



A DIVISION OF CENTURY FENCE COMPANY

## Terms and Conditions for Standard Preventative Maintenance Service - Minnesota

### (Upon acceptance of proposal become binding as part of the contract)

By accepting Century Fence Company's proposal the Customer acknowledges that Customer has read, understands, and agrees to the following Terms and Conditions as part of this Agreement.

CENTURY SECURITY SOLUTIONS, a division of CENTURY FENCE COMPANY is hereinafter referred to as "CSS" or "Seller" and Customer is hereinafter referred to as "Customer".

The parties hereto agree that:

- 1.** CSS agrees to provide preventive maintenance for each gate operator installed and instruct Customer in the proper use of the gate system and install at Customer's premises, and Customer agrees to buy, supervisory equipment described in the Proposal which has been provided to the Customer and is a part of this agreement.
- 2. SCHEDULE OF SERVICES:** see proposal which is part of this contract and provides for preventative maintenance services described on the Checklist attached hereto and made a part hereof.
- 3. SERVICE CHARGES:** Customer agrees to pay CSS: Customer agrees to pay CSS the annual fee, payable annually in advance for the services selected on the Schedule of Services for the term of this agreement commencing on the first day of the month next succeeding the date hereof, and continuing annually thereafter, all payments being due in advance of the subsequent term, together all flat rate, hourly, and other service work charges described in the CSS Estimate/Quote.
- 4. TERM OF AGREEMENT: RENEWALS/ INCREASES OF CHARGE:** The term of this agreement shall be for a period of two years and shall automatically renew year to year thereafter under 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 contract at least 30 days prior to the expiration of any term. After the expiration of one year from the date hereof CSS shall be permitted from time to time to increase its charge under the contract by an amount not to exceed nine percent each year and Customer agrees to pay such increase as invoiced.
- 5. CUSTOMER'S CARE OF EQUIPMENT: REPAIRS AND ADDITIONS:** Customer agrees not to tamper with, remove or otherwise interfere with the system. The equipment shall remain in the same location as installed and Customer agrees to bear the cost of repairs, replacement, relocation or additions to the system made necessary as a result of any painting, alteration, remodeling or damage, including damage caused by unauthorized intrusion to the premises, lightning or electrical surge.
- 6. TESTING OF SYSTEM:** The parties hereto agree that the system, once installed, is in the exclusive possession and control of Customer, and it is Customer's sole responsibility to test the operation of the system and to notify CSS if any equipment is in need of repair. CSS shall not be required to service the system unless it has received notice from Customer and all Customer payments are current, and upon



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such notice, and provided Customer is not in default of this agreement, CSS shall during the warranty period service the system to the best of its ability within 72 hours, exclusive of Saturday, Sunday and legal holidays, during the business hours of 7 a.m. and 3 p.m. Customer agrees to test and inspect the system immediately upon completion of installation and to advise CSS in writing within three days after installation of any defect, error or omission in the system. In the event Customer complies with the terms of this agreement and CSS fails to repair the system within 36 hours after notice is given, excluding Saturdays, Sundays, and legal holidays, Customer agrees to send notice that the system is in need of repair to CSS, in writing, by certified or registered mail, return receipt requested and Customer shall not be responsible for payments due while the gate system remains inoperable. In any lawsuit between the parties in which the condition or operation of the equipment is in issue, Customer shall be precluded from raising the issue that the equipment was not operating unless Customer can produce a post office certified or registered receipt signed by CSS, evidencing that service was requested by Customer.

**7. CUSTOMER RESTORES EQUIPMENT:** Customer shall be responsible for any Loss occasioned by fire or casualty and the cost of replacing or restoring the system. Notwithstanding the condition of Customer's premises, or CSS's Impossibility of performance occasioned by condition of Customer's premises, Customer shall remain liable for monthly payments for the term of this agreement without offset or reduction.

**8. INSURANCE:** Customer shall maintain a policy of public liability, property damage, burglary and theft insurance under which CSS is named as additional insured, and under which the insurer agrees to indemnify and hold CSS harmless from and against all costs, expenses including attorneys fees and liability arising out of or based upon any and all claims, injuries and damages arising under this agreement, including, but not limited to, those claims, injuries and damages contributed to by CSS's negligent performance to any degree or its failure to perform any obligation. The minimum limits of liability of such insurance shall be one million dollars for any injury or death, and property damage, burglary and theft coverage in an amount necessary to indemnify Customer for property on its premises. CSS shall not be responsible for any portion of any Loss or damage which is recovered or recoverable by Customer from insurance covering such Loss or damage or for such Loss or damage against which Customer is indemnified or insured.

**9. ASSIGNMENTS/WAIVER OF SUBROGATION RIGHTS:** Customer shall not be permitted to assign this agreement without written consent of CSS. Any such assignment without CSS's prior approval shall be deemed a breach of this agreement. CSS shall have the right to assign this contract and shall be relieved of any obligations created herein upon such assignment. Customer on its behalf and any insurance carrier waives any right of subrogation Customer's insurance carrier may otherwise have against CSS or CSS's subcontractors arising out of this agreement or the relation of the parties hereto. Customer shall not be permitted to assign this agreement without written consent of CSS.

