

# SkyHelp Annual Purchase and Services Agreement

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Assistive Technology Services LLC. "Dealer" and Customer.

**Purchaser (Subscriber) Information:** (Person buying this unit and responsible for payment)

Name: \_\_\_\_\_

Address: (city, state, zip) \_\_\_\_\_

Phone: \_\_\_\_\_ Email \_\_\_\_\_

**Device Holder Information:** (Person using the unit on a regular basis)

Name: \_\_\_\_\_

Address: (city, state, zip) \_\_\_\_\_

Phone: \_\_\_\_\_ Email \_\_\_\_\_

**Emergency Contacts:** (This information is available to monitoring service when SkyHelp is activated during a call)

**Contact 1:**

Name \_\_\_\_\_ Phone \_\_\_\_\_ Relationship \_\_\_\_\_

**Contact 2:**

Name \_\_\_\_\_ Phone \_\_\_\_\_ Relationship \_\_\_\_\_

**Contact 3:**

Name \_\_\_\_\_ Phone \_\_\_\_\_ Relationship \_\_\_\_\_

1. SERVICES. Global Positioning System is referred to as "GPS" in this document. The "Services" are provided solely within the United States and consist of Assistive Technology Services LLS providing a SkyHelp GPS device (the "SkyHelp Device") and communications service that enables you to transmit your voice to our emergency call center (the "Center") using a cellular network, and permits the notification of emergency personnel of your need for help where service is provided.

The Services are provided to us by our subcontractor, using the SkyHelp Device, and the services of the Center who is a subcontractor. If an emergency signal from the SkyHelp Device is received in the Center, it will try to ascertain the nature of your emergency. If, in the reasonable judgment of the Center an emergency situation exists, the Center will attempt to telephone the emergency response authority in the geographic area identified by the device and one of the people as designated on your Information Form.

To avoid false alarms, the Center may use the two-way audio feature of the SkyHelp Device to determine if an actual emergency exists before the Center calls any authorities or persons on your Information Form or dispatch emergency response personnel. If the Center has reason to believe that no actual emergency exists, it may choose not to notify emergency response personnel.

We are authorized to change or modify the Services provided by SkyHelp and the Center and advise them of changes to your Information Form.

2. **SALE OF SKYHELP DEVICE.** We will sell and deliver to you, the SkyHelp Device. Upon delivery of the SkyHelp Device and receipt of your payment of the full sales price we will provide you instructions to activate the device and two-way talk capabilities of the SkyHelp Device.

3. **PRICE; PAYMENT AND TERM.**

3.1 **SALES/INSTALLATION PRICE.** The total sales price for the SkyHelp Device plus one year of usage, is **\$449.99** plus sales tax if applicable. **We will not activate the SkyHelp Device, or start Services until the sales price is paid in full.**

3.2 **SERVICES FEE; TERM:** For Services, you agree to pay us the sum of **\$449.99 per year**, billed and payable annually in advance. The original term of this Agreement is the billing cycle selected and will renew for the same consecutive billing cycle thereafter unless terminated as set forth below. We may terminate this Agreement at the end of the original term or any renewal term by giving you not less than 30 days advanced written notice. You may terminate this Agreement at anytime by giving us written notice. If you terminate during a billing cycle your bill will be adjusted to reflect our standard monthly billing rate for the months used, and you will receive a refund for the unused portion of the fee. You will **not receive a refund for an initial hardware payment** which includes the SkyHelp equipment and first month of service. Mid-month cancellations will be charged for the entire month.

3.3 **INCREASE IN SERVICES FEE.** You acknowledge that the services fee is based upon existing federal, state and local taxes and other third-party charges. We shall have the right, at any time, to increase the services fee to reflect any additional or increased taxes, licenses, permits, or fees which may be charged to us by any utility, cellular provider, or governmental agency relating to the services we provide and you agree to pay the same. In addition, we may increase the services fee for any renewal term by giving you sixty (60) days prior notice.

4. **WARRANTY AND LIMITATIONS.**

4.1 **WARRANTY COVERAGE.** For one year from the date of this agreement, we will repair or replace the SkyHelp Device without charge to you per our repair and replacement policy provided separately. A replacement may be a used or reconditioned SkyHelp Device.

4.2 **CELLULAR TECHNOLOGY.** The SkyHelp Device uses cellular technology to provide two-way talk capabilities. The quality and reliability cellular service is outside our control and that of our subcontractors, so there may be times when two-way talk is unavailable or unreliable.

