

These **SAFESENIOR TERMS & CONDITIONS OF USE/DISCLAIMER** apply to **Tender Hearts at Home** and **The Senior's Choice** (provider and owner, respectively, of the SafeSenior program, and hereinafter collectively referred to as "Provider") and you (hereinafter referred to as "Client").

That for the considerations and covenants hereinafter specified, the parties hereto, their heirs, successors and assigns do mutually covenant and agrees as follows:

1. Terms & Conditions of Use

Please read the Terms & Conditions of Use/Disclaimer as this contains important information regarding the use of service. You accept and agree to be bound by, and comply with, the terms and conditions of use. Provider reserves the right to change the Terms & Conditions of Use at any time.

2. Service

Provider agrees to provide a service wherein a computer generated telephone call is made to Client or Client's designee at predetermined intervals for the purposes of receiving Client's or Client's designee's input as to such person's health status or as a reminder to take medication (the "System"). Upon receiving such telephone call, Client or Client's designee will be prompted to input certain information. Client's or Client's designees failure to input the information will trigger a telephone call to a third party emergency contact specified by Client.

3. Interruptions in Service

a. The Service. Provider assumes no liability for interruption of services due to strikes, riots, floods, fires, acts of God, mechanical or electrical equipment failures, or any cause beyond the control of Provider, and will not be required to supply service during the time which said interruption may continue.

b. Telephone Call Service. Client acknowledges and agrees that in the event of strikes, riots, floods, fires, acts of God, mechanical, electrical or computer equipment failures, or any cause beyond the control of SafeSenior, Provider assumes no liability for delays in telephone calls to Client and/or Client's designated contact person and that Provider will not be required to provide its services during the time which said interruption may continue.

4. Disclaimers of Warranties and Liability

A. NO WARRANTY OR REPRESENTATION: PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM MAY NOT BE COMPROMISED OR CIRCUMVENTED OR THAT THE SYSTEM WILL PREVENT PERSONAL INJURY, LOSS OF LIFE OR PROPERTY, OR DAMAGE, OR THAT THE SYSTEM WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INTENDED. PROVIDER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE CLIENT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY. THE SUBSCRIBER ACKNOWLEDGES THAT ANY AFFIRMATION OF FACT OR PROMISE MADE BY PROVIDER OR ITS AGENTS, SERVANTS OR EMPLOYEES SHALL NOT BE DEEMED TO CREATE AN EXPRESS WARRANTY UNLESS INCLUDED IN THE AGREEMENT IN WRITING.

B. CLIENT AGREES AND UNDERSTANDS: THAT PROVIDER IS NOT A HEALTH CARE PROVIDER AND DOES NOT PROVIDE MEDICAL ADVICE; THAT COMPANY IS NOT AN INSURER AND THAT INSURANCE COVERING PERSONAL INJURY, INCLUDING DEATH, AND REAL OR PERSONAL PROPERTY LOSS OR DAMAGE IN, ABOUT OR TO THE PREMISES SHALL BE OBTAINED BY THE CLIENT; THAT COMPANY MAKES NO GUARANTEE, REPRESENTATION OR WARRANTY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE; THAT THE EQUIPMENT AND SERVICES ARE DESIGNED TO REDUCE, BUT NOT ELIMINATE, CERTAIN RISKS OF LOSS AND THAT THE AMOUNTS BEING CHARGED BY COMPANY ARE NOT SUFFICIENT TO WARRANT OR GUARANTEE THAT EITHER NO LOSS OR DAMAGE WILL OCCUR OR INCREASED LOSS OR DAMAGE WILL NOT OCCUR; THAT COMPANY IS NOT LIABLE FOR ANY LOSS OR DAMAGE WHICH MAY OCCUR PRIOR TO, CONTEMPORANEOUS WITH, OR SUBSEQUENT TO THE EXECUTION OF THIS AGREEMENT EVEN IF DUE TO THE ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE OF COMPANY OR ITS AGENTS, SERVANTS, EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS, OR TO THE IMPROPER PERFORMANCE OF AND/OR FAILURE TO PERFORM OF THE EQUIPMENT, OR BREACH OF CONTRACT, EXPRESS OR IMPLIED, OR BREACH OF WARRANTY, EXPRESS OR IMPLIED, OR BY LOSS OR DAMAGE TO FACILITIES NECESSARY TO OPERATE THE SYSTEM OR ANY CENTRAL STATION; THAT SHOULD

