

**THINK PROTECTION, INC.**

**[CONTACT INFORMATION]**

**PERSONAL EMERGENCY RESPONSE SYSTEM AND SERVICE AGREEMENT**

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between Think Protection, Inc. ("Company") and the Subscriber shown above. Subscriber is sometimes referred to as "you" or "your." Company is sometimes referred to as "we," "us" or "our". The "System" refers to the equipment sold to you which may include, without limitation, a cellular base station, help button(s), location aware (GPS coordinates only) mobile communicator, fall detection pendant(s), and any other accessories, devices and features (collectively, "Equipment"). The word "premises" refers to your address set-forth above.

**1. Term and Renewal.** The initial term of this Agreement begins on the date of this Agreement and shall end one (1) month after the Start Date of Monitoring Services, and shall automatically renew month-to-month thereafter unless either party provides at least one (1) month's written notice to the other before the end of any term.

**2. Charge for System.** You agree to pay Company the sum of \$\_\_\_\_\_, plus tax, if applicable, for the purchase of the System. You authorize payment through your credit card account indicated below. Select one only: ☐ VISA ☐ Master Card Expiration Date\_\_\_\_\_. Account Number \_\_\_\_\_.

**3. Monthly Charges.** You agree to pay Company the sum of \$\_\_\_\_\_, plus tax, if applicable, per month for Services prepaid monthly. You authorize payment of all monthly charges through your credit card account indicated below. Select one only: ☐ VISA ☐ Master Card Expiration Date \_\_\_\_\_; Account Number: \_\_\_\_\_ ("Credit Card").

Use of the Credit Card is governed by the card issuer agreement. If Company does not receive timely payment from your credit card issuer, you agree to pay all amounts due upon demand.

**4. Monitoring Services.** Monitoring service consists solely of monitoring service personnel communicating with the persons you identify in writing (the "Call List"), and/or the emergency response entities or agencies you identify in writing ("First Responders") (the Call List and the First Responders are collectively, the "Responders"), upon the monitoring facility's receipt of oral instructions, signals, data or other communication from the System reporting conditions that require assistance (a "Response Condition") ("Monitoring Services"). You understand, acknowledge and agree that (a) following receipt of a Response Condition but before communicating with First Responders, Company may, in its sole and absolute discretion and without any liability, contact or attempt to contact you, a person at the premises or the Call List as frequently as Company deems appropriate to verify the need to communicate with First Responders and (b) after receiving oral advice from you, anyone at the premises or anyone on the Call List to disregard the Response Condition, Company may, in its sole and absolute discretion and without any liability, refrain from alerting Responders or advise Responders of the receipt of oral advice to disregard the Response Condition.

**5. Installation and Start Date of Service.** The System must be installed by you. The System will be delivered to you with installation instructions. Information concerning installation is available by calling Company's customer service number. Company makes no promise of commencement of Monitoring Services by any particular date. Monitoring Service begins after (i) all information which is required from you is provided and entered into Company's monitoring facility's computer system, and (ii) you perform an operating test of the System acceptable to Company's monitoring facility (the "Start Date").

## **6. LIMITATION OF LIABILITY.**

YOU UNDERSTAND, ACKNOWLEDGE AND AGREE THAT SHOULD THERE ARISE ANY LIABILITY ON THE PART OF COMPANY OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS AND EMPLOYEES (COLLECTIVELY, "REPRESENTATIVES") FOR ANY PERSONAL INJURY, HEALTH RELATED EVENT, LOSS, DAMAGE OR EXPENSE INCLUDING, WITHOUT LIMITATION OR EXAMPLE, ANY LIABILITY ARISING OUT OF OR FROM ANY REASON INCLUDING, WITHOUT LIMITATION OR EXAMPLE, COMPANY'S OR REPRESENTATIVES' ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE OF ANY KIND OR DEGREE THAT OCCURS BEFORE OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, BREACH OF CONTRACT, SUBROGATION, CONTRIBUTION, INDEMNIFICATION OR ANY OTHER THEORY OF LIABILITY, ALL SUCH LIABILITY SHALL BE LIMITED TO THE MAXIMUM SUM OF \$1,000.00 COLLECTIVELY FOR COMPANY AND REPRESENTATIVES. IN THE EVENT YOU WISH TO INCREASE THE MAXIMUM AMOUNT OF SUCH LIMITED LIABILITY, YOU MAY, AS A MATTER OF RIGHT, PROSPECTIVELY OBTAIN A HIGHER LIMIT BY PAYING AN ADDITIONAL AMOUNT

