



206 North Main Street  
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## **ELEVATOR MONITORING AGREEMENT**

This AGREEMENT is by and between Towne Monitoring Service, LP (hereinafter referred to as "TOWNE"), located at 206 N. Main St., Souderton, PA and,

Name: \_\_\_\_\_ (hereinafter referred to as "Subscriber")

Address: \_\_\_\_\_

It is my/our desire to have TOWNE monitor our elevator phone(s)..

Payment terms: Your recurring fee shall be \$10.00 per month, per elevator.

Term: The initial term of this monitoring agreement is for one (1) month, and then from month to month thereafter with payment made in advance. Subscriber may terminate this agreement at any time after the initial term with 30 day written notice.

### **MONITORING TERMS & CONDITIONS**

**The MONITORING COMPANY, "TOWNE MONITORING SERVICE" (identified above) and the SUBSCRIBER (identified above) agree to the following:**

**1. Introduction:** Subscriber, at the location indicated on Page 1 of this Agreement, has contracted with Towne Monitoring Service for monitoring to be performed as outlined above and if applicable to notify the party (or parties) identified by the Subscriber. Towne Monitoring Service is NOT responsible and the Subscriber assumes full responsibility for all communications media used to receive calls from the monitoring facility. Towne Monitoring Service shall WITHOUT WARRANTY attempt to contact the Subscriber, and/or the appropriate police or fire department or emergency personal response service designated, and/or party (or parties) that have been identified by Subscriber as the entity or party to notify under the circumstances encountered.

**2. Waiver of Warranty - Exculpatory Clause:** It is understood and agreed that: **TOWNE MONITORING SERVICE IS NOT AN INSURER.** That insurance, if any, shall be obtained by Subscriber covering real or personal property loss or damage and personal injury, including death. The payments hereunder are based solely on the value of the services as described herein and on Page 1 of this agreement, and are unrelated to the value or cost of any deterioration of Subscriber's health, personal injury, loss of life, and/or damage to Subscriber's property, or the property of others located at Subscriber's location, the value of which is known only by Subscriber. Towne Monitoring Service is not liable for losses caused by the malfunction or non-function of the System, equipment, monitoring, signal handling or dispatching services even if due to Towne Monitoring Service's negligence or failure to perform. **TOWNE MONITORING SERVICE MAKES NO GUARANTEE OR WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THAT THE SERVICES SUPPLIED WILL AVERT OR PREVENT OCCURRENCES, OR THE CONSEQUENCES THEREFROM, WHICH THE SERVICES ARE DESIGNED TO COMMUNICATE. TOWNE MONITORING SERVICE MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED THAT THE EQUIPMENT SUPPLIED, OR ANY HARDWARE, SOFTWARE OR NETWORKS USED IN CONNECTION WITH THE SYSTEM SHALL CORRECTLY HANDLE THE PROCESSING.**

**3. Third Party Indemnification.** Since the parties agree that Subscriber retains the sole responsibility for the life and safety of all persons on its premises and for protecting against losses for to its own property and the property of others located on its premises, Subscriber agrees to indemnify, defend and hold harmless Towne Monitoring Service, its officers, employees, agents, subcontractors, suppliers, or representatives from and against all claims, lawsuits, and losses, including attorneys' fees, by persons not a party to this Agreement, alleged to be caused by the improper operation of the alarm unit(s) and/or monitoring System, whether due to malfunctioning or non-functioning of the System, the negligent performance or non-performance of the monitoring services, installation, maintenance, or other services performed by Towne Monitoring Service, or its officers, employee, agents,

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subcontractors, suppliers, or representatives. Subscriber is aware that there are circumstances where the service or equipment may not work including, but are not limited to: a proper surge suppression system, wireless backup system not being employed, moving alarm unit out of cellular range, alarm initiation device too far from base unit, non-functional electrical outlet.

