



STANDARD TERMS AND CONDITIONS FOR ROOF MONITOR OWNER AGREEMENT

These Standard Terms and Conditions (the “Standard Terms”) are incorporated by reference into the Owner Agreement for Roof Monitor Services (the “Agreement”) between BELDON TECHNOLOGIES, INC., a Texas corporation, d/b/a Roof Monitor™ (“Roof Monitor”), the business entity set forth in and electronically executing the Agreement (the “Owner”), and the Roof Monitor Authorized Service Provider set forth in and electronically executing the Agreement (“Dealer”), pursuant to which Owner will acquire and use the Roof Monitor System on (as defined therein). For purposes of the Agreement and these Standard Terms, Roof Monitor, Dealer and Owner are each a “Party” and collectively are the “Parties.” Terms as defined in the Agreement are incorporated herein by reference.

OWNER MAY NOT INSTALL OR OTHERWISE USE ANY OF THE ROOF MONITOR SYSTEM UNLESS AND UNTIL THE AGREEMENT IS ELECTRONICALLY ACCEPTED BY DEALER AND OWNER AND SUBMITTED TO ROOF MONITOR AND ACCEPTED BY ROOF MONITOR IN THE MANNER THEREIN PROVIDED.

1. Product.

1.1 The “Product” governed by the Agreement consists of the Equipment specified in the Sales Order, and the Integrated Software contained in the Equipment and the Online Software, to be used by Owner in conjunction with the Monitoring Services (as described in Section 1.3, below). **The Product is a live load indicator device and not an alarm system, and does not perform any of the functions of an alarm system. The Product does not measure or indicate the integrity of the roof system or any structural element of the Owner’s facility on/in which the Product will be installed, or provide any meteorological information or weather forecasting. The sole purpose of the Product is to provide load sensing data to Owner in the manner provided for herein.** This is designed to alert the Owner to changes in load on a Sensor based entirely on the alert levels as sets the Owner. The default setting for Sensor measuring of live land is set at 15 minute intervals. Any change from the default setting will be made only at the direction of Owner and reducing time between intervals will adversely impact the battery life of the Sensor and the Warranty Period applicable to the Sensor. Roof Monitor may make substitutions and modifications to the Roof Monitor System at any time; but if any material substitution or modification is made to the Product by Roof Monitor after installation, Roof Monitor will provide Owner notification of such change. Equipment (other than Sensors) provided by Roof Monitor may be new or reconditioned by Roof Monitor, but in either case subject to the Roof Monitor Product Warranty which may be found at www.roofmonitor.com in effect on the Date of Agreement.

1.2 Installation Services.

(a) Following Owner’s payment of the first installment of the Initial Fees (in accordance with Section 5, below), Dealer as the Installer of Record for the Facility will be responsible for performing the Installation Services as set forth in Section 6 of the Agreement (the “Installation Services”); provided, however, notwithstanding anything herein to the contrary, the installation of the Controller and ancillary parts (the “Controller Installation”) will be provided by Roof Monitor through a subcontractor of Roof Monitor who is

registered to do business in the State in which the Facility is located (the “Controller Installer”) . No Installation Services will be provided other than as set forth in the Agreement; and Owner will fully cooperate with the Installation Services. Dealer (as identified in the Agreement) is an independent contractor with Owner and will provide the Installation Services under subcontract with Roof Monitor; and Owner will pay Roof Monitor the Dealer Installation Charges for the Installation Services and will pay Roof Monitor the Controller Installation Charges, both in accordance with the Sales Order; and Dealer will be compensated for such Installation Services by Roof Monitor. Notwithstanding anything in the Agreement or herein to the contrary, Dealer as Installer of Record will not be responsible for any acts of the Controller Installer. **Roof Monitor does not control Dealer’s activities; and accordingly will not be responsible for Dealer’s actions and Roof Monitor will have no responsibility for any damage which may result to the Facility or from any third party claims for physical injury arising out of any activity by Dealer at the Facility, including such installation or warranty work.**

(b) Owner warrants that (i) it is the lawful owner of the Facility or (ii) the lawful tenant of the Facility and possesses the legal authority necessary to make improvements to the Facility, including installation of the Product on the roof of the Facility. If Owner is not the lawful owner of the Facility, but is the lawful tenant of the Facility, Product will not ship and Installation Services will not commence until Owner delivers to Roof Monitor (or to Dealer for delivery to Roof Monitor) the Landlord Consent to Installation and Maintenance (the “Consent of Landlord”), in the form provided at www.roofmonitor.com, duly executed by Owner’s landlord for the Facility; and Installation Services will not commence until Roof Monitor is in receipt of the duly executed Consent of Landlord.

(c) Dealer will perform the Installation Services with a goal of completing the Installation Services by the Target Installation Date set forth in the Agreement; provided, however, the Target Installation Date is an estimate only and neither Roof Monitor nor Dealer have made or will make any representation or warranty, written or oral, express or implied as the date Installation Services will actually commence other than that Dealer will commence and perform the Installation Services in a commercially reasonable manner.

(d) If any acts or omissions of Owner or Owner’s landlord, lessors, employees, licensors, contractors, suppliers or agents (the “Owner Parties”) prevents or delays Dealer from performing any Installation Services (an “Owner Delay”), Roof Monitor will provide written or electronic notification to Owner, within ten (10) Business Days of Roof Monitor becoming aware of such delay, and Owner will be invoiced for any additional and documented commercially reasonable expenses, including labor costs, incurred by Roof Monitor or Dealer as a result thereof.

(e) In the event that Roof Monitor, Dealer or Owner desires to make any changes to the Equipment or Installation Services after acceptance of the Agreement, a description of the requested change will be submitted to Roof Monitor at change@roofmonitor.com and/or submitted to Owner at the email address set forth in the Agreement. The Parties in their respective sole discretion will evaluate the requested change and determine whether there are any costs or scheduling impacts due to the requested change. The Parties will then determine whether to approve, disapprove or defer the requested change; and any change will not be effective unless approved by both Parties in the manner provided herein and set forth in the applicable Change Order (which may be found at www.roofmonitor.com).

(f) Owner will not modify, or permit modification of the Product in any manner without the specific prior written approval of Roof Monitor, in its sole discretion; and may not relocate any of the Product to any other facility, and removal of the Product will be subject to Roof Monitor’s right to repossess the Product as set forth in Section 6.5, below. Any such unauthorized modification will void Roof Monitor's responsibilities under the Agreement, including voiding the Roof Monitor Product Warranty.