**10. INDEMNITY:** Customer agrees to and shall indemnify and hold harmless CSS, its employees, agents and subcontractors, from and against all claims, lawsuits, including those brought by third parties or Customer, including reasonable attorneys' fees, and Losses asserted against and alleged to be caused



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by CSS's performance, negligent performance or failure to perform its obligations under this agreement. Parties agree that there are no third party beneficiaries of this contract.

**11. LEGAL ACTION:** The parties agree that due to the nature of the services to be provided by CSS the payments to be made by Customer for the term of this agreement are an integral part of CSS's anticipated profits, and in the event of Customer's breach of this agreement it would be difficult if not impossible to reasonably estimate CSS's actual damages. Therefore, in the event of Customer's default of this agreement Customer shall pay to CSS 80% of the balance due for the full term of this agreement as liquidated damages and CSS shall be permitted to terminate all its services under this agreement without relieving Customer of any obligation herein. Additionally, in the event of Customer's breach of this agreement CSS may, at its option, either remove its equipment or deem same sold to Customer for 80 % the amount specified as the value of the equipment. The parties waive trial by jury in any action between them. In any action commenced by CSS against Customer, Customer shall not be permitted to interpose any counterclaim. Any action by Customer against CSS must be commenced within one year of the accrual of the cause of action or shall be barred. All actions or proceedings against CSS must be based on the provisions of this agreement. Any other action that Customer may have or bring against CSS 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. Should CSS prevail in any litigation between the parties including arbitration, Customer shall pay CSS's legal fees.

**12. ADDITIONAL PAYMENTS:** In addition to the payments set forth herein, Customer agrees to be liable for and pay to CSS any excise, sales, property, or other tax, telephone line charges, and any increases thereof, which may be imposed upon CSS because of this agreement. Should CSS be required by existing or hereinafter enacted law to perform any service or furnish any material not specifically covered by the terms of this agreement Customer agrees to pay CSS for such service or material.

**13. FALSE ALARMS - POLICE RESPONSE:** CSS shall have no liability for false alarms, false alarm fines, police response, or the refusal of the police or fire department to respond. In the event of termination of police or fire response by the municipal police or fire departments this contract shall nevertheless remain in full force and Customer shall remain liable for all payments provided for herein. Customer shall indemnify and hold CSS harmless for all false alarm fines, permit fees or other charges imposed by any municipality, including CSS's attorney fees, arising out of the system or CSS's services related thereto, excluding sales or income tax, if any.

**14. CSS'S RIGHT TO SUBCONTRACT SPECIAL SERVICES:** Customer agrees that CSS is authorized and permitted to subcontract any services to be provided by CSS to third parties who may be independent of CSS, and that CSS shall not be liable for any Loss or damage sustained by Customer by reason of fire, theft, burglary or any other cause whatsoever caused by the negligence of third parties, and that Customer appoints CSS to act as Customer's agent with respect to such third parties, except that CSS shall not obligate Customer to make any payments to such third parties. Customer acknowledges that this agreement, and particularly those paragraphs relating to CSS'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 and communication centers of CSS.



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**15. NO WARRANTIES OR REPRESENTATIONS: Customer's EXCLUSIVE REMEDY:** CSS does not represent nor warrant that the system will prevent any Loss, damage or injury to person or property, by reason of burglary, theft, hold-up, fire or other cause, or that the system will in all cases provide the protection or service for which it is installed or intended. Customer acknowledges that CSS is not an insurer, and that Customer assumes all risk for Loss or damage to Customer's premises or its contents. CSS has made no representation or warranties, and hereby disclaims any warranty of merchantability or fitness for any particular use. Customer's exclusive remedy for CSS's default hereunder is to require CSS to repair or replace, at CSS's option, any equipment or part of the system which is non-operational.

**16. EXCULPATORY CLAUSE:** Customer agrees that CSS is not an insurer and no insurance coverage is offered herein. The equipment is designed to reduce certain risks of Loss, though CSS does not guarantee that no Loss will occur. CSS is not assuming liability, and, therefore shall not be liable to Customer for any Loss, personal injury or property damage sustained by Customer as a result of burglary, theft, hold-up, fire, equipment failure, smoke, or any other cause, whatsoever, regardless of whether or not such Loss or damage was caused by or contributed to by CSS's negligent performance, failure to perform any obligation or strict products liability. Customer releases CSS from any claims for contribution, indemnity or subrogation.

**17. LIMITATION OF LIABILITY:** Customer agrees that should there arise any liability on the part of CSS as a result of CSS's negligent performance to any degree, failure to perform any of CSS's obligations, equipment failure or strict products liability, that CSS's liability shall be limited to the sum of three times the monthly payment at time liability is fixed or the sum of \$250.00, whichever is greater. If Customer wishes to increase CSS's maximum amount of CSS's limitation of liability, Customer may, as a matter of right, at any time, by entering into a supplemental contract, obtain a higher limit by paying an annual payment consonant with CSS's increased liability. This shall not be construed as insurance coverage.

**18. FULL AGREEMENT/SEVERABILITY/ CONFLICTING DOCUMENTS:** This agreement constitutes the full understanding of the parties and may not be amended or modified or canceled except in writing signed by both parties, Should there arise any conflict between this agreement and Customer's purchase order or other document, this agreement will govern, whether such purchase order or document is prior to or subsequent to this agreement. This contract shall be governed by the laws of the State of Minnesota. Should any provision of this agreement be deemed void, all other provisions will remain in effect.