

ATIS ELEVATOR INSPECTION SERVICES, LLC

TERMS AND CONDITIONS

These Terms and Conditions apply to and are hereby incorporated into the Proposal and Agreement for Services (“Agreement”) between ATIS Elevator Inspection Services, LLC (“ATIS”) and the customer named in the Agreement (“Customer”). Any capitalized terms used herein but not defined shall have the meaning ascribed to them in the Agreement. These Terms and Conditions will apply to and govern the business relationship between ATIS and Customer as described in the Agreement and to the Services provided by ATIS to Customer.

1. Scope of Services. During the Term of the Agreement, Customer may call upon ATIS to perform specific inspection work and/or third-party witness inspection work as determined from the scope of services to be defined per project in accordance with the Agreement.

2. Definitions. If ATIS is performing the Services as an inspector, then, depending on the specific scope of work and the type of equipment, ATIS may perform inspections to ensure compliance with local jurisdictional rules or nationally recognized standards on the design, and safety of equipment, general maintenance procedures and the basic operation of the elevators, escalators, moving walkways and other conveyances that are described in the scope of work. If ATIS is operating as a third-party witness, then ATIS, in compliance with local jurisdictional rules, will witness the required safety tests that are performed by an elevator service provider. ATIS does not actually conduct or coordinate the safety tests. If acting as a third-party witness, ATIS’ sole responsibility is to witness and ensure that the elevator maintenance provider performs the required safety tests in compliance with appropriate rules and that all tests are completed in a professional manner in accordance with generally accepted industry standards. In no event, whether operating as an inspector or a third-party witness, should the services of ATIS be confused with that of a mechanic or other repair personnel. ATIS is not responsible for the repair and/or maintenance of any of the devices that are inspected. ATIS does not have any ownership, control or responsibility to ensure that any required maintenance, recommendations or suggestions are implemented.

3. Term. The Initial Term of the Agreement shall be set forth in the Agreement. If the Initial Term is for multiple years, ATIS will fix its annual fee increase to three (3) percent. Otherwise, ATIS may increase its annual fee as ATIS deems appropriate.

4. Compensation. Upon receipt of an invoice, Customer shall pay and ATIS shall accept in full consideration for the performance of the Services, the sum of the reimbursable costs submitted per proposal in accordance with the agreed upon Pricing Schedule of the Agreement. If Customer fails to pay the amounts set forth in the invoice upon receipt and fails to pay such amounts within fifteen (15) days after receiving notice from ATIS regarding such failure to pay, ATIS may immediately suspend the Services.

5. Coordination, Filing and Fees. ATIS, at its sole discretion, may assist and/or provide inspection filing services to the Customer for required elevator inspection reports. However, Customer understands that time is of the essence regarding the filing of such reports, and that the Customer is solely responsible and in a position to control and ensure that all required signatures, forms and information are completed and received by ATIS, the applicable governmental agencies, the applicable elevator maintenance/testing companies or any other third-parties in a timely manner. Customer agrees that ATIS will not be responsible or liable, under any circumstances or for any reason, for any fees, penalties or late charges that may be assessed as a result of any delays and/or failures by Customer, an elevator maintenance/testing company or any other third-party.

6. Third Party Compliance Fees. If Customer requests that ATIS file elevator inspection reports or that ATIS submit or file forms, reports, or other documents to third parties (“Third Party Compliance Reports”) arising out of the Services on behalf of Customer, Customer shall pay to ATIS one hundred fifty percent (150%) of the total amount of the filing fees and direct costs incurred by ATIS to submit or file such Third Party Compliance Reports (the “Compliance Report Fees”). Payment to ATIS of the Compliance Report Fees shall be due upon Customer’s receipt of the invoice for the Compliance Report Fees, and Customer shall be obligated to pay the Compliance Report Fees regardless of whether such Third-Party Compliance Reports are referenced in the Agreement, provided that Customer must have requested that ATIS file or submit the Third-Party Compliance Reports orally or in writing (including via email).

7. Relationship of Parties. ATIS is an independent contractor, and nothing contained herein shall be construed as creating any other relationship with Customer. The Agreement shall not be construed as creating any relationship whatsoever between Customer and ATIS' employees. ATIS shall not be entitled, under the Agreement or otherwise, to any of the benefits under any employee benefit plan which Customer or its affiliates or subsidiaries presently has in effect or may put into effect; nor will ATIS be considered an employee for purposes of any tax or contribution levied by any federal, state or local government. ATIS has sole authority and responsibility to hire, fire and otherwise control its employees.