1.3 Monitoring Services. If the Owner accepts the Monitoring Agreement (by indicating accordingly in the Agreement), then following the Date of Installation Completion, Roof Monitor will be exclusively responsible for performing the monitoring services (the “Monitoring Services”) in accordance with

the Monitoring Agreement. The Monitoring Agreement can be found at www.roofmonitor.com; and the form of Monitoring Agreement in force on the Date of Agreement shall apply. **Remote monitoring through the Integrated Software is an integral and critical element in the effectiveness of the Product and the Roof Monitor System, and remote monitoring of the Product may not be used without the Integrated Software and pursuant to the Monitoring Agreement.** No services outside of those set forth in Roof Monitor's applicable documentation will be included in the scope for the Monitoring Services. Owner is responsible for ensuring that all of the Product, software and other resources that Owner uses with the Monitoring Services are, to the satisfaction of Roof Monitor, compatible with the Monitoring Services; and Owner at its expense will from time to time modify its Product, software or other resources as Roof Monitor may require to assure such compatibility. **Owner acknowledges that the Monitoring Services are not a meteorological service, and do not perform any of the functions of a meteorological service.** Owner agrees to pay for the Monitoring Services in accordance with the Monitoring Agreement.

1.4 Extra Work. If Owner requests and Roof Monitor and Dealer agree to engage in work (the "Extra Work") or provide Products in addition to the scope set forth in the then Sales Order, then such work may be done by Dealer, in accordance with a written statement of work or such additional Products will be provided as agreed upon by the Parties as set forth in the applicable Change Order, which is to be submitted to Roof Monitor in the form available at www.roofmonitor.com and will be effective only when electronically accepted by Dealer and electronically submitted to and accepted by Roof Monitor and represented by a new Sales Order with a new Job Number for that Extra Work, but which will be incorporated into the Agreement by reference and governed by the Agreement. All Change Orders will be governed by Standard Terms and Roof Monitor Product Warranty in effect (which may be found at www.roofmonitor.com) on the date of electronic submission of the Change Order to Roof Monitor.

1.5 Services Generally. The Installation Services, Monitoring Services, and Extra Work are collectively referred to herein as the "Services." The Services will be performed under, and are subject to, the terms of the Agreement. In performing the Services, Roof Monitor or Dealer, as the case may be, will be entitled to rely upon any instructions, authorizations, approvals and other information provided by Owner, and will incur no liability or responsibility of any kind in relying on or complying with any such instructions, authorizations, approvals or other information.

2. **Order Logistics.**

2.1 Order.

(a) Based upon the information provided by Owner regarding the Facility, and with the resources made available to Dealer by Roof Monitor, Dealer will generate and present to Owner a Quote for the Equipment (including recommended number of Sensors and recommended Sensor placement), which shall be non-binding unless and until accepted by Owner, Dealer and Roof Monitor in the manner provided for in the Agreement.

(b) It will be Owner's responsibility to provide to Dealer current, complete and accurate information in the proposed Agreement, including identification of the Facility, when submitted to Roof Monitor for approval, which Roof Monitor will rely upon in accepting the proposed Agreement. Once the proposed Agreement is submitted to and accepted by Roof Monitor, Owner may not modify or cancel the Agreement without the written consent of Roof Monitor, which consent Roof Monitor will not unreasonably withhold, condition or delay. Any such modification or change shall be submitted to Roof Monitor at change@roofmonitor.com.

(c) Once accepted by Owner and Dealer, and submitted to and accepted by Roof Monitor in the manner set forth in the proposed Agreement, **the Agreement shall be in full force and effect and binding upon Owner, Dealer and Roof Monitor.**

(d) The Quote presented by Dealer to Owner represents Dealer's best estimate of the number of Sensors and installation layout to be optimal for the Facility, based upon the initial information available to Dealer relating to the Facility and Roof Monitor's then established guidelines. Each Quote, when presented, is non-binding and supersedes in its entirety any prior Quote until it becomes a Sales Order as part of an approved and fully accepted Agreement.

(e) Once the Proposal is accepted by Owner and by Dealer and submitted to Roof Monitor, Roof Monitor will review the Proposal, including the Equipment and grid layout set forth therein, and it may accept the Equipment and layout in the Proposal and provide a Sensor Grid Placement Sheet accordingly, or it may recommend a different Equipment quantity and/or installation layout for Owner's reconsideration.

(f) Neither Dealer nor Roof Monitor nor any of its subcontractors, vendors or agents make or will make any representation or warranty to Owner as to accuracy of such recommendations and shall have no responsibility or liability to Owner for any such recommendations absent gross (not ordinary) negligence or willful misconduct in making such determination and recommendation.

(g) Owner is under no obligation to accept the recommendations as to the number of Sensors or Sensor placement, and may submit the proposed Agreement with such Equipment/Sensor quantity and/or Sensor Grid Placement Sheet as Owner may select; but Roof Monitor is under no obligation to accept any submission by Owner.

(h) From and after the Date of Agreement, at any time prior to shipment of any Product, Roof Monitor may in its sole discretion cancel the Agreement for any reason, without incurring any liability to Owner or Dealer, other than refund of fees to Owner, if any, as set forth below.

2.2 Shipping and Acceptance.

(a) Roof Monitor will ship the Product to the Facility at the address specified by Owner in the Agreement. The Product will be shipped for delivery Monday through Friday, excluding holidays observed by Roof Monitor, during business hours. Roof Monitor will select the manner, method and carrier for shipping the Product. Owner acknowledges and agrees that Roof Monitor's ability to provide the Product and Dealer's ability to complete Installation Services are contingent upon the supply and delivery schedules of each manufacturer and supplier of the Product and its components. In addition, all shipments and deliveries are subject to the carrier's applicable terms, conditions and schedule. Accordingly, neither Roof Monitor nor Dealer will have any liability for delays in any shipment or delivery.

(b) Acceptance of the Product by Owner is deemed to occur upon delivery of the Product at the Facility at the address as specified on the Agreement. Any delivery refusals and returns of Product will be handled by Roof Monitor in a commercially reasonable manner. Owner is responsible to accept and keep the Product in a safe area; but the shipping container for the Product should only be opened by a Roof Monitor Authorized Service Provider.

2.3 Transfer of Title and Risk of Loss. Title and risk of loss to the Product, and risk of loss to the Integrated Software, will transfer to Owner upon delivery at the Facility at the address specified on the Agreement. Title to the Software will not pass to Owner.

3. **License to Use Software.**

3.1 Grant of License. In consideration of and subject to Owner's agreement to abide by the terms of the Agreement and payment of the Fees (as defined and in the manner provided below), Roof Monitor grants to Owner under all applicable proprietary rights of Roof Monitor a limited, non-exclusive, non-sublicenseable, royalty free, non-transferable and non-assignable (except as permitted under Section 13.2) right

to use the Software to enable Owner's use of the Product in accordance with Roof Monitor's then applicable documentation; provided, however, Owner may not use and is not licensed to use the Software for any remote monitoring of the Roof Monitor System in any manner except pursuant to a then in force Monitoring Agreement. Owner is licensed to use the Integrated Software and any Integrated Software updates obtained through Roof Monitor only as incorporated in, and as part of, the Product in the manner directed by Roof Monitor; provided, however, software updates will not be provided if the Monitoring Agreement is not in full force and effect. To make use of the Online Software, Owner must at its expense have a web browser acceptable to Roof Monitor and maintain a connection to the Internet.

