

## 1 DEFINITIONS

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this agreement bear the meanings ascribed to them:

- 1.1 **KNI:** The Kenridge Neighbourhood Initiative, including where appropriate KNI employees, agents and/or sub-contractors.
- 1.2 **Agreement:** This document, once it has been accepted by KNI in terms of clause 2 below, and any instructions.
- 1.3 **Alarm Receiving Centre:** KNI or KNI sub-contractor's Premises to which signals from the System are transmitted and are monitored.
- 1.4 **Armed Response:** Effective and professional armed assistance to the Customer by attending to all calls when summoned to do so after an alarm activation or telephonic request
- 1.5 **Installer:** Representative Agent of KNI responsible for installation of the System.
- 1.6 **Commissioning Certificate:** The document to be signed by the Customer and the installer which confirms that the System has been satisfactorily installed, has been inspected, tested and is in working order and that the Customer has been instructed concerning the use of the System.
- 1.7 **Customer:** The KNI Participating Member who signs this document.
- 1.8 **Extra Charges:** The extra charges referred to in clauses 9.2 and 9.3 below.
- 1.9 **Fixed Period:** 6/12 months from the start date or any lesser date as may have been agreed between the Customer and KNI.
- 1.10 **Instructions:** Any instructions KNI issues to the Customer from time to time, including any oral instructions and any manual relating to the System.
- 1.11 **Key holder:** Any third party the Customer has chosen or chooses from time to time to hold the keys to the Premises and to go to the Premises if KNI advises them that the Alarm Receiving Centre has received a signal from the System.
- 1.12 **Participating Member:** A person or company actively paying a monthly fee for the patrol services provided by the KNI as outlined in the Constitution of the KNI Voluntary Association;
- 1.13 **Premises:** The Premises specified in the schedule as the Customer's physical address at which the System is installed or any other Premises at which the System is installed, provided that the Customer gives KNI written notification of any change to the address.
- 1.14 **Prime Rate:** Basic rate of interest (per cent, per annum, calculated on the daily balance and compounded monthly in arrear) publicly quoted from time to time by KNI's bank as certified by any divisional director of such bank whose designation and/or appointment it will not be necessary to prove.
- 1.15 **Reaction Officers:** Armed Response personnel provided by the KNI's chosen Armed Response company who are trained to provide Armed Response services.
- 1.16 **Satisfactory Explanation:** Any explanation which is satisfactory to KNI in KNI's sole discretion.
- 1.17 **Schedule:** The schedule on pages 1 and 2 of this document.
- 1.18 **Service:** The service categories chosen by the Customer in the Schedule 1 and which include the Monitoring Service and the provision of Armed Response as described in Schedule 1.
- 1.19 **Start Date:** The date upon which the Customer or its employee or agent and the installer sign the Commissioning Certificate.
- 1.20 **System:** The alarm monitoring equipment, including the detection equipment and/or the transmitter installed by KNI, including wiring and anything KNI installs when carrying out repairs to the System.
- 1.21 **Transmitter:** The radio or telephone transmitter installed at the Premises to convey an activation signal to the Alarm Receiving Centre. Any radio transmitters will at all times remain the property of KNI and the supplier of the radios.

## **TERMS AND CONDITIONS**

### **2 ACCEPTANCE OF THE AGREEMENT**

KNI shall be deemed to have accepted the agreement on signature, of the Commissioning Certificate.

### **3 THE SYSTEM**

- 3.1 The Customer warrants in favour of KNI that all risk of loss or damage in and to the System will pass to the Customer on installation thereof at the Premises.
- 3.2 The Customer shall allow KNI to disconnect and/or remove the radio transmitter (if applicable) should this agreement terminate, for any reason whatsoever.

