

## Terms & Conditions

**“ALARMNZ”** means Alarm New Zealand Limited,

**“AFASP”** means automatic fire alarm service provider.

**“Agreement”** means these terms and conditions, together with the Schedules to these terms and conditions.

**“Alarm Action”** means:

- a) where this Agreement specifies transmission of the Alarm Signals to FENZ, then ALARMNZ shall transmit the signal to FENZ; and
- b) where this Agreement specifies that ALARMNZ is to notify a Contact in response to an Alarm Signal then:
  - (i) ALARMNZ shall use all reasonable endeavours to notify at least one of the Contacts and shall first contact, or attempt to contact, the Priority Contact; and
  - (ii) where ALARMNZ has dialled the contact numbers for the Priority Contact and has been unsuccessful in notifying the Priority Contact, ALARMNZ shall attempt to contact the other Contacts in order of the priority specified in the data then held by ALARMNZ.

**“Alarm Signals”** are signals transmitted from the Equipment to the Central Station when the System is activated.

**“BroadBand Circuit”** means the customer provided secondary Broadband Patch circuit connected to the NAD equipment.

**“Business Day”** means any day, except Saturday or Sunday, on which banks are open for general banking business in Wellington, New Zealand.

**“Carrier”** means each and any of those telecommunications carriers which provide services necessary for the provision of the Services by ALARMNZ.

**“Central Station”** means ALARMNZ's central monitoring facility where Alarm Signals are received.

**“Commencement Date”** means the date on which the Equipment is commissioned in the Premises, as notified to the Customer by ALARMNZ.

**“CPI”** means the official New Zealand CPI (All Groups CPIQ SE9A) consumer price index published quarterly by Statistics New Zealand or its successor (or, if that index ceases to be published or otherwise ceases to be available to ALARMNZ and the Customer, means such other index as measures, in a manner which most closely resembles the manner in which the consumer price index (all groups) measures inflation or deflation in New Zealand immediately prior to becoming unavailable to ALARMNZ and the Customer or ceasing to be published).

**“Contact”** means a person or persons listed as a Contact in the data then held by ALARMNZ.

**“Customer”** means the person or persons named as Customer in the Customer / Billing Information Schedule.

**“Equipment”** means the alarm signalling equipment, together with all associated equipment and cabling provided by ALARMNZ, and any replacement or substitute thereof and all parts and components thereof.

**“Fees”** means the monitoring fees payable for the Services, specified or referred to in the Contract Term and Price Schedule and as may be varied in accordance with clause 2.

**“Fire Alarm”** means an installation of apparatus, which performs specified fire-related functions in response to the operation of a sprinkler, detector, manual call point or other input, as defined in the relevant New Zealand Standards, but excluding the alarm signalling equipment.

**“Fire Service Agreement”** means the agreement for Automatic Fire Alarm Management and Transmission Services between ALARMNZ and FENZ.

**“GST”** means goods and services tax payable in accordance with the GST Act.

**“GST Act”** means the Goods and Services Tax Act 1985.

**“Initial Term”** means the initial term of this Agreement, as specified in the Contract Term and Price Schedule.

**“NAD”** means the Network Access Device.

**“FENZ”** means Fire and Emergency New Zealand.

**“FENZ Interconnection Device”** means the Signal Transport System Message Handling Server that routes messages received from ALARMNZ and Fire Alarms to FENZ.

**“PPSA”** means the Personal Property Securities Act 1999.

**“Protected Premises”** means those premises described in the Site Information Schedule where the Equipment has been installed or is to be installed pursuant to this Agreement.

**“Priority Contact”** means the Contact first listed in the data currently held by ALARMNZ Fire Monitoring.

**“Renewal Term”** means a period of twelve (12) months commencing upon expiration of the Initial Term.

**“Service Agent”** means a party that is contracted by the Customer to maintain and repair the Customer's Fire Alarm.

**“Services”** means the services provided by ALARMNZ under this Agreement, being the continuous twenty four (24) hours per day, seven (7) days per week monitoring of Alarm Signals which transmit successfully to the central station and, upon the receipt of Alarm Signals, initiation of the Alarm Action.