THERE ARISE ANY LIABILITY ON THE PART OF PROVIDER FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE, REAL OR PERSONAL, WHICH IS IN CONNECTION WITH, ARISES OUT OF OR FROM, OR RESULTS FROM THE REMOTE PROGRAMING OR MONITORING OF ANY EQUIPMENT OR SYSTEM, AND/OR THE DISPATCH OF INDIVIDUALS TO THE PREMISES, AND/OR THE FAILURE OR FAULTY OPERATION OF THE SYSTEM, EQUIPMENT OR CENTRAL STATION FACILITIES, AND/OR THE ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OF PROVIDER AND/OR ITS AGENTS, SERVANTS, EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS INCLUDING, WITHOUT LIMITATION, ACTS, ERRORS OR OMISSIONS WHICH OCCUR PRIOR TO, CONTEMPORANEOUSLY WITH OR SUBSEQUENT TO THE EXECUTION OF THIS AGREEMENT, AND/OR ANY CLAIM(S) BROUGHT IN PRODUCT OR STRICT LIABILITY, AND/OR BREACH OF WARRANTY, EXPRESS OR IMPLIED, AND/OR BREACH OF CONTRACT, EXPRESS OR IMPLIED, AND/OR ANY CLAIM FOR DISTRIBUTION OR INDEMNIFICATION, WHETHER IN CONTRACT, TORT OR EQUITY, INCLUDING, WITHOUT LIMITATION, ANY GENERAL, DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE AND/OR CONSEQUENTIAL DAMAGES, IRRESPECTIVE OF CAUSE, SUCH LIABILITY SHALL BE LIMITED TO THE COST OF THE MISSED CALL AND THIS LIABILITY SHALL BE EXCLUSIVE.

C. IN NO EVENT SHALL PROVIDER BE LIABLE TO ANY PARTY FOR ANY DAMAGES INCLUDING WITHOUT LIMITATION, ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INJURIES, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, OR LOSS OF SAVINGS), OR ANY OTHER DAMAGES ARISING - IN ANY WAY, SHAPE OR FORM - OUT OF THE AVAILABILITY, USE, RELIANCE ON, OR INABILITY TO UTILIZE PROVIDER'S SERVICES, EVEN IF PROVIDER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE ABOVE EXCLUSIONS OF INCIDENTAL AND CONSEQUENTIAL DAMAGES MAY NOT APPLY TO YOU, BUT SHALL APPLY, IN ANY EVENT, TO THE MAXIMUM EXTENT POSSIBLE.

D. NO WARRANTY IS MADE THAT THE FUNCTIONS OR SERVICES PERFORMED BY USER IN CONNECTION WITH THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN THE SERVICE WILL BE CORRECTED.

E. CLIENT EXPRESSLY AGREES TO INDEMNIFY AND HOLD PROVIDER, AND ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CORRESPONDENTS, CO-BRANDERS OR OTHER PARTNERS HARMLESS FROM ANY CLAIMS, DEMANDS, LIABILITIES, DAMAGES, LOSSES, EXPENSES, INCLUDING ATTORNEYS FEES AND LAWSUITS WHICH MAY BE ASSERTED AGAINST OR INCURRED BY COMPANY BY OR DUE TO ANY PERSON NOT A PARTY TO THIS AGREEMENT, FOR ANY EXPENSE, LOSS OR DAMAGE INCLUDING, BUT NOT LIMITED TO, STATUTORY CIVIL DAMAGES, PERSONAL INJURY, DEATH AND/OR PROPERTY DAMAGE, REAL OR PERSONAL, ARISING OUT OF THE SERVICE, MAINTENANCE, MONITORING, RECORDING OF COMMUNICATIONS, OPERATION OR NON-OPERATION OF THE EQUIPMENT, SYSTEM OR CENTRAL STATION FACILITIES, WHETHER DUE TO THE SOLE, JOINT OR SEVERAL NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OF COMPANY OR ITS AGENTS, SERVANTS, EMPLOYEES, SUPPLIERS, OR SUBCONTRACTORS, BREACH OF CONTRACT, EXPRESS OR IMPLIED, BREACH OF WARRANTY, EXPRESS OR IMPLIED, PRODUCT OR STRICT LIABILITY, AND/OR ANY CLAIM FOR CONTRIBUTION OR INDEMNIFICATION, WHETHER IN CONTRACT, TORT OR EQUITY.

