REMAINS PROPERTY OF ES / TITLE TO EQUIPMENT:** Provided Subscriber performs this agreement for the full term, upon termination ES shall at its option provide to Subscriber the passcode to the CPU software or change the passcode to the manufacturer's default code. Software programmed by ES is the intellectual property of ES and any unauthorized use of same, including derivative works, is strictly prohibited and may violate Federal Copyright Laws, Title 17 of the United States Code, and may subject violator to civil and criminal penalties. Upon installation the Equipment shall be deemed Subscriber's personal property and shall not be considered a fixture, or an addition to, alteration, conversion, improvement, modernization, remodeling, repair or replacement of any part of the realty, and Subscriber shall not permit the attachment thereto of any apparatus not furnished by ES. ES's signs and decals remain the property of ES and must be removed upon termination of this agreement.

4. CHECK BOX FOR APPROPRIATE SERVICES: Only services selected are included:

SERVICES AND RECURRING CHARGES: All charges are billed in advance and are plus tax, if applicable [select one option]:

Billing shall be: ☐ Monthly ☐ Quarter Annually ☐ Semi-Annually ☐ Annually

(a) MONITORING CENTER CHARGES: Subscriber agrees to pay ES:

☐ (i) The sum of \$ _____, payable in advance for the installation and programming of the communication software and communication devices if separate from the alarm panel if not already installed.

☐ (ii) The sum of \$ _____ per month for the monitoring of the Security System for the term of this agreement.

(b) SERVICE (Select i or ii)

☐ (i) Subscriber agrees to pay ES on a per call basis. If this agreement provides for service on a per call basis, Subscriber agrees to pay ES for all parts and labor at time of service. Subscriber is not obligated to call ES for per call service and ES is under no duty to provide service except its warranty service during warranty period. Service by anyone other than ES during warranty period relieves ES of any further obligations under the Limited Warranty.

Subscriber to initial for per call service option: _____

☐ (ii) Subscriber agrees to pay ES for a Repair Service Plan for the security equipment the sum of \$ _____ per month for the term of this agreement.

☐ **(c) INSPECTION AND TESTING:** Subscriber agrees to pay ES \$ _____ per month for the term of this agreement for inspection service. If this option is selected ES will make _____ inspection(s) per year. Unless otherwise noted in the Schedule of Equipment and Services inspection service includes testing of all accessible components to insure proper working order. If the system is UL Certified, the inspection will comply with UL requirements. ES will notify Subscriber 3 days in advance of inspection date. It is Subscriber's responsibility to reschedule or permit access. Testing at inspection tests only that components are in proper working order at time of inspection unless otherwise reported to Subscriber at time of inspection. Inspection does not include repair. If sprinkler alarm or other device monitoring water flow is inspected the inspection does not include inspection or testing of sufficiency of water supply, for which ES has no responsibility or liability.

☐ **(d) ALARM SIGNAL VERIFICATION:** Subscriber agrees to pay ES the sum of \$ _____ per month for the term of this agreement. If Subscriber selects Alarm Signal Verification as a service to be provided, or if Alarm Signal Verification is required by law, ES or its designated Monitoring Center shall verify the alarm signal by electronic telephone communication, video verification or such other verification system deemed appropriate by ES or as required by local law and only verified alarm conditions shall be communicated to police or fire department.

☐ **(e) REMOTE SUBSCRIBER ACCESS / VIDEO STREAMING DATA [VSD] / CAMERAS / AUDIO / SELF-MONITORING:** Subscriber agrees to pay ES the sum of \$ _____ per month for the term of this agreement. Select remote access / video / audio services to be provided:

- ☐ Access Control ☐ Recording Device ☐ Monitoring Center Remote Video / Audio Monitoring for Live Streaming
☐ Video Clips Monitored Upon Alarm Activation Only ☐ Verification Recorded Video Clips ☐ Cloud Service Data Storage and Retrieval
☐ Remote Access By Subscriber ☐ Video Data to Subscriber's Smart Phone ☐ Self-Monitoring ☐ Audio ☐ Other (describe): _____

☐ (f) **ACCESS CONTROL ADMINISTRATION SERVICES:** Subscriber agrees to pay ES the sum of \$_____ per month for the term of this agreement. Select Access Control Administration services to be provided:

☐ Remote Access Administration ☐ On-Site Administration ☐ Data Storage ☐ Data Backup

☐ (g) **GUARD RESPONSE:** Subscriber agrees to pay ES the sum of \$_____ per month for the term of this agreement plus \$_____ plus tax payable per guard response in excess of _____ responses per month.

☐ (h) **SELF-MONITORING:** Subscriber agrees to pay ES the sum of \$_____ per month for the term of this agreement, for self-monitoring services. Self-Monitoring is provided by third party vendors who facilitate signals and data from Subscriber's alarm system to Subscriber's Internet or Cellular connected device. Unless Subscriber has selected Monitoring Center Services, signals from Subscriber's security system will not be monitored by and no signals will be received by any professional Monitoring Center.