**“System”** means the collection of Equipment, software, transmission links and processes necessary to transport messages between Fire Alarms and the FENZ Interconnection Device.

**“Term”** means the Initial Term, together with the Renewal Term, applicable from the Commencement Date for each premises as listed within the Site Information Schedule, unless this Agreement is terminated earlier in accordance with its terms.

## 1. ALARMNZ'S OBLIGATIONS

- (a) ALARMNZ shall provide the Services to the Customer throughout the Term on the terms and conditions set out in this Agreement.
- (b) Without limiting clause 1(a), ALARMNZ shall provide the Customer with the address of the FENZ station to which the Customer shall deliver the keys referred to in clauses 4(n) to (q) below, and at which those keys will be held.
- (c) ALARMNZ must notify the Customers nominated service agent of both a failure and resumption of service of the System.

## 2. PAYMENT

The Customer shall:

- (a) pay to ALARMNZ any connection fees notified by ALARMNZ to the Customer in writing on the Commencement Date; and
- (b) pay to ALARMNZ the Fees for the Services throughout the Term by quarterly payments in advance and in accordance with the Contract Term and Price Schedule, provided that following the end of the first twelve (12) month period of the Term ALARMNZ may increase the Fees:
  - (i) in accordance with changes in the annual CPI adjustment; or
  - (ii) to reflect any increase in fees charged by FENZ to ALARMNZ for the Customer's connection to FENZ automatic fire alarm system;
- (c) pay in full all taxes, charges and fees imposed by any Carrier, governmental or regulatory body which are properly payable in connection with the provision of the Services;
- (d) reimburse ALARMNZ immediately upon demand the full amount of any fee, cost, expense or penalty imposed upon ALARMNZ by FENZ as a result of a false alarm caused by the System or any act of the Customer;
- (e) pay all GST levied on goods and services provided under this Agreement.

## 3. TERM

- (a) This Agreement commences on the Commencement Date and shall continue in full force and effect for the Term, unless it is terminated earlier in accordance with its terms.
- (b) Upon expiration of the Initial Term, this Agreement will be automatically renewed for the Renewal Term, provided that either party may terminate this Agreement with effect from the end of the Initial Term by giving three months' written notice to the other party.

## 4. CUSTOMER OBLIGATIONS

The Customer shall:

- (a) prior to the connection of a new Fire Alarm to the System, provide to ALARMNZ all data specified by ALARMNZ necessary to allow ALARMNZ or FENZ, as the case may be, to contact the Customer at any time. If, during the Term of this Agreement, any of the data provided by the Customer changes, the Customer must immediately inform ALARMNZ of those changes.
- (b) comply with all operating and maintenance instructions provided by FENZ, ALARMNZ or their agents in relation to the System.
- (c) notify ALARMNZ immediately in the event of any deterioration, loss, damage to, or any other problem with, Equipment located on the Protected Premises.
- (d) during any investigations by ALARMNZ or FENZ into the cause of a false alarm, provide ALARMNZ and/or FENZ with:
  - (i) access to the Protected Premises during normal working hours;
  - (ii) any information required by ALARMNZ or FENZ relating to the false alarm;
  - (iii) any other assistance ALARMNZ or FENZ may require.
- (e) provide any Service Agent with access to the Protected Premises for the purpose of inspecting the condition of the Equipment.
- (f) provide any Service Agent with access to a power supply that is sufficient to reliably supply power to the Equipment and the System.
- (g) introduce a procedure (to the reasonable satisfaction of ALARMNZ) that provides FENZ and/or ALARMNZ with a means of advising by automatic communication any occupier of the Protected Premises or a Service Agent in the event of any abnormal condition being signalled by the System.
- (h) as an essential term of this Agreement, maintain throughout the Term at its own expense an analogue public switched telephone network line to enable ALARMNZ to provide the Services, or back up for the Services, as the case may be.
- (i) for the customers Broadband Patch Circuit
- (j) , the customer will:
  - (i) ensure the Patch is not interfered with or unplugged;
  - (ii) ensure the Patch is not utilised for any other purpose;
  - (iii) ensure the Patch is not connected to any other devices either temporarily or permanently;
  - (iv) the jack point or RJ45 plug must be terminated within one metre of where the NAD is expected to be placed.
- (k) take all necessary steps to prevent false alarms.
- (l) comply with the New Zealand Building Code, the requirements of all relevant local, regional and national authorities and all other applicable legislation, statutory requirements and codes of practice in respect of the System.
- (m) provide such other assistance or permit such other access as a Service Agent may reasonably require for the proper provision of the Services.
- (n) on 24 hours' notice, grant access to FENZ, ALARMNZ or their authorised representatives to inspect the Fire Alarm and the Protected Premises at reasonable times during normal working hours.
- (o) supply to FENZ master keys or sets of keys (or equivalent, e.g. access cards or codes or physical escort) allowing access to all parts of the Protected Premises. The number of keys in the set shall not exceed six.
- (p) immediately advise FENZ of any changes to the security for which keys, access cards or codes have been supplied, and supply further keys, access cards or codes as necessary.
- (q) where access to the Protected Premises is through part of a larger complex that is not being supplied Services under this Agreement, provide keys or access for those outer areas.