8. Standard of Care. ATIS REPRESENTS THAT THE SERVICES, WILL BE PREPARED, PERFORMED, AND RENDERED IN ACCORDANCE WITH PROCEDURES, PROTOCOLS AND PRACTICES ORDINARILY EXERCISED BY PROFESSIONALS IN ATIS' PROFESSION. CUSTOMER ACKNOWLEDGES AND AGREES THAT ATIS HAS MADE NO OTHER IMPLIED OR EXPRESS REPRESENTATION OR WARRANTY WITH RESPECT TO THE SERVICES TO BE PROVIDED BY ATIS PURSUANT TO THE AGREEMENT.

9. Indemnity. Customer shall defend, indemnify and hold harmless ATIS, its employees, directors, officers, and agents, from and against claims, losses, liabilities, and costs and expenses (including reasonable attorney's fees) that are: i) related to or caused by the negligence or willful misconduct of Customer, its employees, or agents; ii) related to the Agreement or the Services to be performed by ATIS for which ATIS is not expressly responsible; or iii) the expressed responsibility of the Customer under this Agreement.

10. Limitation of Liability. Neither party will be liable to the other for any indirect, incidental, special, consequential, exemplary or punitive damages, including, without limitation, loss of use, interruption of business, lost profits, lost revenues or the cost of purchasing replacement services, arising out of the performance or failure to perform the Services or a breach of the Agreement, regardless of whether such liability is based on breach of contract, tort (including all forms of negligence), strict liability, breach of warranty, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages. IN NO EVENT SHALL ATIS' TOTAL AGGREGATE LIABILITY, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING ALL FORMS OF NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION FOR DAMAGES, LOSSES, OR COSTS ARISING OUT OF ANY PROVISION OF THE AGREEMENT OR THE SERVICES PROVIDED BY ATIS PURSUANT TO THE AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO ATIS IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

11. Insurance. ATIS, at ATIS' own cost and expense, shall procure and maintain, during the Term, the following insurance policies with insurers possessing a Best's rating of no less than A: VII:

- a. **Workers' Compensation Coverage:** ATIS shall maintain Workers' Compensation and Employer's Liability Insurance for its employees in accordance with the laws of the state where the services are being performed. Any notice of cancellation or non-renewal of all Workers' Compensation policies will be sent to the Customer in accordance with the policy provisions.
- b. **General Liability Coverage:** ATIS shall maintain Commercial General Liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- c. **Automobile Liability Coverage:** ATIS shall maintain Automobile Liability insurance covering bodily injury and property damage for activities of ATIS employee arising out of or in connection with the work to be performed under the Agreement, including coverage for owned, hired and non-owned vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
- d. **Professional Liability Coverage:** ATIS shall maintain Professional Errors and Omissions Liability for protection against claims alleging negligent acts, errors or omissions which may arise from ATIS' services under this Agreement. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis.

The Customer agrees that providing such insurance shall in no way be construed as an assumption by ATIS of any liability for the negligence or willful misconduct or any wrongful behavior on the part of Customer.

12. Cause of Action. If Customer makes a claim against ATIS, for any alleged error, omission, or other act arising out of the performance of its professional services and to the extent the Customer fails to prove such claim, then the Customer shall pay all costs including attorney’s fees incurred by ATIS in defending the claim. Any cause of action brought against ATIS shall be brought within one (1) year of the work or services performed under the agreement.

13. Resolution of Disputes. All claims, disputes, controversies or matters in question arising out of, or relating to, the Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, except those disputes which arise out of or are related to collection matters or fees alone under the Agreement, (collectively “Disputes”) shall be submitted to non-binding mediation before and as a condition precedent to the initiation of legal proceedings. In no event shall any Disputes be subject to binding arbitration. Upon written request by either party to the Agreement for mediation of any dispute, Customer and ATIS shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Customer and ATIS within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree.

14. Waivers. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. Each party waives its right to a jury trial in any court action arising between the parties, whether under the agreement or otherwise related to the work being performed under the agreement.