☐ (i) **CYBER SECURITY: COMPLIANT ENCRYPTION:** Subscriber agrees to pay ES the sum of \$_____ per month for the term of this agreement for cyber security encryption services as specified in the Schedule of Equipment and Services. Cyber security compliance and conformance programs include guidelines in Underwriters Laboratory (UL), 2090 Cybersecurity Assurance Program or the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF). Encryption services are currently available for installation, inspection and monitoring of Camera and Access Control equipment which meets Advanced Encryption Standard specifications for encryption of electronic data established by the US National Institute of Standards and Technology [NIST], UL or any other established criteria for encryption.

☐ **IN LIEU OF SEPARATE RECURRING CHARGES IN PARAGRAPHS 4(a)-(i) ABOVE, SUBSCRIBER SHALL PAY \$_____ PER MONTH WHICH INCLUDES ALL THE CHECKED SERVICES IN PARAGRAPHS 4(a)-(i).**

5. TERM OF AGREEMENT / RENEWAL: The term of this agreement shall be for a period of one year and shall automatically renew month to month thereafter under the same terms and conditions, unless either party gives written notice to the other of their intention not to renew the agreement at least 30 days prior to the expiration of any term. After the expiration of one year from the date hereof ES shall be permitted from time to time to increase all charges by an amount not to exceed nine percent each year from date of signed agreement and Subscriber agrees to pay such increase. ES may invoice Subscriber in advance monthly, quarterly, or annually at ES's option. Unless otherwise specified herein, all recurring charges for 4(a)-(i) services shall commence on the first day of the month next succeeding the date hereof, all payments being due on the first day of the month. JS 10/20/22

6. MONITORING CENTER SERVICES: Upon receipt of an alarm signal, video or audio transmission, from Subscriber's security system, ES or its designee Monitoring Center shall make every reasonable effort to notify Subscriber and the appropriate municipal police or fire department [First Responders] depending upon the type of signal received. Not all signals or transmissions will require notification to the authorities and Subscriber may obtain a written response policy from ES. No response shall be required for supervisory, loss of communication pathway, trouble or low battery signals. Subscriber acknowledges that signals transmitted from Subscriber's premises directly to municipal police or fire departments are not monitored by personnel of ES or ES's designee Monitoring Center and ES does not assume any responsibility for the manner in which such signals are monitored or the response, if any, to such signals. Subscriber acknowledges that signals and transmissions are transmitted over telephone lines, wire, air waves, internet, VOIP, radio or cellular, or other modes of communication, and pass through communication networks wholly beyond the control of ES and are not maintained by ES except ES may own the radio network, and ES shall not be responsible for any failure which prevents transmission signals from reaching the Monitoring Center or damages arising therefrom, or for data corruption, theft or viruses to Subscriber's computers if connected to the alarm communication equipment. Subscriber agrees to furnish ES with a written Call List of names and telephone numbers of those persons Subscriber wishes to receive notification of alarm signals. Unless otherwise provided in the Call List, ES will make a reasonable effort to contact the first person reached or notified on the list either via telephone call, text or email message. No more than one call to the list shall be required and any form of notification provided for herein, including leaving a message on an answering machine, shall be deemed reasonable compliance with ES's notification obligation. All changes and revisions shall be supplied to ES in writing. Subscriber authorizes ES to access the control panel to input or delete data and programming. If the equipment contains video or listening devices permitting Monitoring Center to monitor video or sound then upon receipt of an alarm signal, Monitoring Center shall monitor video or sound for so long as Monitoring Center, in its sole discretion, deems appropriate to confirm an alarm or emergency condition. If Subscriber requests ES to remotely activate or deactivate the system, change combinations, openings or closings, or re-program system functions, Subscriber shall pay ES \$90.00 for each such service. ES may, without prior notice, suspend or terminate its services, in ES's sole discretion, in the event of civil unrest, rioting or natural disaster which renders monitoring or first responder response impractical, or in event of Subscriber's default in performance of this agreement or in event Monitoring Center facility or communication network is nonoperational or Subscriber's alarm system is sending excessive false alarms or runaway signals. Monitoring Center is authorized to record and maintain audio and video transmissions, data and communications, and shall be the exclusive owner of such property. All Subscriber information and data shall be maintained confidentially by ES.