**4. Limitation of Liability - Liquidated Damages:** Subscriber acknowledges that it is impractical and extremely difficult to fix actual damages, if any, which may proximately result from failure on the part of Towne Monitoring Service to perform any of its obligations or responsibilities herein, including, but not limited to its specifications, installation, service, and/or monitoring service, the failure of the System to operate properly, by active or passive negligence, or by failure to perform any of the obligations herein, because of among other things: (a) the uncertainty of the response time of any individual or entity should any of these parties be dispatched as a result of a signal being received or an audible device sounding; (b) the uncertain nature of occurrences which might cause injury or death to a subscriber or any other person; (c) the inability to ascertain what portion, if any, of any loss would be proximately caused by Towne Monitoring Service's failure to perform or by its Systems' failure to operate; or (d) the uncertain amount of value of Subscriber's property or the property of others kept at the monitored location which may be lost, destroyed, damaged or otherwise affected by occurrences which the System and/or services are designed to detect. Therefore, subscriber acknowledges and agrees that if any loss or liability is alleged against Towne Monitoring Service excluding loss or liability alleged to be caused in whole or in part by Towne Monitoring Service's own negligence, such liability shall be limited to Two Hundred Fifty (\$250.00) Dollars. In the event that loss or liability is alleged to be caused in whole or in part by Towne Monitoring Service's own negligence, such liability shall be limited to the liability limits of the existing insurance policy, a copy of which is attached hereto as Exhibit "A". This sum shall be paid and received as either (1) liquidated damages and not as a penalty, or (2) as a limitation of liability approved and agreed upon by the parties. The payment of this amount shall be Towne Monitoring Service's sole and exclusive liability. Under no circumstances shall Towne Monitoring Service be liable to subscriber for consequential damages of any nature in excess of such amount, including, without limitation, damages for loss of life, deterioration of health, personal injury or damages to real or personal property, loss of property or revenue, cost of capital, costs of purchased or replaced goods, other economic loss or damages however occasioned, and whether alleged as caused by the installation, repair, design, sale, lease or failure of the monitoring equipment or service or the performance or nonperformance of obligations and responsibilities under this agreement or breach of warranty or negligence, active, passive, joint, several or otherwise, strict liability, tort, or otherwise by Towne Monitoring Service, its officers, employees, agents, subcontractors, suppliers, or representatives. Subscriber agrees to obtain insurance coverage adequate to protect Subscriber's interest in light of the limitation of liability stated in this Agreement. If subscriber wishes Towne Monitoring Service to increase the amount of the above limitation of liability or liquidated damages, Subscriber may inquire about obtaining an increase to this amount in exchange for the payment of an additional monthly charge, but such additional monthly charge shall not be construed responsibility to obtain and maintain insurance. The foregoing shall survive the termination or expiration of this Agreement. Towne Monitoring Service assumes no responsibility for any loss in excess of such amount.

**5. Subscriber Duties:** (a) Subscriber shall cooperate with Towne Monitoring Service in the installation, operation, and maintenance of the alarm unit(s) and agrees to follow all instructions and procedures which may be prescribed for the operation of the alarm unit(s), the rendering of services and the provision of monitoring for the premises; (b) Subscriber shall pay all charges made by any telephone company or other utility or communications organization for the installation, leasing and service charges of telephone lines or other communications technologies connecting Subscriber's premises to Towne Monitoring Service Subscriber acknowledges that notification signals from Subscriber's alarm unit(s) to Towne Monitoring Service are transmitted over Subscriber's communications service or a third-party communication service and that in the event the communications service is out of order, disconnected, placed on "vacation", out of range, or otherwise interrupted, signals from Subscriber's System will not be received by Towne Monitoring Service during any such interruption and will not be known to Towne Monitoring Service. Subscriber agrees that in the event the equipment or alarm unit(s) continuously transmits signals reasonably determined to be false and/or excessive in number, Subscriber shall be subject to the additional costs and fees incurred by Towne Monitoring Service in receiving and/or responding to the excessive signals.

