

**BAY AREA VITAL-LINK, INC.**

6529 Telegraph Ave

Oakland, CA 94609

(800) 752-5522 Fax (510) 338-3467

**VITAL LINK MEDICAL ALERT SYSTEM AGREEMENT**

This agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between BAY AREA VITAL-LINK, INC., a California corporation, (herein "Vital") and:

Client: \_\_\_\_\_ Account Number \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**WE WILL PROVIDE TO YOU, AND MONITOR AT OUR MONITORING CENTER ("CENTER"), A VITAL LINK MEDICAL ALERT RESPONSE SYSTEM ("THE SYSTEM") IN ACCORDANCE WITH THIS AGREEMENT.**

- 1. Service: This is a month-to-month agreement with no minimum term.

MONTHLY FEE _____	SET UP FEE _____	<input type="text"/>
_____	TO _____	<input type="text"/>
_____	PARTIAL MONTH _____	<input type="text"/>
_____	LOCK BOX _____	<input type="text"/>
TOTAL DUE FOR FIRST PAYMENT _____		<input type="text"/>

FOR MONITORING AND REPAIR OF SYSTEM YOU WILL PAY US THE SUM OF \_\_\_\_\_ PER MONTH PAYABLE \_\_\_\_\_ PER \_\_\_\_\_ IN ADVANCE. THE FIRST PAYMENT IS DUE UPON EXECUTION OF THIS AGREEMENT. YOU WILL PAY THE PRORATED FEE FOR THE MONTH IN WHICH SERVICE BEGINS. THE TERM OF THE AGREEMENT SHALL BE FOR THREE (3) MONTHS FROM THE DATE OF THIS AGREEMENT AND WILL AUTOMATICALLY BE RENEWED FROM MONTH-TO-MONTH UNLESS EITHER PARTY NOTIFIES THE OTHER IN WRITING TO TERMINATE THIS AGREEMENT WITHIN A THIRTY DAY PERIOD TO THE END OF THE INITIAL TERM THEREOF, OR ANY RENEWAL TERM. YOUR MONTHLY MONITORING FEE WILL NEVER BE INCREASED BY "VITAL" EXCEPT AS SET FORTH IN SECTION 11. WE ARE NOT OBLIGATED TO START MONITORING SERVICE UNTIL (1) WE HAVE RECEIVED A FULLY EXECUTED COPY OF THIS AGREEMENT, (2) COMPLETED MONITORING RESPONSE INFORMATION, AND (3) RECEIVED SUCCESSFUL TEST SIGNALS FROM THE SYSTEM. THIS SYSTEM SHALL REMAIN OUR SOLE AND EXCLUSIVE PROPERTY. THIS AGREEMENT AND YOUR RIGHT TO USE THE SYSTEM SHALL CONTINUE AS LONG AS THE SYSTEM IS MONITORED BY "VITAL". IF THE MONITORING SYSTEM IS CANCELLED OR TERMINATED FOR ANY REASON, THE AGREEMENT SHALL TERMINATE AND YOU WILL RETURN THE SYSTEM TO US, OR PERMIT US TO REMOVE THE SYSTEM FROM YOUR HOME.

2. SERVICE LIMITATION: IN CONSIDERATION FOR THE PROVISION OF THE SYSTEM AND SERVICE, YOU ACKNOWLEDGE THAT WE DO NOT REPRESENT OR WARRANT THAT THE SYSTEM OR SERVICE WILL PREVENT DEATH, BODILY, OR PERSONAL INJURY, OR ANY OTHER INJURY OR DAMAGE TO YOU OR OTHERS WHO USE THE SYSTEM. THE SYSTEM AND SERVICES DO NOT PROVIDE PROPERTY PROTECTION, AND ARE NOT INTENDED TO PROVIDE POLICE RESPONSE FOR BURGLARY, INTRUSION, OR SIMILAR EVENTS. WE MAKE NO REPRESENTATION OR WARRANTY AS TO THE PROMPTNESS OF THE MONITORING CENTER'S RESPONSE, AND WE HAVE NO CONTROL OVER THE RESPONSE TIME OR CAPABILITY OF ANY AGENCY IN PROVIDING THE SERVICE, AND WHICH MAY FAIL TO PROPERLY RESPOND TO THE RECEIPT OF AN ALARM SIGNAL FROM THE SYSTEM, OR THAT THE SYSTEM MAY FAIL TO FUNCTION PROPERLY. IT IS UNDERSTOOD THAT A PORTION OF THE SYSTEM RELIES UPON THE AVAILABILITY OF CELLULAR NETWORK COVERAGE TO OPERATE PROPERLY AS WELL AS THE AVAILABILITY OF SATELLITE GPS DATA, BOTH OF WHICH ARE PROVIDED BY A THIRD PARTY THAT IS NOT CONTROLLED BY THE COMPANY. YOU AGREE THAT IF WE WERE TO HAVE ANY LIABILITY GREATER THAN THAT AGREED TO BY YOU PURSUANT TO SECTION 13 OF THIS AGREEMENT, WE COULD NOT AND WOULD NOT PROVIDE THE SERVICE. YOU ACKNOWLEDGE THAT YOU SHOULD OBTAIN ANY LIFE, MEDICAL, OR DISABILITY INSURANCE FOR THE PROTECTION OF YOURSELF AND OTHERS WHO MAY USE THE SYSTEM. YOU UNDERSTAND THAT THERE ARE ALTERNATIVES AVAILABLE TO YOU SUCH AS 911 EMERGENCY TELEPHONE SERVICE AND YOU HAVE SELECTED THIS SERVICE WITH A FULL UNDERSTANDING OF ITS LIMITATIONS AND THE LIMITATION OF OUR LIABILITY.