4.3 **GPS TECHNOLOGY.** The SkyHelp device uses GPS technology to provide location information. The availability and accuracy of this location information depends on a number of factors that are also outside our control and that of our subcontractors. The Center may not have a location for the SkyHelp Device, or may have one that is incorrect.

4.4 **HOW TO GET SERVICE: CALL US AT OUR SUBSCRIBER SERVICES DEPARTMENT AND TELL US WHAT IS WRONG WITH THE SKYHELP DEVICE.** Our repair and replacement service procedures and policies are set forth on Exhibit A, attached hereto and incorporated by reference herein.

4.5 REPAIR OR REPLACEMENT OF THE SKYHELP DEVICE IS OUR ONLY DUTY UNDER THIS LIMITED WARRANTY. WE MAKE NO OTHER EXPRESS WARRANTY INCLUDING ANY WARRANTY OF MERCHANTABILITY OF THE SKYHELP DEVICE OR ITS FITNESS FOR ANY SPECIAL PURPOSE. WE CANNOT NOT WARRANT THAT THE SKYHELP DEVICE OR SERVICES WILL ALWAYS OPERATE. THIS WARRANTY DOES NOT COVER REPAIRS THAT ARE NEEDED BECAUSE OF AN ACCIDENT, DAMAGE, ACTS OF NATURE, YOUR FAILURE TO PROPERLY USE THE SKYHELP DEVICE, OR IF SOMEONE OTHER THAN US ATTEMPTS TO REPAIR OR CHANGE THE SKYHELP DEVICE, OR ANY OTHER REASON EXCEPT A DEFECT IN THE EQUIPMENT. WE MAKE NO REPRESENTATION OR WARRANTY AS TO THE PROMPTNESS OF OUR RESPONSE, AND WE HAVE NO CONTROL OVER THE RESPONSE TIME OR CAPABILITY OF ANY AGENCY OR PERSON WHO MAY BE NOTIFIED OF AN EMERGENCY. ALL IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THIS EXPRESSED LIMITED WARRANTY. **WE ARE NOT LIABLE FOR CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES.** YOU AGREE THAT THIS IS OUR ONLY WARRANTY AND WE HAVE GIVEN YOU NO OTHER WARRANTY FOR THE SKYHELP DEVICE.

4.6 STATE LAW: SOME STATES DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR A LIMITATION ON THE DURATION OF IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THE WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH MAY VARY FROM STATE TO STATE.

5. RECEIPT OF COPY. YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED A COMPLETED COPY OF THIS AGREEMENT, AND TWO (2) COPIES OF THE NOTICE OF CANCELLATION FORM. ALL OF THE TERMS ON THE REVERSE SIDE OF THIS PAGE AND ON ALL ATTACHMENTS ARE PART OF THIS AGREEMENT. READ THEM BEFORE YOU SIGN BELOW.

**CANCELLATION. YOU, THE SUBSCRIBER, MAY CANCEL THIS AGREEMENT AT ANY TIME. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.**

THIS AGREEMENT SHALL NOT BE BINDING UPON DEALER UNTIL SIGNED BY CUSTOMER OR DEALER BEGINS SERVICE. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT SUBSCRIBER MAY NOT RECEIVE A COPY OF THIS AGREEMENT APPROVED BY DEALER'S MANAGER, AND SUCH LACK OF RECEIPT SHALL NOT, IN ANYWAY, INVALIDATE OR OTHERWISE AFFECT THIS AGREEMENT.

**IF ANYONE OTHER THAN CLIENT IS THE USER OF THE SYSTEM (THE "USER"), SUCH USER IS A THIRD PARTY BENEFICIARY TO THIS AGREEMENT AND IS BOUND BY ALL OF THE TERMS HEREIN, INCLUDING DEALER'S DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.**

[REVERSE SIDE]