- (r) agree that if it does not provide keys in accordance with this clause 4, FENZ may force access to the Protected Premises in the event of a call out. Any damage to the Protected Premises as a result of such forced access shall be at the cost of the Customer.
- (s) give prior notification to ALARMNZ of any intended alterations to the Fire Alarm or any material factor that would affect in any way the operation of the Fire Alarm.
- (t) ensure any alterations to the Fire Alarm shall comply with all relevant New Zealand Standards.
- (u) allow FENZ to inspect any alterations made to a Fire Alarm.
- (v) give 20 Business Days' notice in writing to ALARMNZ prior to any change in ownership of the Protected Premises and/or the Fire Alarm, or any change in protection afforded by the Fire Alarm.
- (w) give ALARMNZ immediate notice in writing of any change to a Service Agent.
- (x) in the event that the Customer wishes to have other localised 'in house' monitoring equipment such as "Building Management Systems" or similar, connected to the Equipment via the dedicated RS485 port, then make arrangements for this directly with their Service Agent. ALARMNZ accepts no liability for the serviceability, functionality or operation of the Customer's equipment and/or any consequences arising as result of this.

#### 5. DISCLOSURE OF INFORMATION TO FENZ

- (a) The Customer authorises ALARMNZ to forward all relevant details contained in the Schedules to this Agreement to FENZ.
- (b) The Customer acknowledges that any data collected by ALARMNZ and forwarded to FENZ may be used by FENZ in furtherance of FENZ' statutory functions, provided that FENZ does not identify the identity of any individual Customer. Neither ALARMNZ nor FENZ shall be required to make any payment to the Customer as a result of such data being used.

#### 6. FALSE ALARMS

The Customer acknowledges that:

- (a) the Fire and Emergency New Zealand Act 2017 ("Act") enables FENZ to impose false alarm charges on the Customer for false alarms in accordance with a scale laid down by FENZ. Notwithstanding section 47c(4) of the Act, where the Customer is a body corporate in terms of the Unit Titles Act 2010, the Customer agrees and acknowledges that it is liable to pay any charge levied by FENZ, for attending a false fire alarm at the Protected Premises, whether or not that false alarm occurred in the common property, or any particular unit of the Protected Premises.
- (b) In the event of non-payment of any false alarm charges the Customer shall be liable for all reasonable costs, charges and expenses (including but not restricted to legal fees and interest on the unpaid amount from the due date until the date of payment) FENZ incurs to recover payment. The rate of interest shall be equal to 1.5% above the current 90 day bank bill rate quoted by FENZ' bankers. In no event will the rate of interest exceed the maximum rate of interest allowable by applicable law.
- (c) The customer agrees to indemnify FENZ against all costs incurred by FENZ in recovering any money the customer owes under this agreement. This obligation will survive the termination of this agreement.

