



Trolley Cellular Backup Only Agreement

(Alarm Monitoring is full year and is by a separate Agreement)

1. This **AGREEMENT** made this **1st day of May 2008 thru Sept. 2008**, between **INTEGRATED CONTROLS, USA**, a New Mexico corporation (hereinafter, "Company"), and **The New Mexico Lottery** (hereinafter, "Subscriber"). In this Monitoring Agreement, the words "transmission equipment" shall refer to communication equipment such as a digital dialer or a modem installed and owned by the Company which has the ability to sent data signals over radio frequencies, telephone lines, cable television lines, and/or lease lines.

THE COMPANY'S SERVICES. The Company agrees to provide cellular backup for the alarm via an Uplink Cellular Backup System installed in the subscriber's off-site or remote site "Trolley" (a trailer that is taken to various venues for promotion and ticket sales).

This service will be seasonal and will only be used for approximately five months in a year, service to be started approximately on May 1st and ending on approximately Sept. 30th Billing is for a one time payment to avoid for the five-month usage. Price includes only Uplink service fee plus tax.

NOTES:

1. This Uplink Cellular Backup System requires a local cell phone connection; IC cannot guarantee that all locations will have this capability.
2. The NM Lottery must notify IC, in writing or by email, when they wish the cell backup service activated and deactivated each season.

These services will consist of the following:

a. The Company will respond as described in Paragraph 7, to the following types of signals received from the Subscriber's Premises:

X Burglar / Intrusion	Fire	Medical Panic	Holdup / Robbery
Opening & Closing	Access Control	X Other Cellular Backup for a 5 month	
		<u>season for burg/ intrusion signals from the</u>	
		<u>Trolley</u>	

b. The Company will provide the following **other** services under this agreement:

Mthly Open/Close Reports **Guard Response** **Other** _____

2. **TERM.** This Monitoring Agreement shall be for a term of **12 months with (3) one year options** commencing on the first day of the month immediately following the installation of the equipment and ending at midnight on the last day of the month at the end of the term. This Monitoring Agreement is automatically renewed for one year terms at the current rate unless the base Monitoring Agreement or any renewal thereof is terminated by one of the parties by placing a notice of termination in the United States mail, postage prepaid, addressed to the address given above at least thirty (30) days prior to the expiration date of the base Monitoring Agreement term or any renewal thereof.

3. **PAYMENTS.** Subscriber agrees to pay **\$0** as a monitoring installation fee payable when this Monitoring Agreement is signed. In addition, Subscriber agrees to pay as a Monitoring **\$12.95 cell backup + .89 (tax @ 6.875%) = \$13.84 per month x 5 months or \$69.20 for a five (5) month season** payable ☒ One Time Payment ☐ Quarterly or ☐ Annually. The Monitoring fee payment is due on the first day of each consecutive applicable period beginning on the first day of the month immediately following the installation of the equipment, or, if the Company does not install any equipment, on the first day of each consecutive applicable period beginning on the first day of the month immediately following the signing of this Monitoring Agreement.

4. **THE COMPANY IS NOT AN INSURER OR WARRANTOR.** The Company does not guarantee or warrant that the service or equipment provided under this Monitoring Agreement will prevent burglary, fire or other occurrences, or any consequences resulting from such occurrences. The Company will not insure or reimburse Subscriber or any other person for Losses due to any of the occurrences which the system is designed to monitor. Subscriber must carry Subscriber's own fire or burglary insurance.

5. **NO LIABILITY FOR CERTAIN OCCURRENCES.** Subscriber agrees that the Company will have no liability for loss of damage to property or for personal injury or death or otherwise due to (a) failure in transmission of an alarm (b) interruptions of service due to any of the following reasons: (i) any failure of your alarm; (ii) any defective or damaged equipment, device, telephone line or connecting circuit; or (iii) any strike of the Company's employees or employees of others, riot, flood, fire, act of God, or any other cause not having to do with transmission failure, defective or damaged equipment, device, telephone line or circuit, and beyond the Company's reasonable control.

6. **LIMITATION OF THE COMPANY'S LIABILITY.** If the Company should nevertheless be found liable for loss or damage to persons or property, Subscriber agrees that the Company's liability will be limited to **one year's service charge unless gross negligence is found on the part of the company and is provable by subscriber**. This limitation will apply no matter why the Company is found liable **except as above**, including for example, (i) breach of this Monitoring Agreement, (ii) any equipment failure, or (iii) any act or failure to