### **4 THE CUSTOMER'S OBLIGATIONS**

The Customer is obligated in addition to the Customer's other obligations contained in this agreement:

- 4.1 to give KNI access to the Premises so that KNI may install the System and provide the Service;
- 4.2 to use the Customer's reasonable efforts to ensure that the Premises and the contents thereof are safe and without risk for KNI in doing what KNI is obliged to do under this agreement and to warn KNI in writing about any risks and any hazardous materials at or near the Premises which at any time come to the Customer's attention;
- 4.3 to ensure that the System is kept in good working order at all times and is used solely for the purpose of transmitting a signal to the Alarm Receiving Centre;
- 4.4 not to use System for any purpose other than to reduce the risk of loss or damage to the Premises or allow the unauthorised use of the System by any person or entity;
- 4.5 to test the System on a regular basis and in any event not later than 72 (seventy two) hours prior to vacating/leaving the Premises unattended for any period exceeding 7 (seven) days by contacting KNI's Alarm Receiving Centre;
- 4.6 to notify KNI immediately when the Customer has notice of or becomes aware of any damage or destruction to the System from whatsoever cause, including, but not limited to damage or destruction occasioned by electric storm (it being recorded that KNI will not be able to provide the Service until any damage or destruction is repaired unless any emergency is telephoned in to KNI's Alarm Receiving Centre);
- 4.7 to notify KNI in writing of the changes to the name(s), residential address(es) and telephone number(s) of the key holders with whom KNI may communicate regarding the Service and/or the System;
- 4.8 not to appoint a key holder who does not enjoy the use of an operational telephone, and to immediately revoke any such appointment if such person previously appointed as a key holder no longer enjoys the use of an operational telephone;
- 4.9 to ensure that the Premises is at all times equipped with an operational telephone and that the telephone service is connected and operational;
- 4.10 to accompany the Armed Reaction Officers or procure that the key holders accompany the Armed Reaction Offices to the Premises as soon as is reasonably possible after being called to do so by KNI;
- 4.11 not to, nor allow the Customer's employees or invitees to remove the System from the Premises or from the position in which it is installed or interfere with or alter the System in any way whatsoever for the duration of this agreement;
- 4.12 to operate the System according to the instructions and the terms of this agreement;
- 4.13 to pay the Customer's telephone, electricity and other bills timeously so that the System and the Service are not affected. In the event that the Customer has a prepaid telephone and no radio transmitter, the Customer hereby acknowledges that in order for a signal to be received by the Alarm Receiving Centre the Customer's telephone must be sufficiently prepaid;
- 4.14 to notify the Alarm Receiving Centre in the event of an accidental activation;
- 4.15 in the event that the Premises is a commercial premises, to ensure that Schedule 2 reflects the operating hours of the business and not the Business/Trading hours;
- 4.16 to be liable to KNI, and compensate KNI, for all and any liabilities, claims, losses, expenses or damages KNI may suffer at the Premises caused by or arising from the operation of this agreement (without prejudice to KNI's rights in terms of this agreement and in common law), including but not limited to:
  - 4.16.1 the Customer's failure to operate the System according to the instructions;
  - 4.16.2 the connection of the System to any equipment or device not authorised by KNI.

### **5 THE PURPOSE OF THE SYSTEM AND THE SERVICE**

- 5.1 This clause 5 is in addition to any other exemptions from liability and indemnities in this agreement and does not in any way derogate from those provisions.
- 5.2 The System is designed to reduce the risks of loss or damage at the Premises insofar as this can be done by the use of this type of equipment. KNI does not, however, guarantee that the System cannot be removed, tampered or interfered with or prevented from working by the Customer or by any other person. KNI is accordingly not liable to the Customer for any loss or damage the Customer or any other party may suffer howsoever arising from any such removal, tampering, interference or from the System being prevented from working in any manner.
- 5.3 Furthermore, KNI does not undertake or guarantee to the Customer that particular losses or injuries will be prevented by using the System and/or the Service or that the System and/or the Service will work continuously and without error.
- 5.4 The Customer hereby accepts that the System, like all mechanical and electronic devices, can develop faults.
- 5.5 KNI does not know the value of the Premises or its contents and the purpose of this agreement is not to act as insurer of the Customer, the Customer's invitees, the Premises or the contents thereof.