#### 7. RECORDS

- (a) ALARMNZ shall maintain a log containing details of all Alarm Signals and Alarm Actions and such log will be conclusive evidence of the signals received by ALARMNZ at the Central Station and the subsequent Alarm Actions taken by ALARMNZ in response.
- (b) The Customer acknowledges that ALARMNZ may record any telephone conversations between the Customer (and/or any third party nominated by the Customer) and the Central Station and the Customer irrevocably waives and releases all its rights in and to such recorded telephone conversations. The Customer consents to the use by ALARMNZ of such telephone conversations for training purposes and in any legal proceedings and the disclosure by ALARMNZ of those conversations and the provision of the tapes on which they are recorded to any police or other law enforcement or government investigatory or regulatory body.

#### 8. LIABILITY AND INDEMNITY

- (a) The Customer shall indemnify and keep indemnified ALARMNZ, its officers, employees, agents and subcontractors (each, an "Indemnified Party") from and against all liabilities, claims, damages, losses, costs and expenses ("Liabilities") of whatever nature, howsoever occurring, sustained or incurred by any such Indemnified Party arising from:
  - (i) any breach of this Agreement by the Customer;
  - (ii) any negligent or wrongful act or omission by the Customer or any of its employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of the Customer's obligations under this Agreement; or
  - (iii) any fraud, dishonesty, misrepresentation or wilful default of the Customer, and for the avoidance of doubt, clause 8(a)(ii) shall apply, without limitation, to any claims against any Indemnified Party arising as a result of damage to a third party's property or injury to or death of any person as a result of the Customer's negligence in the course of or related to the performance of (including any failure to perform) any of its obligations under this Agreement.
- (b) To the extent permitted by law and except as otherwise provided in this agreement, ALARMNZ and FENZ shall not be liable to the Customer:
  - (i) whether under common law, equity or statute and whether directly or indirectly and ALARMNZ's only liability in the event of any failure to provide the Services or any deficient provision of Services shall be to supply the Services again or to pay the cost of having the Services supplied again and, without limitation, ALARMNZ and FENZ have no liability whatsoever for any incidental, consequential or indirect loss or damage or for any loss of profit, anticipated savings or loss or corruption of data whatsoever.
  - (ii) for personal injury or property loss arising from the provision of the Services except for injury or loss caused directly by ALARMNZ's gross negligence.
  - (iii) for any delay or failure to provide the Services due to acts or omissions of the Customer and/or any third party including FENZ, a Carrier, or Service Agent, any failure of the System, natural disaster, power failure, any

- communications failure, industrial dispute, interruption or unavailability of telephone or other communications link, inability to obtain materials or services or any cause beyond ALARMNZ's reasonable control.
- (iv) for any direct or indirect losses, damages or claims suffered by the Customer or third parties in the event of a Fire Alarm being disconnected in accordance with this agreement, if continuous connection to the System (as set out in clause 8(c)) is not provided, or if the FENZ terminates the Fire Service Agreement.
  - (c) ALARMNZ does not guarantee that connection of the Fire Alarm to the System will be continuous or fault free. Circumstances beyond the control of ALARMNZ may cause the connection to be interrupted. Interruption to the connection may be required to comply with a legislative requirement or in order to repair or work on equipment.

#### **9. FORCE MAJEURE**

ALARMNZ shall not be liable for any failure or delay in providing the Services or otherwise complying with any obligation imposed on it under this Agreement if:

- (a) the failure or delay arising directly or indirectly from a cause reasonably beyond ALARMNZ's control, including without limitation as a result of legislative requirements, power failure, communications failure or the carrying out of repairs or other maintenance work on the Equipment;
- (b) ALARMNZ, on becoming aware of the cause, promptly notifies the Customer of the nature and expected duration of, and the obligation affected by the cause;
- (c) ALARMNZ uses commercially reasonable endeavours to:
  - (i) mitigate the effects of the cause on ALARMNZ's obligations under this Agreement; and
  - (ii) perform ALARMNZ's obligations under this Agreement on time despite the cause.

#### **10. WARRANTIES**

To the extent permitted by law, all conditions, warranties, guarantees and representations are expressly negated and excluded. The parties agree that, to the extent that the Services are provided for the purpose of a business, the provisions of the Consumer Guarantees Act 1993 shall not apply.