3. OUR LIMITED LIABILITY: SECTIONS 2, 14, AND 15 OF THIS AGREEMENT LIMIT OUR LIABILITY TO \$500.00, IF YOU OR ANYONE ELSE SUFFERS ANY HARM (DAMAGE OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH) BECAUSE THE SYSTEM FAILED TO OPERATE PROPERLY OR WE WERE NEGLIGENT OR ACTED IMPROPERLY. YOU HAVE HAD THE OPPORTUNITY TO TALK TO OUR SECURITY CONSULTANT ABOUT THIS LIMITATION AND YOU KNOW THAT YOU MAY OBTAIN A HIGHER LIMITATION OF OUR LIABILITY BY PAYING AN ADDITIONAL FEE TO US. THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE OF THIS AGREEMENT AND RESPONSE INFORMATION ARE PART OF THIS AGREEMENT- READ THEM BEFORE YOU SIGN.

4. CANCELLATION: YOU, THE CLIENT, MAY CANCEL THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE SEVENTH BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

5. INSTALLATION: YOU WILL PERMIT US TO INSTALL THE SYSTEM DURING OUR NORMAL BUSINESS HOURS. YOU WILL PROVIDE A TELEPHONE JACK, IF REQUIRED, AND A NON-SWITCHED ELECTRICAL OUTLET FOR THE SYSTEM'S TRANSFORMER. WE ARE NOT RESPONSIBLE IF THE INSTALLATION IS DELAYED BECAUSE OF BAD WEATHER, LABOR DISPUTES, UNAVAILABILITY OF ELECTRICAL POWER OR TELEPHONE SERVICE, ACTS OF GOD OR OTHER REASONS BEYOND OUR CONTROL.

**BAY AREA VITAL-LINK, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_

**Management Approval**

\_\_\_\_\_  
(Client's Name)

By: \_\_\_\_\_  
By: \_\_\_\_\_

**Date Signed \_\_\_\_\_, 20\_\_\_\_**

YOU REPRESENT THAT THE PERSONS WHO HAVE SIGNED ABOVE ARE THE ONLY PERSONS WHO WILL USE THE SYSTEM. THIS AGREEMENT IS NOT BINDING UPON VITAL UNTIL EITHER APPROVED BY OUR MANAGEMENT OR WE BEGIN MONITORING SERVICE. CLIENT ACKNOWLEDGES AND AGREES THAT CLIENT MAY NOT HAVE RECEIVED A COPY OF THIS AGREEMENT SIGNED BY VITAL'S MANAGER, AND SUCH LACK OF RECEIPT SHALL NOT, IN ANYWAY, INVALIDATE OR OTHERWISE AFFECT THIS AGREEMENT.

6. MONITORING SERVICE: We shall connect the System to our monitoring facility (the "Center"). When an emergency signal from the System is received in the Center, it will try to telephone the emergency response authority and the first person available set forth in your call information. To avoid false alarms, the Center may use the two-way audio feature of the System or first call your premises to determine if an actual emergency exists before we call any authorities or persons on your call list, or dispatch emergency response personnel. If we have reason to believe that no actual emergency exists, we may choose not to place such call or notify emergency response personnel. Telephone conversations with the Center are recorded. CLIENT AGREES THAT THE MONITORING CENTER IS RESPONSIBLE ONLY FOR ENDEAVORING TO NOTIFY BY PHONE THE APPROPRIATE EMERGENCY AGENCY OR OTHER PERSONS NAMED IN THE CLIENT EMERGENCY FORM. YOU UNDERSTAND THAT THE CENTER WILL NOT SEND ANY CENTER PERSONNEL TO CLIENT'S PREMISES IN RESPONSE TO ANY EMERGENCY SIGNAL. If a false alarm fine or penalty or a response fee is charged to us, or you by any governmental agency, you will pay for the charge. You further acknowledge that fall detectors are not completely accurate and, depending on the circumstances, may not detect a fall. We recommend you wear your VITAL pendant at all times, so you may send a signal to us.