7. REPAIR SERVICE: Repair service pursuant to paragraph 4(b)(ii), includes all parts and labor, and ES shall service upon Subscriber's request the security system installed in Subscriber's premises between the hours of 9 a.m. and 5 p.m. Monday through Friday, within reasonable time after receiving notice from Subscriber that service is required, exclusive of Saturdays, Sundays and legal holidays. All repairs, replacement or alteration of the security system made by reason of alteration to Subscriber's premises, or caused by unauthorized intrusion, water, insects, vermin, lightning or electrical surge, or caused by any means other than normal usage, wear and tear, shall be made at the cost of the Subscriber. Batteries, electrical surges, lightning damage, software upgrades and repairs, communication devices no longer supported by communication pathways, obsolete components and components exceeding manufacturer's useful life are not included in service and will be repaired or replaced at Subscriber's expense payable at time of service. No apparatus or device shall be attached to or connected with the security system as originally installed without ES's written consent.

8. SUBSCRIBER REMOTE ACCESS: If Remote Access is included in the Schedule of Equipment and Services to be installed and services provided by ES, the equipment will transmit data via Subscriber's high speed Internet, cellular or radio communication service from remote device supplied by ES or Subscriber's Internet or wireless connection device which is compatible with ES's remote services. ES will grant access to server permitting Subscriber to monitor the security system, access the system to arm, disarm and bypass zones on the system, view the remote video camera(s) and control other remote automation devices that may be installed or, when system design permits, connect the system to the Internet, over which ES has no control. The remote services server is provided either by ES or a third party. ES shall install the camera(s) in a permissible legal location in Subscriber's premises to permit Subscriber viewing. ES shall have no responsibility for failure of data transmission, corruption or unauthorized access by hacking or otherwise and shall not monitor or view the camera data. Electronic data may not be encrypted and wireless components of the alarm system may not meet Advanced Encryption Standard specifications for encryption of electronic data established by the US National Institute of Standards and Technology [NIST] or any other established criteria for encryption and ES shall have no liability for access to the alarm system by others.

9. WIRELESS AND INTERNET ACCESS CAPABILITIES: Subscriber is responsible for supplying high-speed Internet access and/or wireless services at Subscriber's premises. ES does not provide Internet service, maintain Internet connection, wireless access or communication pathways, computer, smart phone, electric current connection or supply, or in all cases the remote video server. In consideration of Subscriber making its monthly payments for remote access to the system, ES will authorize Subscriber access. ES is not responsible for Subscriber's access to the Internet or any interruption of service or down time of remote access caused by loss of Internet service, radio or cellular or any other mode of communication used by Subscriber to access the system. Subscriber acknowledges that Subscriber's security system can be compromised if the codes or devices used for access are lost or accessed by others and ES shall have no liability for such third party unauthorized access. ES is not responsible for the security or privacy of any wireless network system or router. Wireless systems can be accessed by others, and it is the Subscriber's responsibility to secure access to the system with pass codes and lock out codes. ES is not responsible for access to wireless networks or devices that may not be supported by communication carriers and upgrades to Subscriber's system will be at Subscriber's expense. If Subscriber is Self-Monitoring, no signals will be received unless Subscriber has access to the selected mode of communication pathway such as cellular, radio or Internet service.

10. ACCESS CONTROL SYSTEM OPERATION AND LIMITATIONS / ACCESS CONTROL ADMINISTRATION: If Access Control is selected as a service to be provided and included in the Schedule of Equipment and Services, Access Control equipment shall be connected to a computer supplied by the Subscriber and connected to Subscriber's computer network. If data storage or backup is a selected service ES or its designee shall store and/or backup data received from Subscriber's system for a period of one year. ES shall have no liability for data corruption or inability to retrieve data even if caused by ES's negligence. Subscriber's data shall be maintained confidential and shall be retrieved and released only to Subscriber or upon Subscriber's authorization or by legal process. Internet access is not provided by ES and ES has no responsibility for such access or IP address service. ES shall have no liability for unauthorized access to the system through the Internet or other communication networks or data corruption or loss for any reason whatsoever. If Access Control Administration is selected as a service to be provided ES will maintain the data base for the operation of the Access Control System. Subscriber will advise ES of all change in personnel and/or changes in access levels of authorization and restrictions, providing access card serial numbers or biometric data and such information that Subscriber deems necessary to identify personnel. All communication by Subscriber to ES regarding personnel access must be in writing via email or fax to addresses designated by ES. ES shall have remote Internet access to the Subscriber's designated access control computer to program and make data base updates to the system. Subscriber is responsible for maintaining its computer and computer network and Internet access.