#### **11. TERMINATION**

- (a) ALARMNZ may terminate this Agreement with immediate effect if:
  - (i) the Customer is in breach of any express or implied term of this Agreement;
  - (ii) the Customer becomes insolvent, fails to pay its debts as and when they become due, ceases to carry on business, or proceedings are commenced to have it wound up, or a receiver and manager (or other administrator) is appointed to all or any part of its assets and undertakings; or
  - (iii) the Fire Service Agreement is terminated, or ALARMNZ is disconnected from the FENZ automatic fire alarm system.
- (b) Without limiting any other rights of ALARMNZ, in the event of termination of this Agreement by ALARMNZ pursuant to clauses 11(a)(i) or (ii) the Customer shall pay to ALARMNZ immediately upon demand by way of liquidated damages the sum equal to the Fees which would otherwise be payable pursuant to this Agreement for the remainder of the Initial Term or the Renewal Term, as the case may be.
- (c) If the Customer terminates this Agreement at any time during the Term (other than by reason of breach by ALARMNZ) the Customer shall pay to ALARMNZ immediately upon demand by way of liquidated damages a sum equal to the Fees which would otherwise be payable pursuant to this Agreement for the remainder of the Initial Term or the notice period required under clause 3 in respect of the Renewal Term, as the case may be.
- (d) Notwithstanding any other provision set out in this clause 11, where the Customer is genuinely vacating the Protected Premises, ceases to trade or the building usage changes such that the Customer no longer requires the Services, the Customer may terminate this Agreement by providing 3 months' written notice to ALARMNZ. In this event the Customer will pay to ALARMNZ the sum equal to the Fees that are payable by the Customer for that 3 month period, together with such disconnection fees as may apply from time to time.
- (e) In the event that the Customer relocates to another premises during the Term of this Agreement and those other premises requires the supply of Services, this Agreement will, upon the Customer giving 3 months' written notice to ALARMNZ, be terminated and the Customer shall enter into a new agreement with ALARMNZ for the supply of Services at the new premises. In this event the Customer will pay to ALARMNZ any disconnection and reconnection fees that may apply from time to time.
- (f) The provisions of clauses 8(a), (b) and (c) shall survive the termination and expiry of this Agreement.

#### **12. DISCONNECTION**

ALARMNZ may disconnect the Fire Alarm from the System:

- (a) Immediately by written notice if, in the opinion of ALARMNZ, the Fire Alarm is adversely affecting either the use of the System by others, the efficiency or security of the System as a whole or the integrity of the fire alarm monitoring network of ALARMNZ or FENZ. ALARMNZ's obligation to provide the Services shall be suspended until such time as the Fire Alarm is reconnected. The Fire Alarm will not be reconnected until ALARMNZ is satisfied that the Fire Alarm no longer poses a threat to any relevant network;
  - (b) on 14 days' written notice to the Customer for repeated false alarms, which result in the attendance of FENZ personnel and vehicles;
  - (c) on 14 days' written notice to the Customer if testing is not carried out satisfactorily or if the Customer does not promptly remedy any abnormalities in the Fire Alarm to the satisfaction of ALARMNZ;
  - (d) on 14 days' written notice to the Customer for the Customer's failure to comply with relevant New Zealand Standards relating to Fire Alarms; or
  - (e) on 14 days' written notice to the Customer if the Customer does not pay the Fees as set out in this Agreement.
- In the event of disconnection under this clause the Customer will pay to ALARMNZ any disconnection and reconnection fees that may apply from time to time. The Customer acknowledges that where a Fire Alarm is disconnected, it may be required to be certified prior to its reconnection to the System.

### 13. ASSIGNMENT AND SUB-CONTRACTING

- (a) ALARMNZ may assign, ovate or sub-contract any or all of its rights and/or obligations under this Agreement.
- (b) The Customer may not in any way assign or otherwise deal with its interest in this Agreement.