3.2 License Restrictions. The Software is licensed and not sold. Owner may not make copies of the Integrated Software, and may only make copies of the Online Software that are incidental for the use of the Online Software, and may not provide a copy of the Software to any third party without the prior written consent of Roof Monitor (which consent may be withheld or granted in the sole discretion of Roof Monitor). Owner will not remove or obscure any intellectual property notices or labels on the Product. Owner will ensure that anyone who uses the Software (accessed either locally or remotely) does so only on Owner's behalf and complies with the terms of the Agreement. Owner will not (and will not encourage, assist or allow any third party to): (a) use or copy the Software except as expressly and unambiguously permitted in the Agreement; (b) modify or create derivative works of the Software; (c) incorporate any portion of the Software into other programs or compile any portion of it in combination with other programs; (d) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or derive any source code, source listings or design documentation (or underlying ideas, algorithms, structure or organization) from the Software or from any other information by any means whatsoever, except if and to the extent permitted by law without contractual waiver, and then only after written notification thereof the Roof Monitor; (e) use any of the Software's components, files, modules, content or related licensed materials separate from the Software; or (f) sell, rent, lease, lend, loan, distribute or sublicense the Software. Owner has no right to receive, use or examine any source code, source listings or design documentation relating to the Software. All rights not expressly granted in herein with respect to the Product are reserved to Roof Monitor and its suppliers.

4. Product Ownership and Use.

4.1 Owner's Property.

(a) Owner agrees to allow (or obtain permission for) Roof Monitor and Dealer, or such other Roof Monitor Authorized Service Provider as Roof Monitor may direct, and the Controller Installer, to access the Facility and the Product from time to time as required for Roof Monitor or Dealer to perform the Services. Owner will ensure that the portion of the Facility to be accessed by Roof Monitor or Dealer or the Controller Installer is a suitable and safe working environment, free of any substance or material that poses an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, protection of air, water or soil, or health and safety. If Roof Monitor or Dealer or the Controller Installer or Roof Monitor's designee for Warranty Services, in its good faith believes that it does not have a suitable and safe working environment at the Facility, or that it has or may encounter any such hazardous materials, upon written notice to Owner explaining such condition, Roof Monitor or Dealer may suspend performance of the affected Services until Owner provides a suitable and safe working environment and/or removes the hazardous materials, as the case may be, and will advise Owner accordingly.

(b) From and after the Date of Agreement, Owner will not permit the modification of the Facility in any manner which in any way affects (i) the ability of Dealer to perform the Installation Services, (ii) the ability of the Controller Installer to complete the Controller Installation, (iii) the ability of the designee of Roof Monitor to perform the Warranty Services, (iv) the Product or (v) performance of Monitoring Services in any way, without the prior written consent of Roof Monitor, which it may grant or withhold in its sole discretion, if any such change in the opinion of Roof Monitor may adversely affect the performance of any of the Services or the Product.

4.2 Battery Life. The Roof Monitor Sensors are battery operated, and the battery life is estimated to be 24 months, but the battery life can be affected by weather parameters, water, debris or snow accumulations, and system algorithms (frequency of reporting changes in live loads). **The battery is not replaceable or rechargeable.** The battery in each Roof Monitor Sensor is guaranteed for 2 years from installation Warranty (subject to change if the default settings for reporting intervals are changed) as reflected in the Roof Monitor Product Warranty. Once the battery runs out, the Roof Monitor Sensor will have to be replaced, and if after such 12-month warranty period such replacement will be at Owner's expense at the then published price of Roof Monitor.

4.3 Product Use. The Product is for Owner's own use at the Facility strictly under and consistent with the License granted herein and the Agreement. Owner may not commercially sell, lease, loan, relocate or distribute any portion of the Product. Except for any liability Roof Monitor may specifically have under the Agreement for any breach of the Agreement by Roof Monitor or under the Roof Monitor Product Warranty, Owner assumes all risk and liability whatsoever resulting from the use of the Product and the results of the use of the Services. **Without limiting the preceding sentence, once the Product is installed, Owner will bear the risk of loss or damage (other than ordinary wear and tear) to the Product and Integrated Software excepting only if and to the extent caused by the gross (not ordinary) negligence or willful misconduct of Roof Monitor or its subcontractors or agents;** provided, however, any damage caused by Roof Monitor (or Dealer) will be repaired or replaced at no expense to Owner. If Owner claims any damage is caused by Roof Monitor or its subcontractor or agent, it shall promptly provide written notice accordingly to Roof Monitor at brad.beldon@roofmonitor.com. **Static electricity which may be discharged when the Controller is accessed may disrupt effective operation of the Controller and will adversely affect the Roof Monitor Product Warranty. It will be the responsibility of the party accessing the Controller to prevent such discharge.**

4.4 Damage. Owner will use its best efforts to prevent any damage or interference with the Product and Integrated Software installed at the Facility. If anyone makes any alterations to the Facility that affect the Product in any way, or if anyone other than Roof Monitor or Dealer or Roof Monitor's designee for Warranty Services otherwise interferes with or damages the Product or Integrated Software, or if the Product is damaged by accumulation of water, snow or debris, Roof Monitor is not responsible to fix or replace the Product, but upon request of Owner to Roof Monitor, at www.roofmonitor.com, it will do work on the Product and Integrated Software required to maintain the full function and operation of the Product, including replacement as required, and Owner will pay Roof Monitor's then standard rates and charges for any such work and/or Product replacement for other than any damage resulting from accumulation of snow or water, but not debris, or from the discharge of static electricity when the Controller is accessed other than by the Controller Installer or any Authorized Service Provider of Roof Monitor.

4.5 Items and Requirements. Owner acknowledges that in order to use the Product and to enable Roof Monitor to perform the Services effectively, Owner must, at its expense, procure and provide: (i) prior to installation of the Product, removing any snow, water or debris from the roofs on which Product will be installed; (ii) prior to installation of the Product, providing a static IP address and a quad 110 plug within six (6) feet of each installation; (iii) prior to installation of the Product procuring any equipment, software and other resources required to use the Product and receive the Services as Roof Monitor may designate in writing prior and as a condition to its acceptance of the Proposal, or as Roof Monitor may reasonably require due to circumstances discovered by Dealer when it is performing the Installation Services; (iv) providing access to Owner's lessors, licensors, contractors, suppliers and agents as required to install and service the Product; (v) providing constant electric power as required for the Product; (vi) keeping the Product physically secure and free of tampering or destruction or removal; and (vii) keeping the Product free from liens and encumbrances. Such items, tasks and requirements may change from time to time, as reasonably required by Roof Monitor or Dealer to perform the Services and as communicated by Roof Monitor to Owner.