11. a. AUDIO / VIDEO SYSTEM OPERATION AND LIMITATIONS: If Audio / Video System is selected as a service to be provided and included in the Schedule of Equipment and Services, and if video equipment is attached to a recorder, it shall not be used for any other purpose. ES shall be permitted to access and make changes to the system's operation on site and over the internet. If data storage is selected service, ES shall store data received from Subscriber's system for one year. ES shall have no liability for data corruption or inability to retrieve data even if caused by ES's negligence. Subscriber's data shall be maintained confidential and shall be retrieved and released only to Subscriber or upon Subscriber's authorization or by legal process. Telephone or internet access is not provided by ES and ES has no responsibility for such access or IP address service. If system has remote access ES is not responsible for the security or privacy of any wireless network system or router, and it is the Subscriber's responsibility to secure access to the system with pass codes and lock outs. ES shall have no liability for unauthorized access to the system through the internet or other communication networks or data corruption or loss for any reason whatsoever. If audio or video devices are installed, Subscriber has been advised to independently ascertain that the audio or video devices are used lawfully. ES has made no representations and has provided no advice regarding the use of audio or video devices, and it is Subscriber's sole responsibility to use the camera and audio devices lawfully.

b. THERMAL IMAGING DEVICES: Thermal imaging technology is intended for initial body temperature assessment for triage use; the device is intended to be used for adjunctive diagnostic screening only, and elevated body temperature must be confirmed with another evaluation method. Subscriber requests installation of this equipment and understands the equipment is not manufactured by ES and may not be cleared through the FDA 510(k) process. The parties agree that this equipment is not intended as a medical grade device for the diagnosis, treatment, cure or prevention of disease or medical condition, of any illness, and does not create an undue risk in light of the public health emergency. **Any measurement produced by the device should not be solely or primarily relied upon to diagnose or exclude a diagnosis of COVID-19, or any other disease.**

12. GUARD RESPONSE: If guard response is specified as a service to be provided, upon receipt of an alarm signal, ES or its subcontractor shall as soon as may be practical send one or more of its guards to the Subscriber's premises. Unless the guard determines that the alarm is a false alarm and that no situation requiring police or fire department services exist, the guard shall notify the Monitoring Center or police or fire department directly that an emergency situation exists and wait up to 15 minutes for the municipal police or fire department personnel or Subscriber to arrive at the premises and if permitted by the police shall assist in making a search of the premises to determine the cause of the alarm condition. If provided with keys to the premises the guard shall endeavor to secure the premises and repair the security equipment. However, Subscriber acknowledges that the guard is not required to enter the premises or to render any service to the security equipment and shall not be required to remain stationed at Subscriber's premises for more than 15 minutes after initial arrival. Subscriber authorizes the guard to take such action the guard deems necessary to secure the premises and reset the alarm, though Subscriber acknowledges that the guard may not be able to or may not have sufficient time to secure the premises or reset the alarm and put same in working order. If Subscriber requests ES to station its guard at the premises for more than 30 minutes, and ES has sufficient personnel to provide such service, and ES makes no such representation that its personnel will be available, then Subscriber agrees to pay ES \$95.00 per half hour plus tax for such service. Subscriber agrees to confirm the request to ES to provide extended guard service by email, text or recorded conversation to ES at the time request is made and ES is authorized to ignore any request not confirmed within 15 minutes.

LIMITED WARRANTY ON SALE

13. In the event that any part of the security equipment becomes defective, ES agrees to make all repairs and replacement of parts without costs to the Subscriber for a period of ninety (90) days from the date of installation. ES reserves the option to either replace or repair the alarm equipment, and reserves the right to substitute materials of equal quality at time of replacement or to use reconditioned parts in fulfillment of this warranty. This warranty does not include batteries, electrical surges, lightning damage, software upgrades and repairs, communication devices that are no longer supported by communication pathways, obsolete components, and components exceeding manufacturer's useful life. ES is not the manufacturer of the equipment and other than ES's limited warranty Subscriber agrees to look exclusively to the manufacturer of the equipment for repairs under its warranty coverage if any. **Except as set forth in this agreement, ES makes no express warranties as to any matter whatsoever, including, without limitation to, unless prohibited by law, the condition of the equipment, its merchantability, or its fitness for any particular purpose and ES shall not be liable for consequential damages.** No equipment provided by ES is represented to be medical grade, FDA approved, or intended for use by a healthcare professional or healthcare facility or to diagnose, treat, cure or prevent a disease or medical condition unless explicitly stated in the Schedule of Equipment and Services and no equipment or services are intended to diagnose, treat, cure, prevent, mitigate or minimize the likelihood of communicable disease, infectious agent, bacteria, virus or any illness. ES does not represent nor warrant that the security system may not be compromised or circumvented, or that the system will prevent any loss by burglary, hold-up, or otherwise; or that the system will in all cases provide the protection for which it is installed. **ES expressly disclaims any implied warranties, including implied warranties of merchantability or fitness for a particular purpose.** The warranty does not cover any damage to material or equipment caused by accident, misuse, attempted or unauthorized repair service, modification, or improper installation by anyone other than ES. Subscriber acknowledges that any affirmation of fact or promise made by ES shall not be deemed to create an express warranty unless included in this agreement in writing; that Subscriber is not relying on ES's skill or judgment in selecting or furnishing a system suitable for any particular purpose and that there are no warranties which extend beyond those on the face of this agreement, and that ES has offered additional and more sophisticated equipment for an additional charge which Subscriber has declined. Subscriber's exclusive remedy for ES's breach of this agreement or negligence to any degree under this agreement is to require ES to repair or replace, at ES's option, any equipment which is non-operational. This Limited Warranty is independent of and in addition to service contracted under paragraph 4(b)(ii) of this agreement. This Limited Warranty gives you specific legal rights and you may also have other rights which vary from state to state. If required by law, ES will procure all permits required by local law and will provide a Certificate of Workman's Compensation prior to starting work.