6. **LIMITATION OF LIABILITY.** IT IS UNDERSTOOD AND AGREED THAT DEALER, SKYHELP AND ANY THIRD-PARTY PROVIDERS OR SUBCONTRACTORS ARE NOT INSURERS AND THAT THE AMOUNTS PAID TO DEALER HEREUNDER ARE FOR THE SERVICES PROVIDED BY DEALER AND SKYHELP AND NOT FOR THE VALUE OF ANY PROPERTY, OR ANY PROPERTY DAMAGE OR LOSS, OR THE COST OF ANY PERSONAL INJURY. IN THE EVENT OF ANY LOSS, DAMAGE OR INJURY TO ANY PERSON OR PROPERTY SUBSCRIBER WAIVES ALL RIGHTS OF SUBROGATION OR ANY OTHER RIGHT OF RECOVERY AGAINST DEALER, SKYHELP AND ANY THIRD- PARTY PROVIDERS OR SUBCONTRACTORS THAT ANY INSURER OR OTHER PERSON MAY HAVE AS A RESULT OF PAYING ANY CLAIM FOR ANY LOSS OR INJURY TO ANY OTHER PERSON.

IN ADDITION, SUBSCRIBER AGREES THAT IT SHALL NOT BRING ANY CLAIM OR ACTION AGAINST ANY THIRD-PARTY PROVIDER OR SUBCONTRACTOR ARISING FROM SUBSCRIBER'S USE OF THE SKYHELP DEVICE AND SERVICES. FOR PURPOSES OF THIS AGREEMENT, "THIRD-PARTY PROVIDERS" MEANS ANY PERSON OR COMPANY THAT SUPPORTS OR MAINTAINS THE GPS MONITORING SERVICE, AND INCLUDES, BUT IS NOT LIMITED TO, CELLULAR NETWORK OR OTHER WIRELESS CARRIERS AND MAPPING DATA PROVIDERS.

**EXCEPT SPECIFICALLY SET FORTH HEREIN, THE GPS MONITORING SERVICE, SKYHELP'S SOFTWARE AND ALL SERVICES ARE PROVIDED BY DEALER AND SKYHELP "AS-IS" AND "WHERE IS." DEALER AND SKYHELP SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, ACCURACY AND FITNESS FOR A PARTICULAR PURPOSE AS TO THE SKYHELP DEVICE, THE SKYHELP SOFTWARE AND SERVICES PROVIDED UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, DEALER, SKYHELP AND ANY THIRD- PARTY PROVIDERS OR SUBCONTRACTORS DO NOT WARRANT THAT THE SERVICES OR ITS OPERATION WILL BE ACCURATE, RELIABLE, UNINTERRUPTED, OR ERROR-FREE. SUBSCRIBER ACKNOWLEDGES THAT THE SERVICES ARE SUPPORTED BY CELLULAR NETWORK, GPS SATELLITES AND OVER LOCAL EXCHANGE, INTER- EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES AND BY CELLULAR NETWORK CARRIERS UTILITIES, SATELLITE COMPANIES COMMUNICATIONS COMPANIES, INTERNET SERVICES PROVIDERS AND OTHER THIRD PARTIES, ALL OF WHICH ARE BEYOND DEALER'S, SKYHELP'S AND ANY THIRD- PARTY PROVIDER'S OR SUBCONTRACTOR'S CONTROL AND SUBSCRIBER SHALL NOT BE ENTITLED TO RECEIVE ANY SERVICES FEE CREDITS OR REFUNDS FOR SERVICES OUTAGES OR INTERRUPTIONS BEYOND DEALER'S, SKYHELP'S AND ANY THIRD- PARTY PROVIDER'S OR SUBCONTRACTOR'S SOLE AND EXCLUSIVE CONTROL. SUBSCRIBER ACCEPTS ALL RISK ARISING OUT OF OR RELATING TO THE DELAY, FAILURE, INTERRUPTION, OR CORRUPTION OF THE SERVICE.**

UNDER NO CIRCUMSTANCES, OTHER THAN THE WILLFUL MISCONDUCT OF DEALER, SKYHELP AND ANY THIRD- PARTY PROVIDERS OR SUBCONTRACTORS, WILL DEALER, SKYHELP AND ANY THIRD- PARTY PROVIDERS OR SUBCONTRACTORS OR ANYONE ELSE INVOLVED IN ADMINISTERING, MAINTAINING OR PROVIDING THE SERVICES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, DEATH, LOSS OF REVENUE OR LOSS PROFITS OMISSIONS, SERVICES INTERRUPTIONS, SERVER DOWNTIME, ERRORS, DEFECTS, VIRUSES, DELAYS IN

OPERATION OR TRANSMISSION, FAILURE OF PERFORMANCE OF THE SERVICE, EVEN IF DEALER, SKYHELP AND ANY THIRD- PARTY PROVIDERS OR SUBCONTRACTORS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