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act on the Company's part or on the part of the Company's agents and employees, whether or not constituting active or passive negligence. You acknowledge that this limitation on the Company's liability is based upon the following factors: (a) the extent of the damage which may result from the occurrences which the system is designed to monitor is uncertain; (b) the possibility of human error or failure by the Company's employees; (c) the response times of the police or fire department if dispatched are uncertain; and (d) that it is not possible to determine with any degree of certainty what portion, if any, of any loss was directly caused by any action or inaction on the Company's part. Subscriber agrees to hold harmless and indemnify the Company, its agents and employees, for any claims, losses, costs, damages and expenses, including attorney's fees, of any person who is not a party to this Monitoring Agreement (for example, any member of Subscriber's family or a guest) who makes any claim or starts any lawsuit against the Company's agents and employees, for any reason whatsoever relating to (i) this Monitoring Agreement; (ii) the Company's premises; or (iii) the service provided under this Monitoring Agreement. Such hold harmless will apply whether these claims or lawsuits are based upon the performance or non-performance of any obligation under this Monitoring Agreement alleged intentional conduct, active or passive negligence, or strict or product liability, on the Company's part, or on the part of the Company's agents and the employees.

7. THE COMPANY'S DUTIES UPON RECEIPT OF A SIGNAL. Upon receipt of an alarm signal the Company will telephone one or more of the following, in accordance with the prearranged instruction given the Company by Subscriber: Subscriber's premises, local responding authorities, private response service, and authorized personnel as specifically designated in Subscribers' Monitoring Response Information list, in accordance with the prearranged instructions given the Company by Subscriber. If requested by Subscriber, the Company may send a person out to Subscriber's premises in response to an alarm, the Company shall charge Subscriber, in addition to the amount for monthly services, a service charge equal to our prevailing rate at the time the call is made. Such service charge shall be paid on or before the next payment date under this Monitoring Agreement.

8. LIMIT OF RESPONSIBILITY: MONITORING. The Company will use our best efforts to carry out our duties under this paragraph promptly. However, delays or failure to respond may occur due to factors such (i) busy telephone facilities, (ii) failure of telephone equipment, and (iii) failure of telephone lines due to weather or other conditions. Monitoring may be provided from Monitoring centers located in New Mexico and other states. The Company's duties under this Monitoring Agreement terminate, without notice to Subscriber when Subscriber fails to pay the Monitoring fee.

9. TEST SIGNALS. Subscriber should test signals at least once every month. Each test must be conducted in accordance with the operating instructions supplied by the Company. Subscriber must notify the Company whenever the system fails to operate.

10. REPAIRS. The Company agrees to make all necessary repairs of the transmission equipment installed at Subscriber's premises. The Company will make all repairs due to equipment or installation defects at the company's own expense only to transmission equipment leased from and installed by the Company. All other repaired and/or service calls will be made only at Subscriber's expense. **The company is not obligated to make any repairs unless and until all bills due from Subscriber to the Company have been paid or are current within 30 days.**

11. RIGHT OF ENTRY. The Company will have the right, upon giving reasonable prior notice to Subscriber, to enter Subscriber's premises for the following purposes: (i) to repair, service or replace the transmission equipment; and (ii) to remove the equipment at the end of the initial term or any renewal term, or upon any cancellation of this Monitoring Agreement. The Company will not be responsible for any condition created on Subscriber's premises by the Company's removal of the equipment. Transmission equipment may take either of two forms, at the discretion of the installing company: (i) a removable, integrated circuit built-in on the master control panel; or (ii) a separate electronic transmitter. The company will not be responsible for any condition created on Subscriber's premises by the Company's removal of the equipment, nor failure to respond to signals once service has been terminated.

12. SAFEGUARDING THE EQUIPMENT. Subscriber agrees that unless authorized by the Company, no person will be permitted to alter, remove or tamper with the alarm equipment installed at Subscriber's premises. Subscriber agrees not to permit any device to be attached to any part of the alarm equipment, except by the Company's authorized agents.

13. CANCELLATION BY THE COMPANY. The Company may cancel this Monitoring Agreement, without prior notice to Subscriber, at the Company's option, if any of the following events occur: (i) the transmission equipment, connecting wires or equipment are destroyed by fire or other disaster (or are damaged to such an extent that it is impractical to continue service); (ii) there is damage to the signaling wire facilities; or (iii) usable telephone facilities become unavailable. If this Monitoring Agreement is canceled under this paragraph, the Company will refund to Subscriber any unused monthly charges already paid. The Company will have no other liability for such cancellation.