GENERAL PROVISIONS

14. DELAY IN DELIVERY / INSTALLATION / RISK OF LOSS OF MATERIAL: ES shall not be liable for any damage or loss sustained by Subscriber as a result of delay in delivery and/or installation of equipment, equipment failure, or for interruption of service due to electric failure, strikes, walk-outs, war, acts of God, or other causes, including ES's negligence or failure to perform any obligation. The estimated date work is to be substantially completed is not a definite completion date and time is not of the essence. In the event the work is delayed through no fault of ES, ES shall have such additional time for performance as may be reasonably necessary under the circumstances. Subscriber agrees to pay ES the sum of \$1,000 per day for each business day the work is re-scheduled or delayed by Subscriber or others engaged by Subscriber through no fault of ES on less than 24 hour notice to ES. If installation is delayed for more than one year from date hereof by Subscriber or other contractors engaged by Subscriber and through no fault of ES, Subscriber agrees to pay an additional 5% of the contract Purchase Price upon installation. Subscriber assumes all risk of loss of material once delivered to the job site. Should ES be required by existing or hereafter enacted law to perform any service or furnish any material not specifically covered by the terms of this agreement Subscriber agrees to pay ES for such service or material.

15. TESTING OF SECURITY SYSTEM: The parties hereto agree that the security equipment, once installed, is in the exclusive possession and control of the Subscriber, and it is Subscriber's sole responsibility to test the operation of the security equipment and to notify ES if any equipment is in need of repair. Service, if provided, is pursuant to paragraphs 4 and 7. ES shall not be required to service the security equipment unless it has received notice from Subscriber, and upon such notice, ES shall, during the warranty or repair service plan period, service the security equipment to the best of its ability within 36 hours, exclusive of Saturday, Sunday and legal holidays, during the business hours of 9 a.m. and 5 p.m. Subscriber agrees to test and inspect the security equipment and to advise ES of any defect, error or omission in the security equipment. In the event Subscriber complies with the terms of this agreement and ES fails to repair the security equipment within 36 hours after notice is given, excluding Saturdays, Sundays, and legal holidays, Subscriber agrees to send notice that the security equipment is in need of repair to ES, in writing, by certified or registered mail, return receipt requested, and Subscriber shall not be responsible for payments due while the security equipment remains inoperable. In any lawsuit between the parties in which the condition or operation of the security equipment is in issue, the Subscriber shall be precluded from raising the issue that the security equipment was not operating unless the Subscriber can produce a post office certified or registered receipt signed by ES, evidencing that warranty service was requested by Subscriber.

16. CARE AND SERVICE OF SECURITY SYSTEM: Subscriber agrees not to tamper with, remove or otherwise interfere with the Security System which shall remain in the same location as installed. All repairs, replacement or alteration of the security system made by reason of alteration to Subscriber's premises, or caused by unauthorized intrusion, lightning or electrical surge, or caused by any means other than normal usage, wear and tear, shall be made at the cost of the Subscriber. Batteries, electrical surges, lightning damage, software upgrades and repairs, communication devices that are no longer supported by communication pathways, obsolete components and components exceeding manufacturer's useful life, are not included in warranty or service under paragraph 4(b) (ii) and will be repaired or replaced at Subscriber's expense payable at time of service. No apparatus or device shall be attached to or connected with the security system as originally installed without ES's written consent.

17. ALTERATION OF PREMISES FOR INSTALLATION: ES is authorized to make preparations such as drilling holes, driving nails, making attachments or doing any other thing necessary in ES's sole discretion for the installation and service of the security system, and ES shall not be responsible for any condition created thereby as a result of such installation, service, or removal of the security system, and Subscriber represents that the owner of the premises, if other than Subscriber, authorizes the installation of the security system under the terms of this agreement.

18. SUBSCRIBER'S DUTY TO SUPPLY ELECTRIC AND TELEPHONE SERVICE: Subscriber agrees to furnish, at Subscriber's expense, all 110 Volt AC power, electrical outlet, ARC Type circuit breaker and dedicated receptacle, Internet connection, high-speed broadband cable or DSL and IP Address, telephone hook-ups, RJ31x Block or equivalent, as deemed necessary by ES.

