



# Sierra Communications, Inc.

A subsidiary of Baca Valley Telephone Company, Inc.

PO Box 67 ♦ Des Moines, NM ♦ 88418

575-278-2101 ♦ 575-445-5364 ♦ 575-375-2101 ♦ 1-888-682-2101



## Alarm System Application and Agreement

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

Name (herein, "Client"): \_\_\_\_\_

Physical Address (herein, "Client Premises"): \_\_\_\_\_

Billing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone #: \_\_\_\_\_ Social Security or Tax ID Number: \_\_\_\_\_

Payment Method:  Monthly Billing  Bank Draft (Please attach a voided check to this application.)

Credit Card: Name \_\_\_\_\_ Number \_\_\_\_\_ Exp. Date \_\_\_\_\_

Office Use Only: new _____ cancel _____ billing _____ ssn _____ list _____ bk _____ cal _____ idc _____ cc _____ file _____ Acct# _____
Install date: _____ 1wk _____ 1mo _____ 6mo _____ 1yr _____ Contact Sheet _____

**Client requests that Sierra provide client a minimum of three years of monitoring and equipment maintenance, subject to the Terms and Conditions of Agreement set forth below:**

- Simon Basic Monitoring and Maintenance Package:** \$29.99/mo plus \$199.00 installation fee, which includes without additional charge the following equipment:
  - 1 – Simon 24-Zone Control Panel
  - 2 – Door/Window Sensors
  - 2 – Motion Detectors
  - Window Decals
- Concord Basic Monitoring and Maintenance Package:** \$29.99/mo plus \$299.00 installation fee, which includes without additional charge the following equipment:
  - 1 – Concord 14-Zone Control Panel
  - 1 – Fixed English Touchpad
  - 2 – Recessed Door Sensors
  - 2 – Motion Detectors
  - Window Decals
- Optional Equipment:** As identified in the *Addendum to Alarm System Application and Agreement* in the amount of \$ \_\_\_\_\_

**Total initial payment, including first month monitoring and maintenance charge: \$ \_\_\_\_\_**

**CLIENT ACKNOWLEDGES THAT CLIENT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT CLIENT AGREES TO THE TERMS AND CONDITIONS OF AGREEMENT SET FORTH BELOW AND ON THE REVERSE SIDE OF THIS PAGE. CLIENT AGREES THAT SIERRA COMMUNICATIONS, INC. MAY OBTAIN CLIENT'S CREDIT REPORT.**

Client Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Co-Client Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Sierra Representative: \_\_\_\_\_ Date: \_\_\_\_\_

## Terms and Conditions of Agreement

- 1. TITLE TO EQUIPMENT AND RETAINED SECURITY INTEREST:** Title to all of the equipment described above, including purchased and free equipment, shall vest in client upon initial payment, and both parties agree that, upon such transfer, such equipment has been fully paid for. Sierra is hereby granted a security interest in all equipment sold hereby to secure payment of all remaining amounts due under the terms of this Agreement, including amounts due upon termination of this Agreement. Client agrees that such equipment shall remain personal property notwithstanding attachment of the equipment to Client premises. Client agrees to execute or cooperate in obtaining execution of any and all documents necessary to assure that Sierra's security interest granted hereby is prior and superior to any and all other interest in the equipment, including but not limited to the claims of any mortgagee of Client Premises. This Agreement shall be deemed to constitute a security agreement subject to the terms of the New Mexico Uniform Commercial Code.
- 2. TERM OF AGREEMENT:** The initial term of this Agreement shall be three years. Thereafter, the term shall continue for successive annual terms unless terminated by either party by written notice given not less than thirty (30) days prior to the end of the initial term or prior to the end of any successive annual term, as applicable, or unless terminated for the reasons set forth in paragraph 3 and 4 below. Sierra will have no obligation to contact Client regarding the extension of the Agreement term pursuant to the paragraph.
- 3. INCREASE OF MONTHLY FEE FOR MONITORING FOLLOWING INITIAL YEAR OF AGREEMENT:** Sierra may, at any time and from time to time after initial year of the term of the Agreement, impose reasonable increases on the monthly rate for monitoring, subject to the right of the Client upon notice of any such rate increase to terminate the Agreement without refund of any payments previously made for equipment, monitoring or maintenance. Such rate increases shall be based upon Sierra's determination, in its sole and absolute discretion, of the amount necessary to return a reasonable profit and may take into account, among other factors, increases in taxes, fees or other charges which may be hereafter imposed on Sierra by any governmental authority or provider of services to Sierra. Sierra shall give not less than sixty (60) days notice of such increase.