FOR THE INCREASE IN SUCH LIMIT OF LIABILITY, BUT THIS PAYMENT SHALL IN NO WAY BE INTERPRETED TO HOLD COMPANY OR REPRESENTATIVES AS AN INSURER.

**7. Subscriber Acknowledgments.** You understand, acknowledge and agree as follows:

7.1 If your System requires electricity to operate, you must use an outlet with standard 110 volt power and the outlet must always have power available to the System.

7.2 You must test the System at least monthly in accordance with any applicable instructions provided to you. In addition, you must test the System whenever renovations or repairs are made to your premises or to the electrical services at your premises.

7.3 If your System communicates with Company's monitoring facility over the Internet or a telephone line, you must test the System whenever changes are made to those services.

7.4 Certain Systems use radio frequency waves to communicate between devices (e.g., between the help button and the base station). Certain natural events and objects in the premises emit radio frequency waves (e.g., microwave ovens, television sets, radios, household appliances, cordless telephones, cellular telephones, lightning, static electricity or other electrical discharges) and may cause interference resulting in malfunctions of the System.

7.5 For Systems which communicate with Company's monitoring facility over a telephone line, the System will not communicate with Company's monitoring facility if a telephone connected to the same telephone line which the System uses to communicate with Company's monitoring facility is in use, off the hook, or not properly in its cradle. When the System is in use, an alternative telephone line at the premises is necessary to communicate by telephone with others.

7.6 The System is not infallible and the transmission and receipt of communications from the System may be interrupted or otherwise compromised.

7.7 You must comply with all laws, rules, regulations and ordinances which may affect your rights in connection with the use of the System and services, e.g., maintaining all necessary permits, licenses, registrations and notices including, without limitation, notices to Responders.

7.8 The System is not an intrusion detection, security or fire alarm system. The System and the Monitoring Services do not provide intrusion, security or fire protection. The System is not a medical device and Company's monitoring facility personnel are not qualified medical personnel and do not provide medical advice.

7.9 If your System includes a fall detection device, fall detection can activate when you did not fall and fall detection does not detect 100% of falls. If able, you should always push your help button when you require assistance.

7.10 You are not permitted to (i) alter, modify or attempt to repair the System, or (ii) move the System to a new address without the prior consent of Company and then only pursuant to the instructions of Company.

7.11 You will immediately notify Company in the event of changes in Responders or of changes in contact information for Responders or for you.

**8. Waiver of Subrogation.** You hereby waive any rights your insurance Company may have to be reimbursed by Company or Representatives for money paid to you or on your behalf.

**9. INDEMNIFICATION.** IF ANYONE OTHER THAN YOU, INCLUDING, WITHOUT LIMITATION, YOUR INSURANCE COMPANY, ASKS COMPANY OR REPRESENTATIVES TO PAY FOR ANY LOSS, DAMAGE, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION OR EXAMPLE, ECONOMIC LOSSES, PROPERTY DAMAGE, PERSONAL INJURY, HEALTH RELATED EVENTS OR DEATH) DUE TO ANY REASON INCLUDING, WITHOUT LIMITATION OR EXAMPLE, THE ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE OF ANY KIND OR

DEGREE OF COMPANY OR REPRESENTATIVES, OR THERE IS A CLAIM FOR SUBROGATION, INDEMNIFICATION OR CONTRIBUTION, YOU AGREE TO PAY (WITHOUT ANY CONDITION THAT COMPANY OR REPRESENTATIVES FIRST PAY) FOR ALL LOSSES, DAMAGES, COSTS AND EXPENSES INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, WHICH MAY BE ASSERTED AGAINST OR INCURRED BY COMPANY OR REPRESENTATIVES IN CONNECTION WITH ANY AND ALL SUCH CLAIMS.