- 5.6 In the event of an alarm signal being sent to the Alarm Monitoring Centre, the Customer will be requested to provide a password as stipulated in Schedule 2. The response to the request for this password will trigger the following events:
- 5.6.1 Correct Password – no response vehicle will be dispatched to the Premises;
  - 5.6.2 Incorrect Password – a response vehicle WILL be dispatched to the Premises;
- 5.7 Reaction Officers are trained to protect the Customer's life and property from imminent danger or threat by securing the premises and protecting the Customer. The Customer hereby acknowledges that it is not expected of the Reaction Officer to take on the role of the SA Police Service and chase after suspects to affect an arrest. Suspects will however be arrested if the circumstances are of such a nature that the key responsibilities are not compromised;
- 5.8 The Customer acknowledges and places on record that should access to the premises by a Reaction Officer not be possible due to the current layout of the Premises or the presence of vicious dogs, attending to an alarm signal will NOT be possible. It remains the Customer's responsibility and cost to ensure reasonable access (such as, but not limited to, the removal of electric fencing on walls, the removal of spikes on walls) to the Premises by a Reaction Officer;
- 5.9 The Customer acknowledges that the situation outlined in clause 5.8 will result in the Reaction Officer only leaving a slip in the post box or on the gate/door. All will be presumed to be in order should no obvious signs of forced entry be visible from external to the premises and a false alarm category allocated to that specific signal;
- 5.10 The panic button should only be used in the event of a bona fide emergency. Should the Customer accidentally activate the panic button, the Customer should immediately notify the Alarm Receiving Centre to cancel the response;
- 5.11 The Duress Code is the highest priority generated in the Alarm Receiving Centre and will send a distress signal that will not be challenged by the Alarm Receiving Centre. A response vehicle will be immediately dispatched to the Premises by the Alarm Receiving Centre.
- 5.12 In the event where the Premises is a commercial premises, the Alarm Receiving Centre will not contact the Customer in the event of an Open/Close signal being received before or after the scheduled times as long as this signal is within the Opening/Closing window specified in Schedule 2;

## **6 AUTHORISATION**

- 6.1 The Customer hereby authorises the KNI to enter the Premises of the Customer for the purpose of conducting security surveillance and furthermore authorises the KNI to take such steps as would reasonably be required for the protection of the life, property and goods of the Customer. Furthermore, the Customer authorises the KNI to arrest without warrant as contemplated in Section 42(3) of the Criminal Procedure Act 51 of 1977, any person found committing any offence on or in respect of the Premises.

## **7 LIMITATION OF KNI'S LIABILITY TO THE CUSTOMER**

- 7.1 To the extent that the Service functions as a deterrent, the Service is not a guarantee of safety against or prevention of loss, liability, injury and damage of whatsoever nature and howsoever arising. Accordingly while KNI shall exercise reasonable care in the rendering of the Service, nothing herein contained shall be construed or interpreted in any manner whatsoever as providing the Customer or any third party whomsoever with any guarantee or assurance of safety or against any loss, liability, injury or damage of whatsoever nature and howsoever arising.
- 7.2 Neither KNI nor any other persons for whom KNI may be liable in law shall be liable to the Customer in respect of or pursuant to any loss, liability, injury, damage or claims of whatsoever nature (including without limitation any loss of profits and/or any special and/or consequential loss or damages) whether arising through the rendering or non-rendering or attempted rendering by KNI of the Service in terms of this agreement or in delict or otherwise whether at the Premises or elsewhere if any such loss, liability, injury, damage or claims arise as a result of or pursuant to any innocent act or omission on the part of KNI or any other persons for whom KNI may be liable in law. The Customer hereby irrevocably waives all and any such claims and irrevocably indemnifies KNI or any other person for whom KNI may be liable in law against all claims of third parties arising out of the said acts or omissions at the Premises.
- 7.3 Without in any way limiting or derogating from the provisions of clauses 7.1 and 7.2 above, KNI shall further not be liable to the Customer for any damage, loss, liability or injury of whatsoever nature and howsoever arising that may result from the failure to render the Service as a result of any force majeure or casus fortuitous, including but not limited to unforeseeable interruptions in land or radio links between KNI and the Customer, any acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, tremor, flood, storm or fire.
- 7.4 The Customer hereby agrees and acknowledges that the System and/or the Service are complementary to insurance cover and do not provide an alternative to such insurance cover. It remains at all times the duty of the Customer to ensure that it has adequate insurance where necessary and that the Premises and contents thereof (including the Premises for which the Customer, not being the owner thereof, is nevertheless responsible) are adequately insured.
- 7.5 KNI reserves the right not to respond to a signal during or within a reasonable time following any electrical or other storm unless the emergency is telephoned in to the Alarm Receiving Centre.
- 7.6 KNI's responsibility and obligations to the Customer under this agreement cease immediately upon termination of the agreement or the Service is suspended under clause 11.3 or 11.4 below.
- 7.7 The provisions of this clause 7 do not in any way derogate from the exemptions from liability contained elsewhere in this agreement.