7. TRANSMISSION LINES: You will pay for telephone charges including any installation fee for a special jack to connect the System to your telephone service. The System includes a communicator that sends signals to the Monitoring Center over your regular telephone service and if your telephone is out of order, placed on vacation or otherwise not working, a signal cannot be transmitted and the Center will not know of the service problem. When the System is activated you will not be able to use the telephones in your home to make other calls such as calls to the 911 emergency operator. The system will not work if the phones are off the hook. The use of DSL, VOIP or other broadband telephone service may prevent the System from transmitting alarm signals to the Center and/or interfere with the telephone line-seizure feature of the System. You agree to notify the Center and us if you have installed or intend to install DSL, VOIP or other broadband service. IMMEDIATELY AFTER THE INSTALLATION OF DSL, VOIP OR OTHER BROADBAND SERVICE YOU MUST TEST THE SYSTEM'S SIGNAL TRANSMISSION WITH THE CENTER. ALSO, THE SYSTEM DOES NOT WORK WITH CELLULAR SERVICE, UNLESS SPECIFIED. IF YOU ELIMINATE YOUR LANDLINE, YOU MUST NOTIFY US AND THE CENTER IMMEDIATELY.

8. FALSE ALARMS: You agree that you, your family members, or others using the System, will use it carefully so as to avoid causing false alarms. If we receive too many false alarms we may cancel monitoring service. If a false alarm fine or penalty is charged to you or us by any governmental agency, you will pay for the charge.

9. CLIENT'S DUTIES: You will instruct your family members and others who may use the System on its proper use. You will test the System in accordance with our instructions and send test signals to the Center in accordance with our instructions. If a problem in the System occurs you will notify us immediately. You will charge the GPS mobile unit daily, if applicable, to prevent the battery from getting low or dying. You will obtain and keep in effect all permits or licenses that may be required for installation and operation of the System. You will give us response information which will include the name, telephone number and relationship of each person we should notify in the event a signal is received or in the event we believe there is an emergency at your home. You will notify us in writing of any changes in the persons or telephone numbers on your emergency call list. You will keep the system plugged into an unswitched electrical outlet and the telephone jack at all times.

10. INCREASES IN TAXES OR FEES: You acknowledge that the monitoring fee is based upon existing federal, state and local taxes. We shall have the right, at any time, to increase the monitoring fee to reflect any additional or increased taxes, licenses, permits, fees or charges which may be charged to us by any utility or governmental agency relating to the use or operation of the System or the monitoring service and you agree to pay the same.

11. SUSPENSION OR CANCELLATION OF THIS AGREEMENT; DELINQUENCY CHARGE: You understand that we may stop or suspend monitoring and repair service if:

11.1 Strikes, severe weather, earthquakes or other such events beyond our control affect the operation of the Center or so severely damage your home that continuing would be impractical.

11.2 There is an interruption or unavailability of the telephone service, electrical lines, cellular network, radio towers and GPS network that prevents a connection between the System and the Center.

11.3 You do not pay the monthly fee due to us, after we have given you ten days notice that we are canceling service because of non-payment.

11.4 We are unable to provide service because of some action or ruling by any governmental authority.

11.5 You become a debtor in a bankruptcy proceeding.

We may impose and you will pay a delinquency charge in the maximum amount permitted by California law, all payments that are more than ten days past due. If service is canceled, you will permit us to remove all our equipment. You understand and agree to pay the sum of \$380.00 + tax for the Vital-Link base unit and \$40.00 + tax for pendants, that are lost or destroyed or otherwise not returned to us in good condition at the end of this Agreement. YOU UNDERSTAND THAT THE SYSTEM MAY NOT WORK WITH EQUIPMENT USED BY OTHER ALARM COMPANIES OR MONITORING CENTERS. WE ARE NOT RESPONSIBLE IN ANY WAY FOR THE OPERATION OR MAINTENANCE OF ANY APPLIANCE, INSTRUMENT, OR THE TELEPHONE SYSTEM TO WHICH THE SERVICE IS CONNECTED.