**10. False Alarms and Forced Entry.** If the System is activated for any reason, you shall (i) pay, without reimbursement from Company, or (ii) reimburse Company, for any fines, fees, costs, expenses or penalties assessed against you or Company by any court or governmental agency. You must provide access to the premises to Responders. If you fail to provide access, Responders may use forcible means to enter the premises which may result in damage to the premises, all of which damage, cost and expense shall be borne solely by you without recourse to Company or Representatives. Company has no control over response times for Responders. You hereby release Company and Responders for and from all claims, losses and damages that may arise from any forced entry or any delayed response by Responders.

**11. Costs and Expenses.** If any claim is asserted or any legal action, suit, mediation or arbitration proceeding is instituted, Subscriber shall pay Company its costs and expenses of such legal action, suit, mediation or arbitration proceeding including, without limitation or example, consultants' and professionals' fees and costs and reasonable attorneys' fees and costs on the sole condition that Company is the substantially prevailing party by way of termination or withdrawal of the claim, settlement, judgment or award.

**12. Applicable Law.** This Agreement shall be governed by and construed according to the laws of the State of New Jersey without reference to its conflicts of law rules. The interpretation of this Agreement shall not be construed against the drafter.

**13. Assignment.** This Agreement is not assignable by you. This Agreement or any portion thereof is assignable by Company in its sole discretion.

**14. Finance Charges.** A finance charge of one and one-half (1 1/2%) percent per month (eighteen (18%) percent per year) will apply to all obligations not paid by the due date.

**15. No Waiver of Breach.** If you or Company shall waive any breach of this Agreement it shall not be construed as a waiver of any subsequent breach. Your rights and Company's rights hereunder shall be cumulative, and any rights hereunder may be exercised concurrently or consecutively and shall include all remedies available even though not expressly referred to herein.

**16. Suspension of Service.** You understand, acknowledge and agree that Company's obligations are automatically suspended without notice to you and you hereby waive all claims and release Company for all liability, loss, damage and expense in the event (i) the monitoring facility, communications equipment or network or the System is destroyed, damaged, inoperable or malfunctions for any reason whatsoever, or (ii) Company's service is interrupted due to any reason or cause. In each such event, the duration of such suspension shall be until the reason for the suspension is cured. During any interruption of Company's services for any reason, Company has no duty, obligation or liability to supply you with alternative or substitute services. You shall be entitled to reimbursement of the unearned charge paid for the period of the suspension on your request and this shall be the limit of Company's liability.

**17. Integrated Agreement; Modifications.** This Agreement contains the entire agreement between you and us concerning the transactions described in this Agreement and supersedes all prior or current negotiations, commitments, contracts, express or implied, warranties, express or implied, statements and representations, written or oral, pertaining to such matters, all of which are merged into this Agreement. NEITHER PARTY HAS AUTHORITY TO MAKE OR CLAIM ANY REPRESENTATION, TERM, PROMISE, CONDITION, STATEMENT, WARRANTY, OR INDUCEMENT (COLLECTIVELY, "INDUCEMENT") WHICH IS NOT EXPRESSED HEREIN. EACH PARTY REPRESENTS THAT IT/HE/SHE IS NOT RELYING ON ANY INDUCEMENT IN SIGNING THIS AGREEMENT WHICH IS NOT EXPRESSED IN THIS AGREEMENT. All changes or amendments to this Agreement must be in writing and signed by all parties to be binding on the parties.