#### 5. Jurisdiction

It is important to note that SafeSenior products, services and information are only available to United States residents. Accordingly, the SafeSenior website does not constitute an offer to transact business in any jurisdiction other than the United States.

#### 6. Privacy

Your expectations of privacy are important. The Privacy Policy which you can find on the SafeSenior website explains how Provider collects personal information from you and then maintains, uses and discloses that information.

#### 7. User Obligations

Any person accessing or using the SafeSenior website undertakes the following obligations: (a) to comply with all applicable laws and regulations; (b) not to introduce into this website, or any network or equipment supporting this site, any virus, worm, harmful code, Trojan horse or other disabling service; (c) not to attempt to interfere with or disrupt the

website, or any network and/or other equipment supporting it; (d) not to attempt to gain improper access to or otherwise interfere with any system or network connected to or affiliated with this site. Any violation of these obligations is grounds for denying a user access to and use of this website in addition to other available remedies.

#### 8. Not Offering Any Medical Advice

The SafeSenior services provided by Provider are not intended to provide medical advice for you, and should not be relied upon in that regard. You should not act or rely solely on the information on this site without seeking the advice of a physician who will ensure that any medical condition you have warrants more intensive care than the services provided by Provider.

#### 9. Miscellaneous

Provider shall not be required to service its computer systems unless it has received such written notice from the Client. The Client further acknowledges that the System may be dependent upon the proper functioning of Client's telephone system. In the event Client moves to another location or obtains another telephone number, Client agrees to immediately notify Provider, without delay.

#### 10. Self-protection/Client's Duties

a. **Emergency Contact.** The Client understands that the System is used to help the Client protect his or her person. It does not assure such protection. Client understands that the system will only contact Client's designated contact person at the specified contact number. As an additional inducement for Provider to enter into this Agreement, Client understands and acknowledges and agrees that it is Client's sole responsibility to update the contact person and contact information as needed, and that Provider shall not be responsible in any way in the event that the designated contact person cannot be reached or does not respond after the system has called the specified number. Client understands that neither the Provider nor the system will ever contact any emergency services or medical providers on behalf of Client.

b. **Medication/Medical Advice.** Client understands and agrees that SafeSenior is a telephone service and does not provide medical advice. As an additional inducement for Provider to enter into this Agreement, Client agrees and acknowledges that it is Client's sole responsibility to ensure that he/she timely seeks and abides by his/her physician's advice and instructions, including advice regarding the administering of medication, and that Provider shall not be responsible in any way for Client's failure to do so. Client is encouraged to and agrees whenever practical to use all other safety and medical devices and techniques available to the Client for such protection. Available devices and techniques are too numerous to list, but include (a) basic health precautions; and (b) adherence to physicians' directions and recommendations.

#### 11. Full Agreement

This agreement constitutes the full understanding by and between the parties hereto, and may not be amended or modified, except in writing signed by both parties.

#### 12. Assignment

It is specifically agreed that the Client shall not be permitted to assign this agreement without the prior written consent of Provider, and any such assignment without such prior approval shall be deemed a breach of this agreement. Provider shall have the right to assign this agreement to any other company engages in the business similar to that of Provider and upon such assignment shall be relieved of any obligations created therein.

#### 13. Invalid Provisions

In the event that any of the terms or provisions of this Agreement shall be invalid or inoperative, all of the other terms thereof shall remain in full force and effect.

#### 14. Dispute Resolution

These terms and conditions and any dispute in connection with this site will be governed by the laws of the State of California. The parties agree to submit any disputes in connection with SafeSenior to arbitration in accordance with and subject to the American Arbitration Association Expedited Commercial Arbitration Rules, and to the extent permitted under those rules the Arbitrator will be a person recommended by the American Arbitration Association. Client and Provider agree to accept the determination of the arbitrator as final and binding and submit to the jurisdiction of the Courts and/or the federal courts located in the State of California for the enforcement of any such determination.