4.6 Updates. Roof Monitor may, at any time and without prior notice to Owner, provide automatic or manual updates, fixes and patches to the Software as in the opinion of Roof Monitor, in its sole discretion, may be required to keep the Product operational for its intended purpose. However, Roof Monitor is not obligated to provide any update, fix or patch to the Software other than as reasonably required to keep the Product operational for its intended purpose and Roof Monitor will provide no update to any Software unless the Monitoring Agreement is then in full force and effect. If Owner receives an update, fix or patch to the Software, Owner shall promptly install such update (if required) and accepts any additional or different commercially reasonable terms that are applicable to such update, fix or patch. If no materially additional or different terms are provided in the update, then the update, fix or patch is subject solely to the Agreement; and if any such additional or different terms are materially different, Owner will not unreasonably withhold, condition or delay its acceptance of such terms and such terms are incorporated by reference into the Agreement. If any Software is replaced by an update, Owner agrees to promptly implement the update and to discontinue use of the replaced Software.

4.7 Excused Performance. Roof Monitor's or Dealer's delay in performing or nonperformance of its obligations under the Agreement will be excused if such delay or nonperformance is caused by Owner's breach of the Agreement or Owner Delay or Force Majeure (as defined in Section 13.13, below).

4.8 Term of License. This License shall be in effect for so long as the Equipment is operational.

5. **Pricing, Invoicing and Payment Obligations.**

5.1 Defined Terms. The following terms have the following meanings:

"Initial Fees" means the amount payable to Roof Monitor for the sale of the Product as set forth in the Sales Order.

"Controller Installation Charges" means the amount payable by Owner for the Controller Installation as set forth in the Sales Order.

"Dealer Installation Charges" means the amount payable by Owner for the Installation Services as set forth in the Sales Order.

"Monitoring Fees" means the amounts payable to Roof Monitor pursuant to the Agreement and the Monitoring Agreement.

"Fees" means the Initial Fees, Dealer Installation Charges, Controller Installation Charges, and Monitoring Fees, including applicable taxes and shipping; or in the case of Extra Work, as set forth in the Sales Order for the Extra Work.

5.2 Invoicing. Owner will pay to Roof Monitor the applicable Fees, based on the Product components and Services, as set forth in the Sales Order. Fifty percent (50%) of the Fees will be due and payable by Owner to Roof Monitor within ten (10) Business Days after the Date of Agreement, or in the case of Extra Work, within five (5) Business Days after the date of related Sales Order. The remaining fifty percent (50%) will be due and payable by Owner to Roof Monitor within twenty (20) Business Days after the Date of Installation Completion, which will be set forth in the Certificate of Completion when delivered by Dealer to Owner; or in the case of Extra Work, within ten (10) Business Days after completion of the Extra Work. The Monitoring Fees will be invoiced as set forth in the Agreement and as otherwise provided in the Monitoring Agreement. Roof Monitor will retain a purchase money security interest in each item of the Product until Owner pays the entirety of the Initial Fees and Installation Fees. Owner appoints Roof Monitor as Owner's agent to sign and file a financing statement to perfect Roof Monitor's security interest.

5.3 Taxes and Charges. State and local taxes will be included in the Fees unless Owner presents to Roof Monitor, before Owner submits the proposed Agreement, an exemption certificate (other than a resale certificate) issued by and acceptable to the taxing authorities, and then only as to the taxes exempt.

5.4 Payment Terms. All Fees or reimbursements due and payable by Owner to Roof Monitor shall be paid in United States Dollars in immediately available funds on the payment due date to Roof Monitor in San Antonio, Texas at P.O. Box 100840, San Antonio, Texas 78201-8840 or by electronic funds transfer to Roof Monitor's account in accordance with the payment instructions set forth in the Invoice. Whenever any Fees are due on a day which is not a Business Day, such Fees will be paid on the next Business Day. No part of any Fees may be reduced due to any counterclaim, set-off, adjustment or other right which Owner may have or assert against Roof Monitor or its affiliate or Dealer or otherwise. Any credits or refunds will be made to Owner by check from Roof Monitor or by electronic payment, if it so elects.

5.5 Refunds. Roof Monitor will refund Fees to Owner on the following basis, only:

(a) In the event Roof Monitor cancels the Agreement prior to commencement of Installation Services, one hundred percent (100.0%) of the Fees will be refunded to Owner;

(b) In the event Owner cancels the Agreement prior to shipment of the Product to the Facility, eighty percent (80.0%) of the Fees will be refunded to Owner;

(c) In the event Owner cancels the Agreement after shipment of the Product to the Facility but before commencement of Installation Services, eighty percent (80.0%) of the Fees less two thousand and no/100 Dollars (\$2,000.00) will be refunded to Owner so long as the Product is returned to Roof Monitor unaltered and unopened; but

(d) In the event Owner cancels the Agreement after commencement of Installation Services, none of the Fees will be refunded to Owner.

5.6 Late Payments. All Fees due and owing to Roof Monitor but not paid by Owner on their due date will bear interest (in United States Dollars) at the rate of the lesser of (a) the rate of interest announced, from time to time, by JPMorgan Chase & Co. at its principal office in the United States of America as its prime commercial lending rate, or (b) the maximum lawful interest rate permitted under applicable law. Such interest will accrue on the balance of unpaid amounts from time to time outstanding, measured from the date on which portions of such amounts become due and owing until payment thereof in full, compounded annually. Owner will reimburse Roof Monitor for all expenses incurred by Roof Monitor in collecting any delinquent or dishonored payments, including attorneys' fees and expenses.

6. **Term and Termination.**

6.1 Term. The term of the Agreement will commence on the Date of Agreement, and unless terminated pursuant to Section 6.2 or Section 6.3, and shall extend to the later of (i) the Term of the Monitoring Agreement or (ii) one (1) year or (iii) the lifetime of the battery for any Sensors; and shall thereafter automatically extend thereafter from month-to-month until terminated by either Party by notice accordingly to the other Party; but as to the License, shall extend for the term of the License as set forth in Section 4.8, above. The term of the Monitoring Agreement shall be as provided for therein; but any termination of this Agreement will terminate the Monitoring Agreement.

6.2 Termination by Owner. Owner may terminate the Agreement for convenience (i.e., for any reason or no reason) effective as of any date by giving Roof Monitor notice of the termination at least thirty (30) days prior to the termination date specified in the notice (the "Date of Termination").

6.3 Termination by Roof Monitor.

(a) Roof Monitor may terminate for any reason at any time prior to commencement of Installation Services.

(b) In the event of Owner's failure to timely pay any Initial Fees, Dealer Installation Charges or Extra Work Fees (Monitoring Fees are governed by the Monitoring Agreement) or Owner's non-monetary breach of the Agreement, and Owner's failure to cure such breach within thirty (30) days of its receipt of notice thereof (the "Notice of Breach"), then Roof Monitor may terminate the Agreement by delivering written notice accordingly to Owner (the "Termination Notice").