**18. Valid Agreement.** Should any provision hereof (or portion thereof), or its application to any circumstances, be held illegal, invalid or unenforceable to any extent, the validity and enforceability of the remainder of the provision and this Agreement, or of such provisions as applied to any other circumstances, shall not be affected thereby, and shall remain in full force and effect as valid, binding and continuing; provided, however, in the event the Limitation of Liability or Indemnification sections of this Agreement are determined by a court to be unenforceable to any extent, Company shall have the right to terminate this Agreement upon seven (7) days notice to you, without any liability, duty or obligation to you.

**19. Intended Third Party Beneficiaries.** Company may, in its sole and absolute discretion, subcontract for the provision of services under this Agreement. You acknowledge, understand and agree that the provisions of this Agreement inure to the benefit of and are applicable to Responders and any service providers or subcontractors engaged by Company to provide any service set forth herein and bind you to such Responders, service providers and subcontractors with the same force and effect as they bind you to Company.

**20. WAIVER OF JURY TRIAL.** TO THE EXTENT NOT PROHIBITED BY LAW, EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING BROUGHT BY EITHER PARTY ARISING OUT OF OR FROM, IN CONNECTION WITH, RELATED TO, AS A CONSEQUENCE OF OR RESULTING FROM THIS AGREEMENT.

**21. Medical and Related Expenses.** Any and all costs and expenses arising out of or from, in connection with, related to, or as a consequence of use of the System including, without limitation or example, Responders, physician and other medical professional services, medical center, hospital, and other health related support services shall be borne solely by you without recourse to Company.

## **22. Repair Service.**

22.1 Repair service consists solely of providing replacement Equipment upon receipt of Equipment which is not operating properly ("Repair Service"). All Repair Service shall be paid by Subscriber at Company's then prevailing charges. You authorize payment of all Repair Services charges through your Credit Card.

22.2 You agree that all Repair Service shall be performed by Company only, but Company's duty is subject to the availability of the original Equipment from the original manufacturer, and to the terms of this Agreement..

**23. Contractual Limitation of Actions.** All claims, actions or proceedings by or against Company or Representatives must be commenced in court within one (1) year after the

cause of action has accrued or said claim, action or proceeding is barred. The time period in this paragraph must be strictly complied with.

**24. Recording Consent.** You, for yourself and as the authorized agent of your family, guests, agents, servants, representatives and employees (individually and collectively, "Any Person"), hereby consent to Company and Company's monitoring facility intercepting, recording, retrieving, reviewing, copying, using and, subject to Company's privacy policy, disclosing the contents of all telephone, video, wire, oral, electronic and other forms of transmission or communication to which Company and you or Any Person are parties.

**25. Headings.** The paragraph titles used herein are for convenience of the parties only and shall not be considered in construing the provisions of this Agreement.

**26. Company as Agent; Revocation; Ratification; Retroactive Date.** You hereby appoint Company as your agent for Company, in Company's name, to give direction to any monitoring facility which is a subcontractor of Company, as if done by you in your own right, concerning any and all matters arising out of or from, in connection with or related to the performance of monitoring services. The authority granted to Company under this section shall continue to be binding upon you until revocation in writing, signed by you, shall have been actually received by Company and the monitoring facility; and no such notice shall affect anything done by (a) Company in reliance hereon or pursuant hereto or (b) the monitoring facility pursuant to the request or demand of Company prior to actual receipt by Company and the monitoring facility of said written and signed notice of revocation. You hereby ratify and confirm all prior and contemporaneous acts of (x) the monitoring facility pursuant to the request or demand of Company and (y) Company pursuant to this section which you acknowledge and agree shall be and is deemed to be retroactive to the initial date Company performed any Services for you or the monitoring facility performed monitoring services on your behalf.