YOU AGREE THAT EVEN IF A COURT DECIDES THAT DEALER'S, SKYHELP'S AND ANY THIRD-PARTY PROVIDER'S OR SUBCONTRACTOR'S BREACH OF THIS AGREEMENT, OR DEALER'S, SKYHELP'S AND ANY THIRD- PARTY PROVIDER'S OR SUBCONTRACTOR'S NEGLIGENCE, OR GROSS NEGLIGENCE, CAUSED ANY TYPE OF DAMAGES, INCLUDING BUT NOT LIMITED TO ANY ISSUES RELATING TO SYSTEM DESIGN, OPERATION, PROGRAMMING, TESTING, REPAIR, SERVICE, MAINTENANCE, CELLULAR NETWORK AVAILABILITY, SPEED OR ACCURACY OF TRANSMITTED INFORMATION OR DATA, OR THAT ANY OTHER SERVICES PROVIDED BY DEALER OR SKYHELP ALLOWED AND OR CAUSED ANY HARM OR DAMAGE (WHETHER PROPERTY DAMAGE, PERSONAL INJURY OR DEATH) TO OCCUR TO YOU OR ANYONE ELSE, YOU AGREE THAT DEALER'S, SKYHELP'S AND ANY THIRD-PARTY PROVIDER'S OR SUBCONTRACTOR'S AGGREGATE AND COLLECTIVE LIABILITY SHALL BE LIMITED TO \$100.00 (THE COST OF THE EQUIPMENT) AND THIS SHALL BE YOUR ONLY REMEDY REGARDLESS OF WHAT LEGAL THEORY (INCLUDING WITHOUT LIMITATION, NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY FAILURE TO WARN, OR PRODUCT LIABILITY) IS USED TO ALLEGE AND OR DETERMINE THAT DEALER, SKYHELP AND ANY THIRD- PARTY PROVIDERS OR SUBCONTRACTORS WERE LIABLE FOR THE INJURY OR LOSS.

7. INDEMNIFICATION. IF ANYONE OTHER THAN YOU (INCLUDING ANYONE WHO MAY USE THE SKYHELP DEVICE AND ACTIVATE SERVICES), ASKS US TO PAY FOR ANY HARM OR DAMAGES (INCLUDING PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, OR INVASION OF PRIVACY OR ANY SIMILAR TORT) CONNECTED WITH OR RESULTING FROM (i) DEALER'S BREACH OF THIS AGREEMENT OR A FAILURE OF THE SERVICES, (ii) OUR NEGLIGENCE, (iii) ANY OTHER IMPROPER OR CARELESS ACTIVITY OF OURS IN PROVIDING THE SKYHELP DEVICE OR SERVICES, OR (iv) A CLAIM FOR INDEMNIFICATION OR CONTRIBUTION, YOU WILL PAY US (A) ANY AMOUNT WHICH A COURT ORDERS US TO PAY OR WHICH WE REASONABLY AGREE TO PAY, AND (B) THE AMOUNT OF OUR REASONABLE ATTORNEYS' FEES AND ANY OTHER LOSSES OR COSTS THAT WE MAY PAY IN CONNECTION WITH THE HARM OR DAMAGES.
8. SUBSCRIBER'S DUTIES. You will instruct all other persons who may use the SkyHelp System and Services on their proper use, including any User if different than you. Upon activation of the SkyHelp System, you or the user will test the System and send test signals to the Center on a monthly basis. If the Center does not respond to the test signal, you should call the Center and confirm the status of the test. You will use the SkyHelp website to provide your response information, and will use the SkyHelp website to notify us of any changes in the persons or telephone numbers of your emergency contact information. You agree that we may disclose the information you post to the SkyHelp website to any governmental agency having jurisdiction over the use and operation of the System

You acknowledge and agree that all monitoring software, computer codes and monitoring information remain SkyHelp's the Center's or our sole and exclusive property as the case may be. You appoint us as your agent to communicate with the SkyHelp and the Center.

You agree that you will, at your sole expense, obtain and keep in effect during the entire term of this Agreement, all licenses and similar governmental requirements that may be required for the installation,

operation and use of the SkyHelp Devices and Services.