**6. Authorized Personnel & Emergency Information:** Subscriber agrees to furnish a written list of the names and telephone numbers of all persons to be notified in the event of a notification signal. Subscriber agrees to provide all changes, revisions and modifications to the above to Towne Monitoring Service in writing in a timely manner.

**7. Assignees and/or Subcontractors of Alarm Co:** Towne Monitoring Service shall have the right to assign this Agreement in whole or in part to any other person, firm, or corporation and shall have the further right to subcontract any surveillance, monitoring, maintenance, emergency response, or other services which it may be required to perform hereunder. Subscriber acknowledges that this Agreement, and particularly those relating to Towne Monitoring Service's maximum liability and third party indemnification, shall inure to the benefit of and are applicable to any assignees and/or subcontractors of Towne Monitoring Service, and that they bind Subscriber with respect to said assignees and/or subcontractors with the same force and effect as they bind Subscriber to Towne Monitoring Service.

**9. Taxes, Fees, Fines, Licenses and Permits:** (a) Subscriber agrees to pay all sales tax, use tax, property tax, utility tax, and other taxes required in connection with the equipment and services listed, including telephone company line charges or other communications technologies, if any. Towne Monitoring Service shall have the right, at any time, to pass along to Subscriber any

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increases in the monthly charges which hereafter may be imposed on Towne Monitoring Service by utility or government agencies relating to the services(s) provided under the terms of this Agreement, and Subscriber hereby agrees to pay the same. (b) Subscriber agrees to assume all responsibility for any false notifications or signals given by the System. Subscriber will indemnify, pay and defend Towne Monitoring Service and its authorized contractors and subcontractors and hold each of them harmless from and against any responsibility or liability for payment of associated fines, penalties or other costs. (c) Subscriber shall comply with all laws and regulations relating to the equipment and its use and shall promptly pay when due all sales, use, property, excise and other taxes and all license and registration fees now or hereafter imposed by any government body or agency upon the equipment or its use. If Subscriber fails to maintain any required licenses or permits, Towne Monitoring Service shall not be responsible for performing the services and may terminate the services with notice to Subscriber.

**10. Increase in Service Charges:** Towne Monitoring Service shall have the right to increase the service charges provided for herein by giving Subscriber thirty (30) days written notice in advance of the effective date of such increase. Charges for time and materials services are based upon Towne Monitoring Service service rates in effect at the time of the service, and are subject to change without notice.

**11. Delay or Interruptions:** Towne Monitoring Service assumes no liability for delay in the installations of the System or for interruption of monitoring services due to strikes, riots, floods, storms, earthquakes, fire, power failures, insurrections, interruption of availability of telephone cable, cellular, satellite, or radio service or any communications service through any other medium, malfunction or unavailability of the system related to data handling problems, delay of response time, acts of terrorism, acts of war, whether through direct or indirect actions, irrespective of cause, acts of God, or for any other cause beyond the control of Towne Monitoring Service, and will not be required to provide monitoring services to Subscriber while interruption of service due to any such cause may continue. Towne Monitoring Service assumes no liability for delay of installation or services due to non-cooperation of the Subscriber or his agents in providing access to that area of installation or service on any device or devices of the Subscriber or of others to which Towne Monitoring Service's equipment is attached. Towne Monitoring Service shall not be obligated to perform any monitoring service hereunder during any time when the communications equipment and/or service shall not be working.

**12. Outside Charges:** Subscriber understands and accepts that Towne Monitoring Service specifically denies any responsibility for charges associated with the notification or dispatching of anyone, including, but not limited to any government personnel or agencies, and if there are any charges incurred as a result of said notification or dispatch, said charges shall be the responsibility of Subscriber, whether requested or not and whether such entities were correctly or incorrectly notified by Towne Monitoring Service, its agents, or subcontractors.