**27. Internet Services.** Company hereby grants to Subscriber a non-exclusive, non-transferable license to use the Company's internet portal to access, input, delete and modify Information through the internet. Except for Subscriber's (a) failure to keep confidential all Information, passwords, etc., (b) use of the license or the Information in any manner that negatively affects Company, (c) use of the license or the Information for any illegal purpose, or (d) violation of any applicable law, this license shall continue and be coextensive with the term of this Agreement. Subscriber shall be solely and absolutely responsible for the Information which it inputs, deletes or modifies. Subscriber agrees that upon termination of this Agreement or termination or suspension of the license by Company, Company may immediately, and without notice, disable Subscriber's access



to the Company's internet portal and cancel all passwords or other access codes.

**28. Electronic Media.** If you sign a hard-copy of this Agreement, you authorize Company to scan, image or otherwise convert this Agreement and any ancillary documents into an electronic format of any nature and to destroy all such written documents. You agree that a copy of this Agreement or other ancillary document produced from such electronic format is legally equivalent to the original for any and all purposes, including litigation or arbitration.

**29. Execution in Counterparts and by Facsimile or Electronically.** This Agreement may be executed in any number of counterparts, any one of which need not contain the signature of more than one party, but all of which shall together constitute one and the same instrument. The parties agree that this Agreement and the signatures affixed hereto may be transmitted and delivered by facsimile or electronically and that all such signatures and this Agreement transmitted or delivered by facsimile or electronically shall be deemed to be originals for all purposes and given the same legal force and effect as the original Agreement and original signatures, including litigation and arbitration.

**30. Consent to Call Subscriber and Call List.** You, for yourself and as the authorized agent of each person on your Call List from time-to-time, consent to Company (i) calling each such person's cell phone or other mobile device; (ii) using automatic dialers; and (iii) using a technology known as "robocalling" (unless such person notifies us that he/she opts out of this clause (iii)).

**31. Amendments.** We may modify this Agreement by giving you thirty (30) days prior notice in writing or electronically. Your continued use of the System or services or your payment of amounts charged to you under this Agreement after the effective date of the amendment shall constitute your acceptance of and agreement to the amendment and you shall be bound by the terms of this Agreement as so amended from time-to-time.

**32. Usage Limits.** We may place usage limits in connection with any Company service by giving you prior notice in writing or electronically. If you exceed any such usage limit, you agree to pay our charges for your excess usage at our then current rates.

**33. Electronic Signatures.** Each party consents to and agrees that the use of a keyboard, mouse, or other device (i) to select an item, button, icon or checkbox, or (ii) to enter text, or (iii) to perform any similar act or action while using Company's web-based portal for the purpose of initiating, reviewing, modifying or completing any transaction regarding this Agreement constitutes a lawful and valid signature, acceptance, and agreement, and shall be treated the same as if such were actually made using a physical, written signature. The parties further agree that no certification authority, or other third-party verification is necessary to validate their respective electronic signature. The parties additionally agree that this Agreement is accepted and agreed to when an electronic signature for each party has been affixed to this Agreement.

**34. Statutory Notices.** [NOTE TO THINK PROTECTION. Include in this section all notices required by law, e.g., license numbers, legally required notices to subscribers, etc.]

ACKNOWLEDGMENTS. BY SIGNING THIS AGREEMENT OR BY USING THE SYSTEM, YOU (I) AGREE THAT THIS IS A BINDING AGREEMENT AND INCLUDES THE TERMS AND CONDITIONS ON THE REVERSE; (II) AGREE TO THE LIMITATION OF LIABILITY AND INDEMNITY PARAGRAPHS OF THIS AGREEMENT; AND (III) ACKNOWLEDGE HAVING RECEIVED AND READ A COPY OF THE ENTIRE AGREEMENT.

NO WARRANTIES. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OR REVERSE HEREOF, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

RIGHT TO CANCEL. YOU MAY CANCEL THIS TRANSACTION PRIOR TO MIDNIGHT OF THE THIRD (3rd) BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have executed this Agreement on the date first above written.