(c) The Date of Termination being the date Owner receives such Termination Notice.

6.4 Effects of Termination. Upon any termination of the Agreement, (a) all rights and licenses of Owner, and all obligations of Roof Monitor or Dealer to Owners, hereunder will terminate, except any accrued payment obligations (including during any applicable notice period), (b) all Fees then owed Roof Monitor under the Agreement will become immediately due and payable, (c) Roof Monitor and Dealer may immediately cease performing the Services.

6.5 Roof Monitor Repossession of Equipment. If Owner elects to remove the Equipment from the Facility, it will notify Roof Monitor accordingly at (844) 492-7646, and Owner will transfer, assign and deliver the Product to Roof Monitor, free and clear of any liens or encumbrance, pursuant to Return Merchandise Authorization for pick-up of the equipment provided by Roof Monitor, and Roof Monitor will supply containers to Owner for such shipment, all at the expense of Roof Monitor; and Owner will be entitled to no further consideration or reimbursement; and Owner and Roof Monitor acknowledge and agree that this obligation to return the Equipment as herein provided is taken into consideration in determining the cost of the Product as set forth in the Sales Order and is fair and reasonable consideration.

6.6 Reactivation. Following termination of the Agreement, if the Product has not been removed by Roof Monitor or Owner and Owner wants to reactivate the Product and Services, which may only be done with the consent of Roof Monitor (which it may grant or withhold in its sole discretion), but in any event only if (i) Owner cures any monetary or non-monetary default which precipitated such termination, if terminated by Roof Monitor, (ii) Owner pays Roof Monitor an amount equal to ten percent (10%) of the Initial Fees for the Product plus the costs reasonably incurred by Roof Monitor to bring the Product up to then current Roof Monitor Standards, and to all then outstanding Fees.

6.7 Survival. The terms of Sections 3.2 [License Restrictions], this Section 6, Sections 7 [Roof Monitor Warranty], Section 8 [Proprietary Information], Section 9 [Claims Relating to Infringement], Section 10 [Claims Relating to Personal Injury and Property Damage], Section 11 [Limitation on Liability], Section 12 [Disputes] and Section 13 [General Provisions], and any right of action for breach of the Agreement, will survive any termination of the Agreement.

7. **Roof Monitor Warranty.**

7.1 Limited Warranty. The only warranty, written or oral, express or implied, which Roof Monitor provides with respect to the Product and Services, is the Roof Monitor Limited Warranty which may be found at www.roofmonitor.com (the "Roof Monitor Product Warranty"); and the Roof Monitor Product Warranty in effect on the Date of Agreement shall be applicable to the Product and Services under the Agreement. Warranty Services shall be performed by Dealer or Roof Monitor or such other Roof Monitor Authorized Service Provider as Roof Monitor may designate. The Roof Monitor Product Warranty is provided only for the Warranty Term set forth therein. The Roof Monitor Product Warranty applies only to Product manufactured by or for Roof Monitor, and sold by Roof Monitor. The Roof Monitor Product Warranty applies

to Equipment that is new and Equipment that is reconditioned by or for Roof Monitor, which will be certified for warranty by Roof Monitor. TERMINATION OF THE AGREEMENT BY ROOF MONITOR IN ACCORDANCE WITH SECTION 6, ABOVE, SHALL TERMINATE ROOF MONITOR'S OBLIGATIONS UNDER THE ROOF MONITOR PRODUCT WARRANTY.

7.2 Controlling Document. To the extent, if any, that the terms of this Section 7 conflict with the terms of the Roof Monitor Product Warranty, the terms of the Roof Monitor Product Warranty shall control.

8. **Proprietary Information.**

8.1 Proprietary Information. "Proprietary Information" means all information (regardless of form) of Roof Monitor, whether disclosed to, obtained by or accessed by Owner in connection with the Agreement, including the terms of the Agreement, the source and object code for the Software, and all information of Roof Monitor's affiliates, Roof Monitor's and its affiliates' respective customers, contractors, subcontractors, suppliers, vendors and service providers, and other third parties doing business with Roof Monitor or Roof Monitor's affiliates; *provided, however*, that the term "Proprietary Information" will not include information that Owner can demonstrate by clear and convincing, corroborative evidence (a) is independently developed by Owner without violating Roof Monitor's rights, (b) is or becomes generally known to the public (other than through unauthorized disclosure by or through Owner) without any charge or license, (c) was already known by Owner at the time of disclosure and Owner has no obligation of confidentiality with respect to said information other than pursuant to the Agreement or any confidentiality agreement between Roof Monitor and Owner entered into before the Agreement with respect to said information, or (d) is rightfully received by Owner free of any obligation of confidentiality, provided that (i) Owner has no knowledge that such information is subject to a confidentiality agreement and (ii) such information is not of a type or character that a reasonable person would have regarded it as confidential; *provided, however*, that should any information come within any circumstance set forth in clauses (a) through (d) of this Section 8.1, this Section 8.1 does not authorize Owner to infringe or misappropriate any intellectual property or other proprietary rights of Roof Monitor. Specific Proprietary Information will not be deemed to be subject to any of the exceptions set forth in clauses (a) through (d) of this Section 8.1 merely because they are embraced by general disclosures in the public knowledge or literature or disclosures in the possession of Owner. Any combinations of features will not be deemed subject to any of the exceptions set forth in clauses (a) through (d) of this Section 8.1 merely because individual features are in the public knowledge or literature or in the possession of Owner.

8.2 Confidentiality Obligations. Owner agrees: (a) to hold Proprietary Information in strict confidence, and to take all reasonable precautions to protect Proprietary Information from unauthorized use and disclosure (including all precautions Owner employs with respect to its most confidential materials); (b) not to disclose, publish, release, transfer or otherwise make available any Proprietary Information or any information derived therefrom in any form to, or for the use or benefit of, any individual or entity without Roof Monitor's prior written consent, to be given in Roof Monitor's sole discretion; (c) not to make any use whatsoever at any time of any Proprietary Information except as necessary for purposes of using the Product in accordance with the Agreement; (d) not to alter or delete any proprietary legends or markings on any Proprietary Information; and (e) not to decompile, disassemble, reverse engineer or otherwise attempt to derive the composition or underlying information, structure or ideas of the source code or internal structure of the Product, or any part thereof, from the object code or from the information made available to it. Owner will, however, be permitted to disclose relevant aspects of the Proprietary Information to its officers, directors, agents, professional advisors (including attorneys), employees and contractors and to the officers, directors, agents, professional advisors, employees and contractors of its affiliates, in each case only to the extent such disclosure is necessary for purposes of using the Product in accordance with the Agreement or the determination, preservation or exercise of its rights and remedies under the Agreement; *provided, however*, that Owner will obligate such individuals or entities by appropriate written the Agreement to keep the Proprietary Information confidential in a manner no less restrictive than set forth in this Section 8.2, and Owner acknowledges and agrees that it is responsible for such individual's or entity's compliance with the terms of this Section 8.2. Owner may make disclosures of

Proprietary Information required by court order, provided Owner promptly notifies Roof Monitor of the disclosure requirement and cooperates with Roof Monitor's efforts to resist or narrow the disclosure and to obtain an order or other reliable assurance that confidential treatment will be afforded the Proprietary Information.