9. **SUSPENSION OR CANCELLATION OF THIS AGREEMENT.** You understand that we may stop or suspend Services if: (i) strikes, severe weather, earthquakes other Acts of God, or other such events beyond our control affect the operation of the cellular network, a global positioning satellite or the Center, or your connection to the Center that continuing service would be impractical; (ii) there is an interruption or unavailability of the cellular network including transmission facilities; (iii) you do not pay the service charge due to us, after we have given you ten days notice that we are canceling service because of non-payment; (iv) we are unable to provide service because of some action or ruling by any governmental authority; and/or (v) you become a debtor in a bankruptcy proceeding. If Services are suspended because you have failed to pay the charges set forth herein, and you ask us to reactivate the Services, you will pay in advance our then prevailing re-activation fee.
10. **TERMINATION, DEFAULT. If you fail to make any payment when due we may discontinue Services.** In addition; we may impose a monthly late fee on all payments more than 5 days past due in an amount equal to **\$40.00 until paid**, or the maximum amount permitted by state law whichever is less.
11. **ASSIGNEES AND SUBCONTRACTORS.** We may transfer or assign this Agreement to any other service provider, financial institution or other entity. Upon an assignment to another service provider, Dealer will be relieved of any further obligations hereunder. You may not transfer this Agreement to someone else unless we approve the transfer in writing. We may use subcontractors, sub-subcontractors and third-party providers, including SkyHelp and the Center to provide Services. This Agreement, and particularly Sections 6 and 7 shall apply to the work and services they provide, and shall apply to them and protect our assignees, subcontractors, sub-subcontractors and third-party providers in the same manner as it applies to and protects us.
12. **LIMITATION ON LAWSUITS; VENUE; WAIVER OF JURY TRIAL.** Both Dealer and Subscriber agree that, to the extent permitted by law, no lawsuit or any other legal proceeding connected with this Agreement shall be brought or filed more than one (1) year after the incident giving rise to the claim occurred. Each party hereby irrevocably agrees that any suit, action or other legal proceeding (“suit”) arising out of or from, in connection with or as a result of this agreement shall be brought exclusively in the state courts of record or the courts of the United States located in the district or county where Dealer’s principal place of business is located. Each party consents to the exclusive jurisdiction and venue of each such court in any such suit and waives any objection that it may have to jurisdiction or venue of any such suit. **UNLESS PROHIBITED BY LAW, ANY LAWSUIT BROUGHT BY EITHER PARTY WITH RESPECT TO THIS AGREEMENT SHALL NOT BE HEARD BEFORE A JURY. BOTH PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL.**
13. **INFORMATION AND PRIVACY.** You understand and agree that in conjunction with employee training, quality control and the provision of services, we may monitor and/or electronically record cellular transmissions related to the Services, as well as conversations with you or others. Further, you understand that privacy cannot be guaranteed on telephone, cellular network and computer systems, and we shall not be liable to you for any claims, loss, damages or costs which may result from a lack of privacy experienced. You consent to us (i) using information about you and your location (collectively, “information”) to administer services, offer you new products or services, enforce the terms of this Agreement, prevent fraud and respond to regulatory and legal requirements, (ii) response to a subpoena or other such legal process, and (iii) using and sharing aggregate Subscriber information and statistics that do not include information that identifies you personally.

14. **ENTIRE AGREEMENT; DOCUMENT RETENTION.** This Agreement is the entire and only Agreement between you and Dealer. It replaces any earlier oral or written understandings or Agreements. It may only be changed by a written Agreement signed by you and us. **IT MAY NOT BE CHANGED BY ANY ORAL STATEMENTS MADE BY ANY DEALER OR SKYHELP REPRESENTATIVE.** If you have given or ever give us a purchase order for the System or service that provides for different terms other than this Agreement, this Agreement will govern and be controlling. If any provision of this Agreement is found to be invalid or illegal by a court, the balance of the Agreement shall remain in force. You agree that this Agreement shall be governed by the laws of California. You agree that a copy of this Agreement and the signatures affixed hereto transmitted and delivered by facsimile, or electronic mail shall be deemed to be originals for all purposes. You agree that we may save and store all contracts and other documents executed by Subscriber in an electronic media and all such contracts and other documents shall be deemed to be, and may be used by us as, originals and shall be given the same force and effect as the paper-form originals.

**SUBSCRIBER**

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Date \_\_\_\_\_

**THE TERMS AND CONDITIONS SET FORTH ON THIS AGREEMENT ARE INCORPORATED HEREIN AND BY REFERENCE ARE MADE A PART HEREOF.**