19. LIEN LAW: ES or any subcontractor engaged by ES to perform the work or furnish material who is not paid may have a claim against purchaser or the owner of the premises if other than the purchaser which may be enforced against the property in accordance with the applicable lien laws.

20. INDEMNITY / WAIVER OF SUBROGATION RIGHTS / ASSIGNMENTS: ~~Subscriber agrees to defend, advance expenses for litigation and arbitration, including investigation, legal and expert witness fees, indemnify and hold harmless ES, its employees, agents and subcontractors, from and against all claims, lawsuits, including those brought by third parties or by Subscriber, including reasonable attorneys' fees and losses, asserted against and alleged to be caused by ES's performance, negligence or failure to perform any obligation under or in furtherance of this agreement or failure to detect, mitigate or respond to any communicable disease, infectious agent, bacteria or virus. Parties agree that there are no third-party beneficiaries of this agreement. Subscriber on its behalf and any insurance carrier waives any right of subrogation Subscriber's insurance carrier may otherwise have against ES or ES's subcontractors arising out of this agreement or the relation of the parties hereto. Subscriber shall not be permitted to assign this agreement without written consent of ES, which shall not unreasonably be withheld. ES shall have the right to assign this agreement to a company licensed to perform the services and shall be relieved of any obligations herein upon such assignment.~~

21. EXCULPATORY CLAUSE: ES and Subscriber agree that ES is not an insurer and no insurance coverage is offered herein. The equipment and ES's services are designed to detect and reduce certain risks of loss, though ES does not guarantee that no loss or damage will occur. No equipment provided by ES is represented to be medical grade, FDA approved, or intended for use by a healthcare professional or healthcare facility or to diagnose, treat, cure or prevent disease or medical condition unless explicitly stated in the Schedule of Equipment and Services and no equipment or services are intended to diagnose, treat, cure, prevent, mitigate or minimize the likelihood of communicable disease, infectious agent, bacteria, virus or illness. ES is not assuming liability, and, therefore, Subscriber agrees ES, shall not be liable to Subscriber or any other third party, and Subscriber covenants not to sue ES, for any loss, economic or non-economic, business loss or interruption, consequential damages, in contract or tort, data corruption or inability to retrieve data, personal injury, health condition or property damage sustained by Subscriber or others as a result of equipment failure, human error, burglary, theft, hold-up, fire, smoke, water, any communicable disease, infectious agent, bacteria, virus, illness or any other cause whatsoever, regardless of whether or not such loss or damage was caused by or contributed to by ES's breach of contract, negligent performance to any degree in furtherance of this agreement, any extra contractual or legal duty, strict products liability, or negligent failure to perform any obligation pursuant to this agreement or any other legal duty, except for gross negligence and willful misconduct.

22. INSURANCE / ALLOCATION OF RISK: Subscriber shall maintain a policy of Comprehensive General Liability and Property Insurance for liability, casualty, fire, theft, and property damage under which Subscriber is named as insured and ES is named as additional insured and which shall on a primary and non-contributing basis cover any loss or damage ES's services are intended to detect to one hundred percent of the insurable value or potential risk. The parties intend that the Subscriber assume all potential risk and damage that may arise by reason of failure of the equipment, or ES's services and that Subscriber will look to its own insurance carrier for any loss or assume the risk of loss. ES shall not be responsible for any portion of any loss or damage which is recovered or recoverable by Subscriber from insurance covering such loss or damage or for such loss or damage against which Subscriber is indemnified or insured. Subscriber and all those claiming rights under Subscriber waive all rights against ES and its subcontractors for loss or damages caused by perils intended to be detected by ES's services or covered by insurance to be obtained by Subscriber, except such rights as Subscriber or others may have to the proceeds of insurance.

23. LIMITATION OF LIABILITY: SUBSCRIBER AGREES THAT, EXCEPT FOR ES'S GROSS NEGLIGENCE AND WILLFUL MISCONDUCT, SHOULD THERE ARISE ANY LIABILITY ON THE PART OF ES AS A RESULT OF ES'S BREACH OF THIS CONTRACT, NEGLIGENT PERFORMANCE TO ANY DEGREE OR NEGLIGENT FAILURE TO PERFORM ANY OF ES'S OBLIGATIONS PURSUANT TO THIS AGREEMENT OR ANY OTHER LEGAL DUTY, EQUIPMENT FAILURE, HUMAN ERROR, OR STRICT PRODUCTS LIABILITY, WHETHER ECONOMIC OR NON-ECONOMIC, IN CONTRACT OR IN TORT, THAT ES'S LIABILITY SHALL BE LIMITED TO THE SUM OF \$250.00 OR 6 TIMES THE MONTHLY PAYMENT FOR SERVICES BEING PROVIDED AT TIME OF LOSS, WHICHEVER IS GREATER. IF SUBSCRIBER WISHES TO INCREASE ES'S AMOUNT OF LIMITATION OF LIABILITY, SUBSCRIBER MAY, AS A MATTER OF RIGHT, AT ANY TIME, BY ENTERING INTO A SUPPLEMENTAL AGREEMENT, OBTAIN A HIGHER LIMIT BY PAYING AN ANNUAL PAYMENT CONSONANT WITH ES'S INCREASED LIABILITY. THIS SHALL NOT BE CONSTRUED AS INSURANCE COVERAGE AND NOTWITHSTANDING THE FOREGOING ES'S LIABILITY SHALL NOT EXCEED ITS AVAILABLE INSURANCE COVERAGE.

SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS EXCULPATORY CLAUSE, INDEMNITY, INSURANCE, AND ALLOCATION OF RISK AND LIMITATION OF LIABILITY PROVISIONS.

24. LEGAL ACTION / BREACH / LIQUIDATED DAMAGES / AGREEMENT TO BINDING ARBITRATION: The parties agree that due to the nature of the services to be provided by ES, the payments to be made by the Subscriber for the term of this agreement form an integral part of ES's anticipated profits; that in the event of Subscriber's default it would be difficult if not impossible to fix ES's actual damages. Therefore, in the event Subscriber defaults in any payment or charges to be paid to ES, Subscriber shall be immediately liable for any unpaid installation and invoiced charges plus 80% of the balance of all payments for the entire term of this agreement as LIQUIDATED DAMAGES and ES shall be permitted to terminate all its services, including but not limited to terminating monitoring service, under this agreement and to remotely re-program or delete any programming without relieving Subscriber of any obligation herein.

SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS A LIQUIDATED DAMAGE CLAUSE.

The prevailing party in any litigation or arbitration is entitled to recover its legal fees from the other party. In any action or proceeding commenced by ES against Subscriber, Subscriber shall not be permitted to interpose any counterclaim. SUBSCRIBER MAY BRING CLAIMS AGAINST ES ONLY IN SUBSCRIBER'S INDIVIDUAL CAPACITY, AND NOT AS A CLASS ACTION PLAINTIFF OR CLASS ACTION MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. ANY DISPUTE BETWEEN THE PARTIES OR ARISING OUT OF THIS AGREEMENT, INCLUDING ISSUES OF ARBITRABILITY, SHALL, AT THE OPTION OF ANY PARTY, BE DETERMINED BY BINDING AND FINAL ARBITRATION BEFORE A SINGLE ARBITRATOR ADMINISTERED BY ARBITRATION SERVICES INC., ITS SUCCESSORS OR ASSIGNS, IN ~~NASSAU COUNTY, NEW YORK~~ ^{Kenton County, KY} PURSUANT TO ITS ARBITRATION RULES AT WWW.ARBITRATIONSERVICESINC.COM AND THE FEDERAL ARBITRATION ACT, EXCEPT THAT NO PUNITIVE OR CONSEQUENTIAL DAMAGES MAY BE AWARDED. The arbitrator shall be bound by the terms of this agreement, and shall on request of a party, conduct proceedings by telephone, video, submission of papers or in-person hearing. By agreeing to this arbitration provision the parties are waiving their right to a trial before a judge or jury, waiving their right to appeal the arbitration award and waiving their right to participate in a class action. Service of process or papers in any legal proceeding or arbitration between the parties may be made by First-Class Mail delivered by the U.S. Postal Service addressed to the party's address designated in this agreement, on file with an agency of the state, or any other address provided by the party in writing to the party making service. The parties submit to the jurisdiction and laws of ~~Kentucky~~ ^{Kentucky}, except for arbitration which is governed by the FAA and the arbitration rules and agree that any litigation or arbitration between the parties shall be commenced and maintained in the county where ES's principal place of business is located. The parties waive trial by jury in any action between them unless prohibited by law. Any action between the parties must be commenced within one year of the accrual of the cause of action or shall be barred. All actions or proceedings by either party must be based on the provisions of this agreement. Any other action that Subscriber may have or bring against ES in respect to other services rendered in connection with this agreement shall be deemed to have merged in and be restricted to the terms and conditions of this agreement.

SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE DISPUTES AND THAT ARBITRATION IS BINDING AND FINAL AND THAT SUBSCRIBER IS WAIVING SUBSCRIBER'S RIGHT TO TRIAL IN A COURT OF LAW AND OTHER RIGHTS.