8.3 Return of Proprietary Information. On termination of the Agreement, Owner will (a) promptly return to Roof Monitor all or any part of the Proprietary Information, and (b) securely and permanently erase or destroy all or any part of the Proprietary Information, in Owner's possession or control in accordance with then-current generally accepted industry standards, as Roof Monitor may direct. Upon Roof Monitor's request, Owner will certify to Roof Monitor that Owner has complied with the immediately preceding sentence in a notice signed by an officer of Owner. Owner will not withhold any Proprietary Information as a means of resolving any dispute.

8.4 Ownership. Owner understands and agrees that as between Owner and Roof Monitor, all Proprietary Information will remain the sole property of Roof Monitor, including all intellectual property and other proprietary rights therein and thereto. Any product enhancements or modifications to any element of the Roof Monitor System which may be developed by Dealer or Owner or developed from suggestions of Dealer or Owner or its employees or agents, arising out of the installation or use of the Roof Monitor System or otherwise, will be solely the property of Roof Monitor without any necessity of additional consideration, and Owner will not have or claim any interest therein, and Owner will execute such instrument of conveyance as Roof Monitor may request to reflect such Ownership by Roof Monitor.

9. **Claims Relating to Infringement.**

9.1 Agreement to Protect. Roof Monitor will defend Owner against any causes of action against Owner by an unaffiliated third party that the Product infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret. Roof Monitor will also pay the amount of any resulting adverse final judgment or settlement thereof.

9.2 Limitations. Roof Monitor's obligations under Section 9.1 will not apply if the cause of action or award is based on: (a) any information, design, specification, instruction, software, data, or material not furnished by Roof Monitor; (b) use of the Product in a manner other than in accordance with the Agreement and Roof Monitor's applicable documentation and minimum recommendations; (c) use of the Product after Roof Monitor notifies Owner to discontinue that use due to a third party claim; (d) combination of the Product with any products or services not provided by Roof Monitor; or (e) modification, alteration or adaptation of the Product by anyone other than Roof Monitor or a third party authorized by Roof Monitor.

9.3 Additional Obligations. If Roof Monitor receives information concerning an infringement claim related to the Product, Roof Monitor may, at its expense and without obligation to do so, either (a) procure for Owner the right to continue to use the allegedly infringing Product, or (b) modify the Product, or replace it with a functional equivalent, to make it non-infringing, in which case Owner will immediately cease use of the allegedly infringing Product after receiving notice from Roof Monitor. If, as a result of an infringement claim, Owner's use of the Product is enjoined by a court of competent jurisdiction, Roof Monitor will, at its option, (a) procure for Owner the right to continue its use, (b) modify the Product, or replace it with a functional equivalent, to make it non-infringing, or (c) refund the Initial Fees paid for the Product and terminate the Agreement. If any such claim of infringement may occur or such use is enjoined, Roof Monitor may suspend the Monitoring Agreement until the claim is resolved to the satisfaction of Roof Monitor; and when reinstated by Roof Monitor or no longer enjoined, the Owner will be credited for the amount paid applicable to the suspended period or any period in which Owner's use is enjoined, which credit will be applied to extend the then paid for term under the Monitoring Agreement; but this shall be Owner's sole recourse as a result of such limitation of the Monitoring Services.

9.4 Procedures. Roof Monitor's obligations set forth in this Section 9 will not apply unless Owner: (a) notifies Roof Monitor promptly in writing of any matters in respect of which Roof Monitor's obligations may apply and of which Owner has knowledge in order to allow Roof Monitor the opportunity to investigate and defend the matter, provided that the failure to so notify will only relieve Roof Monitor of its obligations under this Section 9 if and to the extent that Roof Monitor is prejudiced thereby; and (b) gives Roof Monitor full opportunity to control the responses thereto and the defense thereof, including any agreement relating to the settlement thereof, provided that Owner will have the right to participate in any legal proceeding to contest and defend the infringement claim and to be represented by legal counsel of its choosing, all at Owner's expense. Owner agrees to cooperate in good faith with Roof Monitor at the request and expense of Roof Monitor. If Roof Monitor fails to promptly assume defense of a claim covered by this Section 9, Owner may assume the defense at Roof Monitor's expense. Roof Monitor will not be responsible for any settlement or compromise made without its consent, unless Owner has tendered notice and Roof Monitor has then refused to assume and defend the claim and it is later determined that Roof Monitor was liable to assume and defend the claim under this Section 9.

9.5 Exclusive Remedy. This Section 9 provides Owner's exclusive remedy and Roof Monitor's entire liability for any infringement claims, causes of action, damages, losses or expenses.

10. **Claims Relating to Personal Injury and Property Damage.**

10.1 General. **Owner will indemnify and hold Roof Monitor and Dealer and their respective subcontractors and agents (the "Indemnified Party" or "Indemnified Parties") harmless from any damage to or loss of personal or real property (whether owned, licensed or leased) or personal injury arising out of any action or inaction occurring at the Facility, excepting only to the extent of gross (not ordinary) negligence of such Indemnified Party. Roof Monitor will indemnify and hold Owner harmless from any damage to or loss of personal or real property (whether owned, licensed or leased) or personal injury arising out of the gross (not ordinary) negligence of Roof Monitor or its subcontractors or agents for other than the Installation Services (as to which Roof Monitor will not be responsible for Dealer's actions).**

10.2 Waiver of Subrogation. Roof Monitor, Dealer and Owner release each other from any liability for any claims, causes of action, damages, losses or expenses relating to any damage to or loss of their respective personal or real property (whether owned, licensed or leased) to the extent covered by applicable insurance. Roof Monitor, Dealer and Owner each waive any right of recovery of insured claims by anyone claiming through it, by way of subrogation or otherwise, including its insurers.

10.3 Procedures. The indemnification obligations set forth in this Section 10 will not apply unless the Party claiming indemnification: (a) notifies the other promptly in writing of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge in order to allow the indemnitor the opportunity to investigate and defend the matter, provided that the failure to so notify will only relieve the indemnitor of its obligations under this Section 10 if and to the extent that the indemnitor is prejudiced thereby; and (b) gives the other Party full opportunity to control the responses thereto and the defense thereof, including any agreement relating to the settlement thereof, provided that the indemnitee will have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and to be represented by legal counsel of its choosing, all at the indemnitee's expense. The indemnitee agrees to cooperate in good faith with the indemnitor at the request and expense of the indemnitor. If the Party obligated to provide indemnification fails to promptly assume defense of a claim covered by this Section 10, the Party entitled to indemnification may assume the defense at the other Party's expense. The Party obligated to provide indemnification will not be responsible for any settlement or compromise made without its consent, unless the Party claiming indemnification has tendered notice and the other Party has then refused to assume and defend

the claim and it is later determined that the other Party was liable to assume and defend the claim under this Section 10.