## **8 KNI'S RECOMMENDATIONS TO THE CUSTOMER**

- 8.1 Because of the purpose of the System described in clause 5 above, and the exemptions from, and limitations of KNI's liability to the Customer under this agreement, KNI strongly recommends that the Customer takes out separate insurance to cover the Customer, the Customer's invitees, the Premises and the contents thereof.
- 8.2 Where the System is configured to send signals to the Alarm Receiving Centre via a telephone line, KNI recommends that the Customer uses one telephone line for the System only.

## **9 WHAT IT WILL COST THE CUSTOMER**

- 9.1 The Customer is liable for the timeously payment, in terms of this agreement, of the charges set out in this agreement pertaining to the Service. These charges include VAT (where applicable) and, if the rate of VAT changes during the course of this agreement, the

Customer will be liable to pay VAT at any changed rate. In the years subsequent to the completion of the first year of this agreement from the start date, KNI is entitled to increase its Service fees and charges, including extra charges, by not more than the average monthly Consumer Price Index plus 3% per annum, in order to cover any increase in the costs of providing the Service. KNI will inform the Customer in writing of any increased amount. The Consumer Price Index is the rate published from time to time by Statistics South Africa.

- 9.2 The Customer is also responsible for the following charges:
- 9.2.1 Installation and equipment charges for the System to KNI (where applicable);
  - 9.2.2 Taxes, fees or charges set by the police, fire, or any other authority due to the installation or operation of the System;
  - 9.2.3 Any charges for work done by police, fire or other authorities, medical service providers, armed response service providers or by any telecommunications agency, the installer or any other party not covered by this agreement.
  - 9.2.4 The annual radio license fee for the transmitter in the System, the first such fee to be paid on installation or activation of the System and the subsequent fees annually at the beginning of January of each year or such other date as notified to the Customer.
- 9.3 The Customer is also liable for charges at KNI's standard rates for labour and materials current at the time when any of the following applies:
- 9.3.1 Faults are caused by the Customer or any other person, thing or event which KNI could not reasonably be expected to prevent;
  - 9.3.2 The Customer has asked KNI to visit the Premises for repair or service work;
  - 9.3.3 The Customer requests KNI to change the System or KNI is required to change it as a result of changes at or in the Premises or for any other reason;
  - 9.3.4 The Customer breaches any of the Customer's obligations contained or implied in this agreement;
  - 9.3.5 Any replacements, repairs or modifications to the System that are needed as a result of a change in a relevant standard or regulation governing the System;
  - 9.3.6 The System requires inspection, resetting, repairing or replacing including where:
    - 9.3.6.1 The Customer, the key holder or some other party has failed to follow the instructions, has not locked, closed or secured a window, door or other protected point, has not used or adjusted other equipment or components properly or has interfered with or tampered with the System;
    - 9.3.6.2 Either the Customer, or the equipment or devices which KNI has not supplied, has caused a false alarm or failure of the System;
    - 9.3.6.3 The Customer's actions or failures, or those of anyone else other than KNI results in KNI needing to inspect, replace or repair the System or any part thereof;
    - 9.3.6.4 Rodents, other animals or insects cause damage to or activation of the System;
    - 9.3.6.5 There is a problem on the telephone line or connection or other communication link,
    - 9.3.6.6 Weather conditions cause damage to or activation of the System;
- 9.4 Unless KNI and the Customer agree in writing to the contrary the service charge does not include any work involving redecorating repairing, carpet laying concealing cables, building or carpentry work. The service charge is established on the basis that KNI will have full access to the areas where KNI carries out work.
- 9.5 If this agreement is terminated under clause 11.3 the following shall apply:
- 9.5.1 The Customer will be liable to KNI for the charges and any other money due to KNI but not paid at the termination of the agreement;
  - 9.5.2 Unless the agreement is terminated in terms of clause 11.3 or 11.3.2, and in such cases such termination is not as a result of the Customer's fault, the Customer will be liable to KNI, as a reasonable estimate of KNI's damages, in an amount equal to the yearly service charge which would be due until the end of the fixed period less an allowance of 20%. This allowance is offered because KNI would then not be obliged to monitor and maintain the System and because KNI will receive payment earlier than would otherwise have been the case;
  - 9.5.3 If the Customer has already paid KNI more than the amounts due under clauses 9.5.1 and 9.5.2 above, KNI will refund any overpayment;
  - 9.5.4 KNI may also take further action against the Customer if the Customer is in breach of any of the Customer's obligations under this agreement.