25. ES'S RIGHT TO SUBCONTRACT SPECIAL SERVICES: Subscriber agrees that ES is authorized and permitted to subcontract any services to be provided by ES to third parties who may be independent of ES, and that ES shall not be liable for any loss or damage sustained by Subscriber by reason of fire, theft, burglary or any other cause whatsoever caused by the negligence of third parties. Subscriber appoints ES to act as Subscriber's agent with respect to such third parties, except that ES shall not obligate Subscriber to make any payments to such third parties. Subscriber acknowledges that this agreement, and particularly those paragraphs relating to ES's disclaimer of warranties, exemption from liability, even for its negligence, limitation of liability and indemnification, inure to the benefit of and are applicable to any assignees, subcontractors, manufacturers, vendors and Monitoring Center of ES.

26. MOLD, OBSTACLES AND HAZARDOUS CONDITIONS: Subscriber shall notify ES in writing of any undisclosed, concealed or hidden conditions in any area where installation is planned, and Subscriber shall be responsible for removal of such conditions. In the event ES discovers the presence of suspected asbestos or other hazardous material, ES shall stop all work immediately and notify Subscriber. It shall be Subscriber's sole obligation to remove such conditions from the premises, and if the work is delayed due to the discovery of suspected asbestos or other hazardous material or conditions then an extension of time to perform the work shall be allowed and Subscriber agrees to compensate ES for any additional expenses caused by the delay but not less than \$1000.00 per day until work can resume. If ES, in its sole discretion, determines that continuing the work poses a risk to ES or its employees or agents, ES may elect to terminate this agreement on 3 day notice to Subscriber and Subscriber shall compensate ES for all services rendered and material provided to date of termination. ES shall be entitled to remove all its equipment and uninstalled equipment and material from the job site. Under no circumstances shall ES be liable to Subscriber for any damage caused by mold or hazardous conditions or remediation thereof.

27. NON-SOLICITATION: Subscriber agrees that it will not solicit for employment for itself, or any other entity, or employ, in any capacity, any employee of ES assigned by ES to perform any service for or on behalf of Subscriber for a period of two years after ES has completed providing service to Subscriber. In the event of Subscriber's violation of this provision, in addition to injunctive relief, ES shall recover from Subscriber an amount equal to such employee's salary based on the average three months preceding employee's termination of employment with ES, times twelve, together with ES's counsel and expert witness fees.

28. FALSE ALARMS / PERMIT FEES / WITNESS FEES: Subscriber is responsible for all alarm permits and fees, agrees to file for and maintain any permits required by applicable law and indemnify or reimburse ES for any fees or fines relating to permits or false alarms. ES shall have no liability for permit fees, false alarms, false alarm fines, the manner in which police or fire department responds, or the refusal of the police or fire department to respond. In the event of termination of police or fire department response this agreement shall nevertheless remain in full force and Subscriber shall remain liable for all payments provided for herein. In the event Subscriber or any third party subpoenas or summons ES requiring any services or appearances, Subscriber agrees to pay ES \$150 per hour for such services and appearances. Subscriber shall reimburse ES for any Monitoring Center charges for excessive, run-a-way or false alarm signals.

29. SECURITY INTEREST / COLLATERAL: To secure Subscriber's obligations under this agreement Subscriber grants ES a security interest in the security equipment installed by ES and ES is authorized to file a financing statement.

30. CREDIT INVESTIGATION: Subscriber and any guarantor authorize ES to conduct credit investigations from time to time to determine Subscriber's and guarantor's credit worthiness.

31. FULL AGREEMENT / SEVERABILITY: This agreement along with the Schedule of Equipment and Services constitute the full understanding of the parties and may not be amended, modified or canceled, except in writing signed by both parties. Subscriber acknowledges and represents that Subscriber has not relied on any representation, assertion, guarantee, warranty, collateral agreement or other assurance, except those set forth in this Agreement. Subscriber hereby waives all rights and remedies, at law or in equity, arising, or which may arise, as the result of Subscriber's reliance on such representation, assertion, guarantee, warranty, collateral agreement or other assurance. To the extent this agreement is inconsistent with any other document or agreement, whether executed prior to, concurrently with or subsequent to this agreement the terms of this agreement shall govern. This agreement shall run concurrently with and shall not terminate or supersede any existing agreement between the parties unless specified herein. Should any provision of this agreement be deemed void, the remaining parts shall be enforceable.

**SUBSCRIBER ACKNOWLEDGES RECEIVING A FULLY EXECUTED COPY
OF THIS AGREEMENT AND SCHEDULE OF EQUIPMENT AND SERVICES AT TIME OF EXECUTION.**

EMERGENCY SYSTEMS, LLC.:

SUBSCRIBER:

Subscriber: Signature by Authorized Officer Title of Person Signing

By: _____
Signature

Print Name of Subscriber

Tax ID or EIN

Subscriber's Email Address: _____

The undersigned personally guarantees Subscriber's performance of this agreement and agrees to be bound by all terms as a party herein.

Signature (Name Must Be Printed Below) SS#

Print Name

Residence Address