14. BREACH OF THIS MONITORING AGREEMENT. In the event of Subscriber's breach of any of the terms, conditions, covenants and agreements herein contained, including, but not limited to, the obligation to pay the appropriate Monitoring or transfer said business voluntarily or involuntarily, or if bankruptcy, insolvency or receivership proceedings are commenced by or against Subscriber, then without notice or demand to Subscriber, the Company shall have the right, at the Company's sole option, to exercise any one or more of the following remedies:

- a. To accelerate the remaining monthly installments of fees provided for thereunder and to declare the entire balance of fees thereunder immediately due and payable.
- b. To sue for and recover all fees and other payment then accrued or accelerated.
- c. To pursue any other remedy at law or in equity. Subscriber waives personal service of any and all process, and consents that all such service of process may be by certified or registered mail, return receipt requested, directed to Subscriber at the address indicated herein; and service so made shall be complete at such time as may be determined by the Rules of Procedure for the appropriate court in the State of New Mexico.
- e. In the event of breach by Subscriber of any of the terms, conditions, covenants and agreements herein contained, and if such breach shall continue for a period of 10 days, then, without notice or demand to Subscriber, Subscriber agrees to pay in addition to fees and other payments accruing thereunder: (a) interest at the rate of 18% per annum on the unpaid installments of fees provided for thereunder; (b) reasonable collections costs incurred by the Company in collecting any installments of fees; and (c) a reasonable attorney's fee, if this Monitoring Agreement is turned over to an attorney for enforcement. Costs and attorney's fees shall bear interest at 18% per annum.

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15. TAXES. Subscriber agrees to pay all taxed and assessments that may be assessed or levied upon the equipment, the use thereof, upon this Monitoring Agreement, and the payments to be made thereon, or upon all of the forgoing, provided Subscriber shall not pay any part of the Company's State or Federal income taxes.

16. ASSIGNMENT. Subscriber or Company may not assign this Monitoring Agreement or Subscriber's right under it without the express written approval from the other party. If not agreed to assign, the other party may cancel without penalty. Nevertheless, the terms and conditions hereof shall be binding upon and shall inure to the benefit of Subscriber's successors, assigns and legal representatives. The Company may assign the Company's rights under this Monitoring Agreement and to equipment, and in such event, the assignee shall succeed to all of the Company's right in respect hereto. The assignee's rights shall be free from all defenses, set-offs or counter-claims which Subscriber may be entitled to assert against the Company. Such assignment shall not, however, relieve the Company of any of the Company's obligation to Subscriber thereunder and shall not be construed as being an assumption of such obligation by the assignee. Upon receipt of notice of such an assignment Subscriber, subject to Subscriber's rights thereunder, which shall remain unimpaired, shall become the pledge holder of the equipment for the assignee, and will part with possession thereof only to the assignee or pursuant to the assignee's written order.

Plates or other makings may be placed or affixed on the equipment indication that Integrated Controls USA, Inc. (as assignee) is the owner thereof and Subscriber shall not remove same. If assigned by any par

17. NOTICES. Any written notice provided for by this Monitoring Agreement may be given by mail. It will be deemed to have been given when mailed at any general or branch United States post office, if it is addressed as follows: (a) if the notice is being sent to **Integrated Controls USA, Inc., 7910 Lorraine Ct. NE, Albuquerque, NM 87113**; (b) if the notice is being sent to Subscriber--at Subscriber's address shown upon the face of the Monitoring Agreement. However, any notice of a change of address will be effective only upon the receipt of such notice by the party being notified.

18. SUBSCRIBER RESPONSIBILITIES FOR USE. It is expressly understood and agreed that Subscriber will have sole control over the manner in which the goods covered under this Monitoring Agreement are used. Therefore, Subscriber hereby assumes full responsibility for such use and shall indemnify and hold harmless the Company, its agents and representatives, from and against any and all losses, damages, claims or expenses, including legal fees and expenses, arising out of such use. Any training program or literature provided by the Company concerning the use of the goods is understood to be purely advisory and does not detract from Subscriber's responsibility for such use, as set forth in this paragraph. It is also expressly understood and agreed that the Company shall not be held responsible for any possible false, phantom, or other unintentional alarms, all from whatever cause, which shall be regarded as part of the use of the goods and shall be governed by this paragraph.

19. GOVERNING LAW. This Monitoring Agreement will be governed by the laws of the State of New Mexico, even if it is signed, accepted or to be performed outside of New Mexico.

20. ENTIRE AGREEMENT. This Monitoring Agreement is the entire agreement between Subscriber and the Company. It supersedes any previous agreements, understandings or statements, which may have been made regarding the service to be provided under this Monitoring Agreement. No modification of this Monitoring Agreement will be binding on the Company unless signed by one of the Company's officers.

21. GENERAL. Time is of the essence as to all of the agreement. If any part of this agreement is held to be unenforceable, such a holding shall not affect the validity of the rest of this Monitoring Agreement. No waiver by either party hereto of a breach of this Monitoring Agreement shall be a waiver of any subsequent breach.

NOTICE TO SUBSCRIBER

Do not sign and initial this contract before reading all pages and fully understanding it or if it contains blank spaces. Subscriber is entitled to a copy of the contract at the time it is signed. Keep it to protect your legal rights. Subscriber hereby acknowledges receipt at the time of execution of this contract of an exact copy hereof completely filled in.

Accepted By:

Subscriber's Authorized Signature: _____

Name, Title: _____ Date: _____

Company's Authorized Signature: _____

Name, Title: _____ Date: _____

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