## **10 PAYMENT**

- 10.1 The Customer will be obliged to pay the service charges provided for in this agreement monthly in advance by debit order;
- 10.2 The Customer will be obliged to pay the extra charges and all other amounts provided for in this agreement immediately upon presentation of KNI's invoice or on KNI's written request for payment;
- 10.3 In the event of any payment being overdue, KNI will be entitled to charge the Customer interest, from the date of KNI's relevant invoice or request for payment until the date of actual payment at the Prime Rate plus 2% per annum;
- 10.4 KNI is not obliged to, and does not accept, post-dated cheques;
- 10.5 In the event of any breach by the Customer of the Customer's payment obligations, KNI shall be entitled to suspend the performance of KNI's obligations to the Customer and to disconnect and/or remove the Transmitter without notice to the Customer.

## **11 TERMINATION OR SUSPENSION OF THE AGREEMENT**

- 11.1 Unless this agreement terminates under clauses 11.3 below, this agreement will continue for the fixed period;
- 11.2 The Customer or KNI is entitled to terminate this agreement with effect from the expiry of the fixed period by giving at least 1 month's notice in writing prior to the expiry of the fixed period to the other party, failing such notice this agreement will continue after the fixed period until either party gives 1 month's written notice of termination of this agreement;
- 11.3 KNI may terminate or suspend this agreement in writing immediately if:
  - 11.3.1 The alarm Receiving Centre or the System are destroyed or so badly damaged that KNI cannot reasonably provide the Service;
  - 11.3.2 KNI cannot for any reason whatsoever, arrange or keep the telecommunications or other communication facilities needed to transmit and/or receive the signal to or from the Customer's Premises or the Alarm Receiving Centre;