12. ASSIGNEES AND SUBCONTRACTORS: We may transfer or assign this agreement to any other company. You may not transfer the agreement to someone else (including someone who purchases or rents your home) unless we approve the transfer in writing. We may use subcontractors, including the Center, to provide repair and monitoring and sections 2, 14 and 15 shall apply to the work and services they perform, and shall apply to them and protect them in the same manner as it they apply to and protect us.

13. VITAL IS NOT AN INSURER; LIMITATION OF LIABILITY: You understand: (a) we are not an insurer of your property or the personal safety of persons in your home; (b) you should provide any insurance on yourself and others who may use the System; (c) the amount you pay to us is based only on the value of the service we provide; (d) alarm systems and our monitoring service may not always operate properly for various reasons; (e) it is difficult to determine in advance how quickly the paramedics, fire or other department, persons you have designated, or others will respond to an alarm signal; (f) the System, service and transmission lines are limited as set forth in Sections 2 and 8 herein; (g) it is difficult to determine in advance what portion, if any, of any property loss, personal injury or death would be proximately caused by our breach of this agreement or failure to perform, our negligence, or a failure of the System or service.

THEREFORE YOU AGREE:

Even if a court or other tribunal decides that our breach of this Agreement, or a failure of the System, installation, monitoring, or repair service, or our negligence caused or allowed any harm or damage (whether property damage, personal injury, or death) to you or anyone in your home, you agree that our liability shall be limited to \$500.00 and this shall be your only remedy regardless of what legal theory is used to determine that VITAL was liable for the injury or loss.

YOU MAY OBTAIN A HIGHER LIMITATION OF LIABILITY. If you wish, you may obtain from us a higher limitation of liability by paying an additional periodic charge to us based on a graduated scale of rate. If you elect this option, we will attach a rider to this agreement which will set forth the amount of the limitation of liability and the amount of the additional charge. Agreeing to the limitation of liability does not mean that we are an insurer.

14. THIRD PARTY INDEMNIFICATION: If anyone other than you, asks VITAL to pay for any harm or damages (including personal injury or death) connected with or resulting from (a) our breach of this agreement or a failure of the System or services, (b) our negligence, (c) any other improper or careless activity of VITAL in providing the System or services or (d) a claim for indemnification or contribution, you will pay to VITAL any amount which a court orders us to pay or which we reasonably agree to pay, and the amount of our reasonable attorney's fees and any other loss or costs that we may pay in connection with the harm or damages.

15. LIMITATION OF LAWSUITS; REFERENCE: Both VITAL and Client agree that no law suit or any other legal proceeding connected with this agreement shall be brought or filed more than one year after the incident giving rise to the claim occurred. Any controversy, dispute, or claim between the parties arising out of or relating to this Agreement, (other than actions brought by Vital in small claims court to collect amounts due under this Agreement) will be settled by a reference proceeding in California, in accordance with the provisions of Section 638, *et seq.* of the California Code of Civil Procedure, or their successor section, which shall constitute the exclusive remedy for the resolution of any controversy, dispute, or claim concerning this Agreement, including whether such controversy, dispute, or claim is subject to the referenced proceeding. The referee shall be appointed to sit as a temporary Judge with all of the powers of a temporary Judge authorized by law. In the event that the enabling Legislation, which provides for the appointment of a referee is repealed and no successor statute is enacted, any dispute between procedures herein, will be resolved and determined by binding arbitration. That arbitration will be conducted by a retired Judge of the Superior Court in accordance with sections 1280 to 1294.2 of the California Code of Civil Procedure, as amended from time to time.

16. SYSTEM REPAIRS: So long as the System is being monitored, we will repair the system without charge to you. Many service problems can be corrected by telephone. If you believe the System is not working call our service department at the telephone number shown above. Our service department's hours are 9:00 am to 5:00 pm, Pacific time, Monday through Friday, excluding holidays we observe. If the System still needs repair, we will send a service technician to your home. We may use new or used parts at our discretion whether or not the System has been sold or rented to you. Repair or replacement of the System at our facility is our only duty. Repair services do not cover repairs that are needed because of an accident, acts of God, your failure to properly use the System, if someone other than us attempts to repair or change the System, or any other reason, you will pay us for all parts and labor at our then prevailing service rates. We may request payment in advance before repairing the System. If you are outside of our service area we will ship you a replacement unit or parts for self repair.

17. ENTIRE AGREEMENT: The entire and only agreement between you and VITAL is written in this Agreement. It replaces any earlier oral or written understandings or agreements. It may only be changed by a written agreement signed by you (and if married, your spouse) and us. If you have given us a purchase order for the System or service which provides for different terms 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 is performed in the state of California and shall be governed by the laws of California.