### 14. EQUIPMENT

- (a) ALARMNZ agrees to install the Equipment in the Protected Premises and the Customer agrees to do all things as are reasonably necessary to assist with the installation of the Equipment.
- (b) Title in the Equipment shall at all times remain with ALARMNZ.
- (c) The Customer agrees to grant to ALARMNZ if it so requires a security interest in all Equipment located on the Protected Premises from time to time. The Customer:
  - (i) must, upon request, promptly give ALARMNZ all assistance and information as is necessary to register a financing statement under the PPSA in respect of the Equipment;
  - (ii) agrees to ALARMNZ registering a financing statement to protect its security interest under this Agreement;
  - (iii) must pay to ALARMNZ promptly on request the cost of registering the financing statement, and the costs of enforcing or attempting to enforce the contract evidenced by this Agreement and the security interest granted under clause 14(c); and
  - (iv) agrees that sections 114(a), 121 and 131 of the PPSA shall not apply to the security interests created by these terms and conditions, and the Customer waives its right to receive a verification statement under section 148 of the PPSA.
- (d) The Customer shall not use or treat the Equipment in a manner that might damage the Equipment or cause it to malfunction. The Customer shall use all reasonable endeavours to ensure that the Equipment is kept safe and secure at all times, and is not exposed to damage of any kind, fair wear and tear excepted.
- (e) If, in the opinion of ALARMNZ, the Customer's power supply or batteries are found to be insufficient for the supply of Services under this Agreement, the Connection Fee may be varied to take account of installation of a new power supply and/or batteries.
- (f) Upon termination of this Agreement ALARMNZ shall have the immediate right to take possession of the equipment. For this purpose the Customer unreservedly grants to ALARMNZ the right to enter any premises where the Equipment may be located and the right to remove all Equipment from those premises. The Customer agrees to do all things as are reasonably necessary to assist ALARMNZ in the removal of the Equipment.



### 15. NOTICES

- (a) Any notice or other communication to be given under this Agreement (other than signals given by the Customer to ALARMNZ) shall be in writing and addressed to the address of the parties shown in this Agreement or to such other address as a party may notify in writing to the other.
- (b) Every notice will be deemed to be duly received by or served on the addressee:
  - (i) if delivered in person, when delivered;
  - (ii) if by post; seven days from the date of postage;
  - (iii) if by facsimile transmission, on successful dispatch of the transmission;
  - (iv) If by email, time and date stamp sent; or
  - (v) If by page, time and date stamp of acknowledgement

### 16. SPECIAL CONDITIONS

- (a) Any special conditions contained in any of the Schedules to this Agreement shall form part of this Agreement. In the event of any inconsistency between any of the special conditions and any other term of these terms and conditions, the special condition shall prevail.

### 17. MISCELLANEOUS

- (a) No waiver by ALARMNZ of any default or breach or the non-acceptance by ALARMNZ of any repudiation of this Agreement by the Customer shall affect the rights of ALARMNZ in respect of any further or continuing default or breach or any subsequent repudiation by the Customer. No forbearance, delay or indulgence by ALARMNZ in enforcing its rights under this Agreement will prejudice or restrict the future enforcement of those rights.
- (b) The provisions of this Agreement are also for the benefit of, and are intended to be enforceable by, FENZ under the Contracts (Privity) Act 1982.
- (c) This Agreement shall be binding on all heirs, successors and permitted assigns of the parties hereto.
- (d) In the event that any provision (or part thereof) contained in this Agreement is or becomes illegal, invalid or unenforceable for any reason, then such provision (or part thereof) shall be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement or the enforceability, legality, validity or application of the remaining provisions of this Agreement.
- (e) Where more than one person constitutes the Customer under this Agreement, the liability of each person shall be joint and several.
- (f) This Agreement records the entire agreement and understanding between the parties and contains all of the representations, undertakings, warranties, covenants and agreements of the parties.
- (g) This Agreement shall be governed by and construed in accordance with the laws of New Zealand.
- (h) No amendment or variation to this Agreement will be effective unless it is in writing and signed by the parties.
- (i) In this Agreement:
  - (i) the singular includes the plural and vice versa;
  - (ii) any gender includes any other gender;
  - (iii) a reference to a person includes a corporation or any other legal entity, and vice versa;
  - (iv) headings are for convenience of reference only and do not affect interpretation.