15. Force Majeure. A delay in, or failure of, performance of either party hereto shall not constitute a default hereunder or give rise to any claim for damage if and to the extent such delay or failure is caused by (an) occurrence(s) beyond the reasonable control of the party affected, including, but not limited to, act(s) of God, or the public enemy, expropriation or confiscation of facilities or compliance with any order or request of governmental authority or person(s) purporting to act therefore affecting to a degree not presently existing the supply, availability, or use of engineering personnel or equipment, act(s) of war, public disorder(s), insurrection(s), rebellion(s), or sabotage, flood(s), riot(s), strike(s), or any cause(s), whether or not of the class or kind of those specifically named above, not within the reasonable control of the party affected, and which, by the exercise of reasonable diligence, said party is unable to prevent. A party who is prevented from performing for any reason shall immediately notify the other party in writing of the cause of such non- performance and the anticipated extent of the delay.

16. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Customer: To the address of the Customer set forth in the Agreement

If to ATIS: ATIS Elevator Inspection Services, LLC
1976 Innerbelt Business Center Drive
St. Louis, MO 63114

17. Confidential Information and Publicity. Each party agrees that all information furnished to it by the other party, including maps, layouts, pricing, financial terms, business plans or models, design information, methodologies, specifications, locations or other information to which it has access, is deemed the confidential and proprietary information or trade secrets (collectively referred to as “**Proprietary Information**”) of the disclosing party and will remain the property of the disclosing party. Each party will take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Proprietary Information of the disclosing party and shall use at least the same degree of care the receiving party employs with respect to its own Proprietary Information, but in no event less than a reasonable standard of care. Neither party will directly or indirectly, without the prior written consent of the disclosing party, disclose the disclosing party’s Proprietary Information or terms of the Agreement to anyone other than: (a) the receiving party’s officers, directors, affiliates, subsidiaries, shareholders, financing sources, attorneys, and employees on a need to know basis and who agree to be bound by confidentiality terms at least as restrictive as those contained in this Section 17; or (b) as required by governmental law, rule, or regulation including judicial proceedings. Information will not be deemed Proprietary Information if it: (i) becomes publicly available other than through the actions of the receiving party in breach of this Section 17; (ii) is independently developed by the receiving party without reference to the Proprietary Information of the disclosing party; or (iii) becomes available to the receiving party without restriction from a third party. If the receiving party is required by a governmental or judicial law, order, rule, regulation, or permit to disclose Proprietary Information of the disclosing party or the terms of this Agreement, then the receiving party will give prompt written notice to the disclosing party of the requirements of such disclosure and cooperate fully with the disclosing party to minimize such disclosure. The technical and pricing information contained in any proposal or other documents submitted to Customer by ATIS is to be considered confidential and proprietary and shall not be released or disclosed to a third party without ATIS’ written consent. Customer agrees that ATIS shall be permitted to use Customer’s name and logos in ATIS’ marketing materials unless advised or prohibited against it by the Customer in writing.

18. Third Party Beneficiary. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the Customer and ATIS that any such person or entity, other than Customer or ATIS, receiving services or benefits under the Agreement shall be deemed an incidental beneficiary.

19. Conflict. In the event that these Terms and Conditions conflict with the terms and conditions of any other document or agreement (other than the Agreement), then these Terms and Conditions shall govern and control over any such conflicts. In the event of a conflict between these Terms and Conditions and any term in the Agreement, the Agreement shall govern and control.

20. Modification or Amendment of Terms and Conditions. ATIS may modify or amend these Terms and Conditions at any time, and ATIS shall only be required to provide notice to Customer of any such modification or amendment if such modification or amendment is material in nature, such materiality to be determined in the sole, reasonable discretion of ATIS. In the event of such a material modification or amendment, ATIS may notify Customer via a Customer-provided email address or via the U.S. Postal Services or other reputable mail carrier.

21. Miscellaneous. The invalidity or unenforceability of any portion(s) or provision(s) of these Terms and Conditions shall in no way affect the validity or enforceability of any other portion(s) or provision(s) hereof. Any invalid or unenforceable provision(s) shall be severed and the balance of the Terms and Conditions shall be construed and enforced as if they did not contain a particular portion(s) or provision(s) held to be invalid or unenforceable. The Terms and Conditions stated herein, along with the Agreement, constitute the entire agreement between the parties and shall supersede other agreements and representations made prior to the date hereof. No amendments to this contract or changes in the Scope of the Services shall be valid unless made in writing and signed by the parties. Pre-printed terms and conditions (including, but not limited to, waivers of rights and remedies, and variations from any of the warranty, guarantee, standard of care, indemnity, and liability provisions) contained in purchase orders, work orders, invoices or other documents issued by Customer with respect to any services shall have no force or effect and shall be superseded by these Terms and Conditions herein. These Terms and Conditions shall be interpreted as though prepared by all parties and shall not be construed unfavorably against either party.