11. **Limitation on Liability.**

NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY, AND REGARDLESS OF THE FORM OF THE CLAIM OR THE THEORY OF RECOVERY, NEITHER ROOF MONITOR OR ITS SUPPLIERS WILL BE RESPONSIBLE OR LIABLE FOR: (A) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (B) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES ASSOCIATED WITH BUSINESS INTERRUPTION, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF BUSINESS OPPORTUNITIES OR LOSS OF GOODWILL), EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES; OR (C) ANY MATTER OUTSIDE OF THEIR REASONABLE CONTROL. THE AGGREGATE LIABILITY OF ROOF MONITOR AND ITS SUPPLIERS FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THE PRODUCT, THE SERVICES OR THE AGREEMENT, REGARDLESS OF THE FORM OF THE CLAIM OR THE THEORY OF RECOVERY, WILL BE LIMITED TO ANY ACTUAL DIRECT DAMAGES UP TO TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

12. **Disputes.**

12.1 Governing Law.

(a) Except as provided in Section 12.1(b), below, the Agreement and the rights and obligations of the Parties under the Agreement will be governed by and construed in accordance with the laws of the State of Texas without giving effect to the principles thereof or of any other jurisdiction relating to the conflicts of laws.

(b) Notwithstanding the foregoing, as to any dispute between Dealer and Owner as to which Roof Monitor is not a party and no claim is asserted against Roof Monitor, the rights and obligations of Owner and Dealer at the election of either shall be the law of the State in which the Facility is located.

(c) The United Nations Convention on Contracts for the International Sale of Goods, Article 2 of the Uniform Commercial Code and the Uniform Computer Information Transactions Act, each as adopted in any form in any jurisdiction, do not apply to the Agreement.

12.2 Informal Dispute Resolution. Any dispute arising out of or related to the Product, the Services or the Agreement will be considered in person or by telephone by each Party's President (or the equivalent thereof) within ten (10) days after the date of a notice from either Party specifying the nature of the dispute (a "Dispute Notice").

12.3 Mediation. If the Parties are unable to resolve a dispute arising out of or related to the Product, the Services or the Agreement pursuant to Section 12.2, then either Party may refer the dispute to non-binding mediation under the Commercial Mediation Procedures of the American Arbitration Association (the "AAA"), to be conducted in San Antonio, Texas, with a mediator who is a contractor, architect or civil engineer with at least five (5) years experience in commercial construction. The mediator's and administrative expenses of any mediation under this Section 12.3 will be equally shared by the Parties.

12.4 Sole and Exclusive Venue.

(a) **Subject to the terms of this Section 12, and except as provided in Section 12.4(b), below, each Party knowingly, voluntarily, unconditionally and irrevocably (a) agrees that any claim or cause of action brought by it that arises out of or relates to the Product, the Services or the Agreement**

must be brought solely and exclusively in the San Antonio Division of the United States District Court for the Western District of Texas or in the state courts of the State of Texas located in Bexar County, Texas, and (b) accepts and submits to the sole and exclusive jurisdiction of such courts *in personam* with respect to any claim or cause of action brought by it or against it by the other Party.

(b) Notwithstanding the foregoing, as to any claim or cause of action brought by Dealer against Owner or Owner against Dealer, so long as Roof Monitor is not a party to such action and no claim is asserted against Roof Monitor, at the election of Dealer or Owner, such claim or cause of action may be brought in the State Courts or Federal Courts in the location of the Facility; but if thereafter any claim or cause of action is then asserted in such litigation against Roof Monitor or its affiliates, Roof Monitor shall have the absolute right to remove such litigation to the venue set forth in Section 12.4(a) above, and in such case, Texas law shall again apply.

12.5 Limitation. Except for actions for nonpayment or breach of Roof Monitor's intellectual property or other proprietary rights, no action, regardless of form, arising out of or related to the Product, the Services or the Agreement may be brought by either Party more than two (2) years after the cause of action has accrued.

12.6 Other Remedies. Notwithstanding the terms of Sections 12.2, 12.3 and 12.4, any dispute arising out of or related to Sections 3.1 [Scope of Installation Services], Section 3.2 [Installation Terms of Sale and Pricing] or Section 8 [Warranties and Disclaimers], or infringement of Roof Monitor's proprietary rights, will not be subject to the terms of Sections 12.2, 12.3 and 12.4. Owner acknowledges and agrees that any breach of Sections 3.1, 3.2 or 8, or infringement of Roof Monitor's intellectual property or other proprietary rights, will result in irreparable injury to Roof Monitor, and that Roof Monitor will be entitled to appropriate equitable relief which it may seek in the District Courts in Bexar County, Texas, or in the jurisdiction in which the Facility is located, in addition to whatever other remedies it might have, subject only to the court's finding as to the merits of Roof Monitor's action and without the necessity of Roof Monitor proving actual damages, or posting bond or other security (unless otherwise not waivable by state law). In addition, nothing in Sections 12.2, 12.3 or 12.4 will delay or prevent either Party from (a) exercising any of its rights under the Agreement before or during the pendency of the dispute resolution procedures described in Sections 12.2, 12.3 or 12.4, or (b) seeking equitable relief whenever the facts or circumstances would permit a Party to seek such relief in a court of competent jurisdiction.

13. **General Provisions.**

13.1 Audits. Upon written notice, Roof Monitor may audit Owner's use of the Product. Owner agrees to cooperate with Roof Monitor's audit and provide reasonable assistance and access to information. Any such audit will not unreasonably interfere with Owner's normal business operations. Owner agrees that Roof Monitor will not be responsible for any of Owner's costs incurred in cooperating with any such audit. If any such audit results in Owner being notified that Owner is not complying with the Agreement, Owner will remedy such non-compliance and take actions to comply with the same within a time period specified by Roof Monitor.

13.2 Assignment. Owner will not assign the Agreement or its rights hereunder without Roof Monitor's prior written consent, to be given in Roof Monitor's sole discretion, except that Owner may assign and transfer the Agreement to an acquirer of all or substantially all of the assets of Owner or the facility(ies) at which the Product is installed, in each case without such consent but with notice to Roof Monitor. The Agreement will be binding on the Parties and their respective successors and permitted assigns. Any assignment in contravention of this Section 13.2 will be void.