**13. Cancellation:** This agreement may be cancelled by Towne Monitoring Service at any time, upon a ten (10) day written notice, if false notifications and/or "runaway" signals continue to occur. This agreement shall terminate upon Subscriber's death or prolonged hospitalization or institutionalization and the completion of original contract term by Subscriber's representative to Towne Monitoring Service .

**14. Default/Termination:** In the event Subscriber fails to pay any amount, Subscriber abuses the equipment or the use of the monitoring facility, Subscriber fails to comply with any of the terms and conditions hereof, Subscriber makes an assignment for the benefit of creditors, an order for relief is entered against Subscriber under any chapter of the National Bankruptcy Code, as amended, a receiver or trustee is appointed for all, or substantially all, the assets of Subscriber, or there is a dissolution or termination of existence of Subscriber, or if Subscriber is in default under this Agreement and such default continues for ten (10) days after Towne Monitoring Service gives Subscriber written notice of such default, in addition to any other remedies provided by law, Towne Monitoring Service may pursue any one or more of the following remedies, which are cumulative and nonexclusive: (a) terminate all services subscribed for hereunder by giving ten (10) days written notice to Subscriber, without terminating this Agreement, and recover all amounts due to Towne Monitoring Service; (b) take possession of all Towne Monitoring Service owned equipment wherever situated and for such purpose enter upon Subscriber's property without liability for so doing; (c) by notice to Subscriber, declare immediately due and payable all moneys to be to be paid by Subscriber during the primary term or, if the primary term has then expired, declare immediately due and payable all moneys to be paid during any renewal term then in effect, and Subscriber shall in any event remain fully liable for reasonable damages as provided by law and for all costs and expenses incurred by Towne Monitoring Service on account of such default including all court costs and reasonable attorneys' fees. The waiver by Towne Monitoring Service of a breach of any obligation of Subscriber shall not be deemed a waiver of such obligation or any subsequent breach of the same or any other obligation. The subsequent acceptance of payment hereunder by Towne Monitoring Service shall not be deemed a waiver of any prior existing breach, regardless of Towne Monitoring Service's knowledge of such prior existing breach at the time of acceptance of such payments.

**15. Conflict of Terms:** Should there arise a conflict of terms or conditions between this agreement and a purchase order it is agreed that this contract shall be supreme and binding.

**16. One Year Limitation on Actions:** It is agreed that no suit or cause of action shall be brought against Towne Monitoring Service more than one (1) year after the accrual of the cause of action therefore.

**17. Waiver of Subrogation:** Subscriber does hereby for itself and all other parties claiming under it, release and discharge Towne Monitoring Service, its officers, employees, agents, subcontractors, suppliers, or representatives from and against all hazards covered by Subscriber's insurance, it being expressly agreed and understood that no insurance company or insurer will have any right of subrogation against Towne Monitoring Service, its officers, employees, agents, subcontractors, suppliers, or representatives.

**19. Entire Agreement – Modification, Waiver:** This writing is intended by the parties as a final expression of their Agreement as a complete and exclusive statement of the terms thereof. This Agreement supersedes all prior representations, understandings or agreements of the parties, written or oral, and shall constitute the sole terms and conditions of sale for all equipment and services. This Agreement can be modified only in writing, signed by the parties or their duly authorized representatives. No waiver of a breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach.

**20. Choice of Law; Venue:** The laws by which the state where the Towne Monitoring Service is headquartered shall govern the validity, enforceability and interpretation of the Agreement. It is agreed that any suit or action initiated as a result of this Agreement or the monitoring services to be provided under this Agreement shall be brought in a court of competent jurisdiction. Subscriber and Towne Monitoring Service irrevocably agree to waive their individual rights to a jury trial.

**21. Severability:** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.

**22. Representation and Warrant:** By signing this document below, Subscriber represents and warrants that he or she is above the age of eighteen, and has the necessary capacity and authority to enter into this Agreement on behalf of Subscriber, or for any other individual(s) or organization(s) that the signatory may legally bind to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_

Last Revised: 01/20/2022

Customer Initials: \_\_\_\_\_