



Touch N' Talk 24/7
Annual Purchase and Services Agreement

This Agreement is made this _____ day of _____, 20____, by and between

Assistive Technology Services LLC. and

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 _____

Other Information:

Special Instructions:

Directions to home:

Lock Box Code or other combinations:

Contact EMS First? (circle one) YES NO

Medical Information:

Allergies:

Dispatch Agencies:

Ambulance phone number: _____ Fire: _____ Police: _____

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

Contact 1:

Name _____ Phone _____ Relationship _____

Contact 2:

Name _____ Phone _____ Relationship _____

Contact 3:

Name _____ Phone _____ Relationship _____

1. The Services are provided to us by our subcontractor call center. Assistive Technology Services LLC does not directly provide call center services of any kind. If an emergency call from your Device is received in the Center, a representative 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 your geographic area and one of the people as designated on your Information Form. If the Center has reason to believe that no actual emergency exists, it may choose not to notify emergency response personnel.

2. **SALE OF TOUCH N’ TALK 24/7 DEVICE.** We will sell and deliver to you, the Touch N’ Talk 24/7 Device. Upon delivery of the 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 Device.

3. **PRICE; PAYMENT AND TERM.**
 - 3.1 **SALES/INSTALLATION PRICE.** The total sales price for the Touch N’ Talk 24/7 Device plus one year of usage, is **\$449.99** plus sales tax if applicable. **We will not 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 **\$359.88 per year after the first year and every year after**, 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. Your refund will be reduced by \$219.00. **You will not receive a refund for \$219.00** which includes the equipment, shipping, setup and cancellation fees. 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, subcontractors 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 originating date of this agreement, we will repair or replace the Touch N' Talk 24/7 Device without charge to you per our repair and replacement policy. Customer is to pay all shipping fees to and from Assistive Technology Services. A replacement may be a used or a reconditioned Device.

4.2 HOW TO GET SERVICE: CALL US AT OUR SUBSCRIBER SERVICES DEPARTMENT AND TELL US WHAT IS WRONG WITH THE DEVICE.

4.3 REPAIR OR REPLACEMENT OF THE Touch N' Talk 24/7 DEVICE IS OUR ONLY DUTY UNDER THIS LIMITED WARRANTY. WE MAKE NO OTHER EXPRESS WARRANTY INCLUDING ANY WARRANTY OF MERCHANTABILITY OF THE Touch N' Talk 24/7 DEVICE OR ITS FITNESS FOR ANY SPECIAL PURPOSE. WE CANNOT NOT WARRANT THAT THE Touch N' Talk 24/7 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 Touch N' Talk 24/7 DEVICE, OR IF SOMEONE OTHER THAN US ATTEMPTS TO REPAIR OR CHANGE THE Touch N' Talk 24/7 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 DEVICE.

5. RECEIPT OF COPY.

YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED A COMPLETED COPY OF THIS AGREEMENT, AND THE NOTICE OF CANCELLATION FORM. ALL OF THE TERMS ON THIS PAGE AND ON ALL ATTACHMENTS ARE PART OF THIS AGREEMENT. READ THEM BEFORE YOU SIGN BELOW.

6. LIMITATION OF LIABILITY. IT IS UNDERSTOOD AND AGREED THAT ASSISTIVE TECHNOLOGY SERVICES AND ANY THIRD-PARTY PROVIDERS OR SUBCONTRACTORS ARE NOT INSURERS AND THAT THE AMOUNTS PAID TO ASSISTIVE TECHNOLOGY SERVICES ARE FOR THE SERVICES PROVIDED BY SUBCONTRACTOR CALL CENTER 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 ASSISTIVE TECHNOLOGY SERVICES 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.

EXCEPT SPECIFICALLY SET FORTH HEREIN, THE MONITORING SERVICE AND ALL SERVICES ARE PROVIDED BY ASSISTIVE TECHNOLOGY SERVICES “AS-IS” AND “WHERE IS.” ASSISTIVE TECHNOLOGY SERVICES 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 TOUCH N’ TALK 247 DEVICE, THE SERVICES PROVIDED UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, ASSISTIVE TECHNOLOGY SERVICES 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 THE CUSTOMERS TELEPHONE NETWORK, 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 ASSISTIVE TECHNOLOGY SERVICES CONTROL AND SUBSCRIBER SHALL NOT BE ENTITLED TO RECEIVE ANY SERVICES FEE CREDITS OR REFUNDS FOR SERVICES OUTAGES OR INTERRUPTIONS BEYOND ASSISTIVE TECHNOLOGY SERVICES EXCLUSIVE CONTROL. SUBSCRIBER ACCEPTS ALL RISK ARISING OUT OF OR RELATING TO THE DELAY, FAILURE, INTERRUPTION, OR CORRUPTION OF THE SERVICE.

YOU AGREE THAT EVEN IF A COURT DECIDES THAT ASSISTIVE TECHNOLOGY SERVICES BREACH OF THIS AGREEMENT, OR ASSISTIVE TECHNOLOGY SERVICES 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, NETWORK AVAILABILITY, SPEED OR ACCURACY OF TRANSMITTED INFORMATION OR DATA, OR THAT ANY OTHER SERVICES PROVIDED BY ASSISTIVE TECHNOLOGY SERVICES 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 ASSISTIVE TECHNOLOGY SERVICES AGGREGATE AND COLLECTIVE LIABILITY SHALL BE LIMITED TO COST OF EQUIPMENT NOT TO EXCEED \$169.99 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 ASSISTIVE TECHNOLOGY SERVICES 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 TOUCH N' TALK 247 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) ASSISTIVE TECHNOLOGY SERVICES 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 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 TOUCH N' TALK 247 System and Services on their proper use, including any User if different than you. Upon activation of the TOUCH N' TALK 247, 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 TOUCH N' TALK 247 website to provide your response information, and will use the TOUCH N' TALK 247 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 TOUCH N' TALK 247 website to any governmental agency having jurisdiction over the use and operation of the System

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 TOUCH N' TALK 247 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 network, or the Center, or your connection to the Center that continuing service would be impractical; (ii) there is an interruption or unavailability of the TELEPHONE network including transmission facilities; (iii) you do not pay the service charge due to us, after we have given you 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, ASSISTIVE TECHNOLOGY SERVICES 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 ASSISTIVE TECHNOLOGY SERVICES and the Center to provide Services.

12. **LIMITATION ON LAWSUITS; VENUE; WAIVER OF JURY TRIAL.** Both ASSISTIVE TECHNOLOGY SERVICES 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 Assistive Technology Services 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. **ENTIRE AGREEMENT; DOCUMENT RETENTION.** This Agreement is the entire and only Agreement between you and ASSISTIVE TECHNOLOGY SERVICES. It replaces any earlier oral or written understandings or Agreements. It may only be changed by a written Agreement signed by you and ASSISTIVE TECHNOLOGY SERVICES. **IT MAY NOT BE CHANGED BY ANY ORAL STATEMENTS MADE BY ANY ASSISTIVE TECHNOLOGY SERVICES employee.** 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 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.

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.

SUBSCRIBER

Signature

Print Name

Print Title

Date

DEVICE SERIAL NUMBER

**FAX THIS SIGNED AGREEMENT TO (831) 308-9671 OR EMAIL TO ORDERS@ATS-TN.COM
You may also mail the signed agreement to: TNT247, 8023 Franklin Road, Murfreesboro, TN 37128**

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