13.3 Government Matters. Owner acknowledges that the Product is subject to United States' laws, statutes and regulations, including those which limit the export, re-export or deemed export of certain

products and technology to certain countries, entities and individuals, and Owner agrees that it will at all times comply with the terms of all such laws, statutes and regulations. Owner represents that it is not a government agency and it is not acquiring the Product pursuant to a government contract or with government funds.

13.4 Notices. Notices hereunder may be sent electronically to Owner or Dealer at the email address set forth in the Agreement and to Roof Monitor at brad.beldon@roofmonitor.com or may be sent by regular or overnight mail or express courier to Owner or Dealer at the addresses and numbers listed on the Agreement and to Roof Monitor at Beldon Technologies, Inc., d/b/a Roof Monitor, P.O. Box 100840, San Antonio, Texas, 78201-8840 or 5039 West Avenue, San Antonio, Texas 78213. Electronic notices will be effective upon receipt by sender of confirmation of deliver. Notices by mail will be effective on the date shown on the return receipt, on the date shown on the courier confirmation of delivery, or three (3) days after deposit in the regular mail. Either Party may change its address or number for notification purposes by giving the other Party notice of the new address or number and the date upon which it will become effective.

13.5 Independent Relationship. The Parties intend to create an independent contractor relationship and nothing contained in the Agreement will be construed to make either Roof Monitor or Dealer or Owner partners, joint venturers, principals, agents or employees of the other. Neither Party has any right, power or authority, whether express or implied, to bind the other.

13.6 Amendments. No amendment, modification, change or supplement to the Agreement will be valid unless in writing and manually signed by authorized representatives of each Party. Neither the course of dealings between the Parties nor any trade practices will act to modify, vary, supplement, explain or amend the Agreement.

13.7 Severability. If any term of the Agreement conflicts with the Law under which the Agreement is to be construed or if any such term is held invalid or unenforceable by the arbitrators or a court with jurisdiction over the Parties, such term will be deemed to be modified or restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable Law, or if and to the extent such modification or restatement is not permitted under applicable Law, such term will be severed from the Agreement. The remaining terms of the Agreement and the application of the challenged term to Entities or circumstances other than those as to which it is invalid or unenforceable will not be affected thereby, and each such term will be valid and enforceable to the greatest extent permitted by applicable Law.

13.8 Costs and Fees. In the event of any litigation arising out of or related to the Product, the Services or the Agreement, the prevailing Party in such litigation proceedings will be entitled to recover, from the non-prevailing Party, the prevailing Party's expenses and attorneys' fees, in addition to all other legal or equitable remedies to which it may otherwise be entitled.

13.9 Third Party Beneficiaries. The Agreement is for the sole benefit of the Parties and their successors and permitted assigns, and each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties and their successors and permitted assigns.

13.10 Delays, Waivers, Consents and Approvals. Except where an express time frame is set forth in the Agreement, no delay or omission by either Party to exercise any right, remedy or power it has under the Agreement will be construed as a waiver of such right, remedy or power. A waiver by any Party of any breach or covenant will not be construed to be a waiver of any other or succeeding breach or covenant. All waivers, notices, consents, approvals, agreements, authorizations, acknowledgments, waivers and other communications under the Agreement must be made in writing and must be provided by an authorized representative of the applicable Party in order to be binding.

13.11 Negotiated Terms. The Parties agree that the terms of the Agreement are the result of negotiations between the Parties and that the Agreement will not be construed in favor of or against either Party by reason of the extent to which a Party or its professional advisors participated in the preparation of the Agreement.

13.12 Construction.

(a) **Each Party hereby acknowledges and agrees that such party has consulted legal counsel in connection with the negotiation of this Agreement and that such party has bargaining power equal to that of the other party in connection with the negotiation and execution of this Agreement.**

(b) **The parties agree that the rule of contract construction to the effect that an agreement shall be construed against the draftsman shall have no application in the construction or interpretation of this Agreement.**

(c) The defined terms include the plural as well as the singular and the derivatives of such terms, and a reference to one gender includes all genders. All references to the Agreement include the Ancillary Agreements and any documents referred to therein, unless the context in which used specifically indicates otherwise. If the terms of any of any of the Ancillary Agreements or other document incorporated into the Agreement conflict with the terms of the Agreement, the terms of the Agreement shall govern and control for all purposes excepting only that the terms and conditions of the Roof Monitor Product Warranty shall govern over all other documents. Unless otherwise expressly stated, all references to Sections, subsections and other subdivisions refer to Sections, subsections and other subdivisions of the Agreement. The word “or” is not exclusive and the word “include” and its derivatives will not be construed as terms of limitation. Examples will not be construed as to limit, whether expressly or by implication, the matter they illustrate. The words “will” and “shall” are expressions of command, not merely expressions of future intent or expectation. Unless otherwise expressly stated, the words “hereof,” “herein” and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular term of the Agreement. Unless otherwise expressly stated, the words “day,” “month” and “year” mean, respectively, calendar day, calendar month and calendar year. The words “expense” and “expenses” mean any charges, fees, costs, expenses or other amounts. References to any law will be to such law as amended or supplemented, or to a newly adopted law replacing such law. Headings are included for ease of reference only and will not affect the interpretation or construction of the Agreement.

13.13 “Force Majeure” shall mean any failure to perform an obligation under the Agreement when the party so obligated is prevented from so performing any event or circumstance that is beyond the reasonable control of the party obligated to perform, including, but not limited to (i) adverse weather conditions or other Acts of God, (ii) strike, lockouts, actions of labor unions or other labor trouble, (iii) sabotage, (iv) fire or casualty, (v) Agreement or regulation of or by any governmental authority, (vi) acts or omissions of any governmental authority (including delays in obtaining any required licenses, permits or approvals, provided such permits were timely and accurately submitted to the applicable governmental authority), (vii) war (declared or undeclared), acts of terrorism, riot, acts of the public enemy or other civil commotion, (viii) rebellions or insurrection, or (ix) shortage in labor, materials or supplies.

13.14 “Business Day” shall mean any day other than (1) a Saturday, a Sunday or (2) a day on which the payment system of the Federal Reserve System is not operational, or (3) a day on which banking institutions are required or authorized to remain closed in Bexar County, Texas.

13.15 Counterparts. The Agreement may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign the Agreement, will constitute a complete and fully executed original. All such fully executed original counterparts will collectively constitute a single the Agreement.

13.16 Entire Agreement. The Agreement and the Ancillary Agreements as defined therein, including this Standard Terms, constitute the entire agreement and understanding between the Parties with respect to its subject matter and supersedes all prior agreements and understandings relating to such subject matter, and there are no other representations, warranties, promises, covenants, commitments, understandings or agreements between the Parties relative to such subject matter. No terms in any order form or other agreement submitted by Owner that vary from, or add to, the terms of this Agreement will be of any force and effect, whether or not Roof Monitor signs the order form or other agreement or otherwise indicates its acceptance.