- 11.3.3 KNI may, without any prejudice to any other rights which KNI may have, including the right to payment of KNI's charges for the remaining period of the agreement, either terminate this agreement or suspend this agreement for a period KNI considers appropriate if any of the following apply:
- 11.3.3.1 The Customer fails to make timeously payment of any amount due to KNI by the Customer;
  - 11.3.3.2 The Customer commits a breach of any of the Customer's obligations under this agreement.
  - 11.3.3.3 The Customer dies, application is made for the Customer's sequestration, the Customer enters into any kind of arrangement or settlement or scheme with the Customer's creditors or if a receiving order or administration order is made against the Customer;
  - 11.3.3.4 Any legal proceedings are taken relating to the System or the Premises or any part of the Premises;
  - 11.3.3.5 The Customer fails to follow any recommendations KNI makes for repairing or replacing faulty or old parts of the System or for repairs to the Premises which KNI considers necessary for the System to work properly, or to prevent unnecessary damage to the System;
  - 11.3.3.6 The Customer does not follow the instructions or if, for any other reason which is or ought to be within the Customer's control, there are an excessive (In KNI's sole discretion) number of false alarms;
  - 11.3.3.7 The Customer changes the Premises in such a way that KNI (in KNI's sole discretion) believes it is no longer viable to provide the Service;
- 11.4 If KNI gives the Customer written notice of suspension, such notice suspends what KNI is obliged to do under this agreement and KNI has no obligation in terms of this agreement until the suspension is lifted by KNI.
- 11.5 At the termination of the agreement KNI will stop providing the Service forthwith and KNI shall be entitled to disconnect and/or remove the transmitter.

## 12 GENERAL

- 12.1 KNI is at all times entitled to engage contractors or sub-contractors to carry out all or any of KNI's obligations under this agreement;
- 12.2 If the Customer enters into this agreement together with any other person, the Customer and such other person are both liable jointly and severally to KNI. If the Customer is a tenant at the Premises, the landlord may be required to become a party to this agreement and in such event the liability of the Customer and the landlord to KNI shall be joint and several;
- 12.3 KNI may pass on the information the Customer has given to KNI under this agreement to any authority and, except for security details, to any credit reference, debt collection or public telecommunications agency;
- 12.4 Any amount to be paid in terms of this agreement will be deemed to have been paid only when the cheque or negotiable instrument concerning such payment has been met and either the KNI's bank account has been credited or the Customer provides proof of payment.
- 12.5 This agreement is the entire agreement between the Customer and KNI and KNI shall not be bound by any representations, undertakings, promises or the like not specifically recorded or incorporated in this agreement. No variation, waiver of rights, release from any obligation or consensual cancellation shall have any effect unless in writing and signed by both KNI and the Customer;
- 12.6 No indulgence, latitude, extension of time or omission by KNI shall constitute a waiver by KNI of any of KNI's rights under this agreement and shall not amount, in any appropriate instance, to a condonation by KNI of any act or omission by the Customer and such conduct shall not, in any circumstances whatsoever, give rise to a defence of estoppels;
- 12.7 The Customer hereby consents to the jurisdiction of the High Court in respect of any actions by KNI arising under this agreement or the implementation or cancellation or termination thereof. Should KNI wish to proceed in a Magistrate's Court having jurisdiction, KNI may do so at KNI's election, the Customer agrees that this consent is severable from this agreement and shall apply even in the event of termination of this Agreement;
- 12.8 The Customer shall be liable for any legal costs incurred by KNI in enforcing the provisions of this agreement on the attorney and own client scale.
- 12.9 The Customer chooses as the Customer's domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature the address stated in this Agreement as the Customer's address.
- 12.10 The Customer is not entitled to cede, delegate or otherwise transfer the Customer's rights or obligations under this agreement to any other party, unless agreed otherwise in writing by KNI;
- 12.11 To the extent any provision of this agreement is found to be void or unenforceable for whatever reason, the parties shall procure that that provision shall (where possible to do so whilst maintaining the purpose of this agreement) be amended to the minimum extent possible to make it valid or enforceable, or if this is not possible, shall be deleted from the agreement. In all such circumstances, the remainder of this agreement shall remain in force unaffected.
- 12.12 Any provision of this agreement which contemplates performance or observance subsequent to any termination or expiration of this agreement shall survive any termination or expiration of this agreement and continue in full force and effect.
- 12.13 When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a weekend or public holiday In the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a weekend or public holiday.
- 12.14 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply to this agreement.
- 12.15 If any provision in a definition or in Schedule 1 or Schedule 2 is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause or in Schedule 1 or Schedule 2, effect shall be given to it as if it were a substantive provision in the body of the agreement.