- 4. TERMINATION FOR REASONS OTHER THAN EXPIRATION OF TERM:** This Agreement shall be deemed terminated without further obligation on the part of either party if Sierra's central station or connecting wire is destroyed or permanently incapacitated. Client may terminate this Agreement without further obligation in the event Sierra elects, pursuant to paragraph 3, to increase the rate for monitoring and maintenance. This Agreement may be terminated by Sierra in the event the client fails to make the monthly payment as provided herein or fails to perform any act or fulfill any condition imposed upon the Client by the terms of the Agreement, in either of which events the total amount due for the remaining portion of the then current term of the Agreement shall be accelerated and become immediately due and payable. Sierra shall have all rights available under New Mexico law, including all rights of a secured creditor under the New Mexico Uniform Commercial Code, together with the right to pursue any and all judicial remedies, to recover attorneys' fees and any other collection costs, and to collect interest on all amounts past due, including amounts due by acceleration, at the rate of twenty-four percent (24%) per annum. Client agrees that acceleration of the amount due shall constitute a reasonable measure of Sierra's damages arising from Client's breach of the Agreement, which damages shall constitute liquidated damages for such breach in lieu of damages which are otherwise difficult or impossible to calculate with reasonable certainty. In the event of the repossession of any equipment pursuant to this paragraph, Sierra shall have no obligation of repair of the Client Premises upon removal of equipment, or obligation to restore the Client Premises to any pre-installation condition, nor will Sierra have any obligation for damages of any kind whatsoever following removal based upon any claim that Client has suffered loss that might have been prevented by continued use or availability of the equipment on Client Premises had such equipment not been removed, without regard to whether or not Sierra was legally entitled to make such removal under the terms of this Agreement. Time is of the essence of this Agreement.
- 5. NONASSIGNABILITY OF THIS AGREEMENT BY CLIENT:** Client may not assign this Agreement or transfer any interest therein without the consent of Sierra. Client shall remain liable to Sierra even if Client premises are sold or otherwise transferred unless Client's remaining obligation hereunder is fully assumed by an assignee upon prior approval of Sierra, following application to Sierra by such proposed assignee.
- 6. OBLIGATIONS OF SIERRA:** During the term of this Agreement and while Client is in compliance with Client's obligations hereunder, Sierra agrees:
- to install the alarm system upon the schedule represented by Sierra to Client, or within a reasonable time thereafter, subject to circumstances not within the control of Sierra, including unanticipated conditions encountered upon Client Premises;
  - to test the alarm system for proper operation immediately following installation;
  - to provide monitoring services, either through Sierra's own facilities or through services provided by others, which shall consist of the receipt, analysis and response to signals from the alarm system or systems installed pursuant to this Agreement, subject to circumstances not within the control of Sierra;
  - to pay any and all false alarm fines or charges or reimburse Client for such charges imposed upon client arising from malfunctioning of equipment not caused by Client; and
  - following notice to Sierra of any defect or malfunction, to maintain at its cost the alarm system and repair or replace malfunctioning equipment, with the exception of 1) replacement of batteries and 2) equipment damaged by Client, persons other than Sierra, weather, lightning, fires, burglary, water or any other means not within Sierra's control.
- 7. OBLIGATIONS OF CLIENT:** Client agrees:
- 7.1 to pay in advance, upon receipt of the monthly invoice, the monthly amount due, as forth above and modified pursuant to paragraph 3;
  - 7.2 to pay any and all false alarm fines or charges imposed upon Client arising from malfunctioning of equipment or otherwise due to fault of Client, and to indemnify Sierra and hold Sierra harmless from such charges, including costs and attorneys' fees incurred by Sierra in defending against the imposition of such charges;
  - 7.3 to promptly notify Sierra of any defect or malfunctioning of the alarm system;
  - 7.4 to take all reasonable measures to protect the alarm system from damage by any means;
  - 7.5 to indemnify Sierra and hold Sierra harmless from any claim by any party based upon, arising from or relating to the reliance of any such party upon the alarm system or monitoring thereof;
  - 7.6 to pay Sierra at Sierra's then prevailing rates the cost of replacing or repairing the alarm system for any defect or malfunction which it is not the responsibility of Sierra to maintain, replace or repair; and
  - 7.7 to assume all risk of loss to equipment following installation.
- 8. DISCLAIMER OF WARRANTIES: CLIENT ACKNOWLEDGES THAT THERE ARE NO TERMS, CONDITIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE QUALITY, FITNESS, CAPACITY OR OTHERWISE WITH RESPECT TO THE ABOVE DESCRIBED ALARM SYSTEM, OR THE SERVICES PROVIDED WITH RESPECT THERETO. CLIENT SPECIFICALLY ACKNOWLEDGES THAT SIERRA HAS MADE NO WARRANTY OF MERCHANTABILITY OR HABITABILITY. CLIENT EXPRESSLY WAIVES, AND ACKNOWLEDGES SIERRA'S DISCLAIMERS OF ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE ALARM SYSTEM, OR THE SERVICE PROVIDED WITH RESPECT THERETO, AS TO QUALITY, FITNESS, CAPACITY, MERCHANTABILITY OR HABITABILITY.**
- 9. LIMITATION OF LIABILITY:** Client agrees that Sierra shall have no liability for loss or damage of any kind whatsoever, including but not limited to compensatory, incidental, consequential, or special damages, whether to person or property, arising from or relating to any failure of Sierra to perform its obligations under the terms of this Agreement or arising from or relating to any failure of the alarm system to perform as represented or expected, with the exception of refund of any monetary consideration paid by Client to Sierra pursuant to the terms of the Agreement, which monetary consideration shall be the limit and extent of Sierra's liability with respect to the Agreement and any claim of damages made by Client or any third party. This Agreement shall not be construed as a third party beneficiary contract. Client acknowledges that Client has obtained or may obtain insurance coverage to insure against any such loss or damages, and waives claim for such loss or damage against Sierra. Client acknowledges that Sierra, by agreeing to install the alarm system and providing services related thereto, has not undertaken to assure the avoidance of any loss that such system and service might be intended to avoid.
- 10. SEVERABILITY OF PROVISIONS OF AGREEMENT:** In the event any provision of this Agreement is held to be void, voidable or invalid by a court of competent jurisdiction, the remaining provisions of the Agreement shall nevertheless remain in full force and effect.
- 11. AMENDMENTS TO AGREEMENT:** This Agreement shall be amended only in writing signed by Sierra and Client.
- 12. ENTIRE AGREEMENT:** This Agreement constitutes the entire contract between the parties hereto, and Sierra is not liable nor bound in any manner or expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the subject matter of this Agreement or any other matter whatsoever made or furnished by any person unless such warranties, guarantees, promises, statements, representations or information are expressly and specifically set forth in this Agreement.