



# Monitoring Service Agreement between Guardian Safety Pendants and The User

**Party 1: Guardian Safety Pendants** *ABN: 71 623 774 621*

**Party 2: The User** (*The User is defined as the individual who will be using the Guardian Safety Pendants Product*)

Guardian Safety Pendants (GSP) will supply The User with a Medical Alert Device, which hereafter will be referred to as “The Product”. The Product is connected to CCCS Monitoring (CM); a 24/7 professional monitoring service.

You, as The User, acknowledge that GSP is not willing to enter any agreement, express or implied, to provide any of our products or services other than what is outlined below, which shall hereafter be referred to as the “Agreement”. As a consumer of our products and services, you are agreeing to these terms and conditions. GSP disclaims all representations, warranties and liabilities, express or implied, in connection with the provision of our products and services other than in accordance with all the terms and conditions set within this Agreement.

## - Agreement Information - Commencement and Term

1.1 This Agreement comes into force on the date of activation of the User’s SIM card. The User will receive notification of this date upon receiving The Product (among other items e.g. user guides, charging cable, etc.) via their dedicated postal service.

1.2 This Agreement continues until terminated in accordance with Section 2.

1.3 You agree that a complete copy of this Agreement is available to you on the GSP website. You further acknowledge and agree that this Agreement was entered into solely by your use of our website.

## Termination of Agreement

2.1 This Agreement may be terminated if:

- you are or become insolvent;
- you fail to make any payment to us when due under this Agreement; or
- you breach any other terms of this Agreement, we may, by written notice to you, terminate this Agreement immediately or with effect from a date specified in the notice.

2.2 You may, by written notice to us, terminate this Agreement at least seven (7) days after the date of the notice.

2.3 Our rights to payment of the fees accrued up to the date of termination are not affected by the termination.

## - Obligations of Guardian Safety Pendants - Products and Services

3.1 We will custom program and test The Product to confirm it works successfully.

3.2 We will use our reasonable endeavours to:

- supply The Product and Services, and perform our other obligations under this Agreement, in a diligent and professional manner; and
- ensure that, in providing The Product and Services, we comply with all applicable laws.

3.3 We do not guarantee that Products or Services using the internet will be continuous or free of interruptions.

3.4 In relation to Carriage (postal or delivery) Services:

we are not responsible for any act or omission of any Carriage Service Provider who we arrange to supply Carriage Services to you;

we are not responsible for any interruption in, disruption to or suspension by a Carrier or Carriage Service Provider of the Carriage Services supplied to you.

3.5 You acknowledge that the internet is sometimes unreliable and is difficult to secure and we do not guarantee:

- the security of your SIM Card, the interfaces you use to connect to the SIM Card, or the information that passes through or is stored in your SIM Card; nor
- access to the SIM Card Network will be continuous, accessible at all times or fault free.

3.6 We will post The Product either:

- within twenty-four (24) hours of receiving notification for the order of The User;
- or the next business day after receiving notification for the order of The User.

## SIM Usage

4.1 GSP will activate a SIM card for The User

4.2 **Fair Use Policy:** Should CM be contacted more than fifteen (15) times in any calendar month (whether it be from pressing the SOS button or triggering the automatic fall alert), additional costs may be incurred at the discretion of GSP. Excessive emergency notifications to CM will not exceed \$1 per notification. The User will be contacted before being charged any additional fees.

4.3 All SIM usages are final and no refunds will be given for accidental usage or excessive usage by The User.

## Payment Deduction

5.1 The Monthly or Yearly Fee (which varies based on choice of SIM card) will automatically be deducted in advance by GSP for the following month's services to pay:

- CM monthly fees and SIM fees;
- for bookkeeping services to maintain The User's account at GSP.

5.2 Automatic deductions will be directly debited monthly on a set day as related to the SIM Activation Date referred to in Section 1.1. The billing cycle will begin on the date the SIM Card was activated.

5.3 We may change the Monthly Fee at any time by giving you at least thirty (30) days notice of the change.

5.4 We will invoice you for the Monthly Fee electronically.

5.5 Any claim by you that an invoice is incorrect must be made within ninety (90) days of the date of the invoice or your claim will automatically be denied.

5.6 If you fail to pay the Monthly Fee on the due date, we may charge you interest at the interest rate our bank charges for a business overdraft on the due date.

## Support

6.1 We will provide customer support for The User.

6.2 The User must call GSP on (08) 6336 9448 between 9:00am - 5:00pm AWST, Monday through Friday. *The User is **not** to call CM for any kind of support.*

6.3 Our Product comes with Lifetime Support and Lifetime Reprogramming which refers to the 'Lifetime of The User'.

This service does not extend to:

- the Lifetime of family or friends of The User;
- the Lifetime of an individual who buys The Product from The User;
- or any other Lifetime other than The User's.

6.4 The Lifetime Phone Support referred to in Section 6.3 allows The User or those speaking on behalf of The User to receive an unlimited amount of phone support as specified in Section 6.2.

6.5 The Lifetime Reprogramming referred to in Section 6.3 allows The User or those speaking on behalf of The User to receive an unlimited amount of reprogramming for customisation of The Product in the following areas:

- Fall Detection (turning either ON or OFF)
- Fall Detection Sensitivity for Products which allow customisation Reprogramming of different emergency contact(s)

## Warranty

7.1 The warranty of The Product lasts for twelve (12) months from the Commencement of this Agreement as outlined in Section 1.1. During this term, GSP will cover the time and cost of repairing or replacing The Product or part thereof that is mechanically defective. Examples include but are not limited to; The Product experiences:

- button activation issues
- charging issues
- sound or vibration issues
- battery issues, such as battery life, or a swollen battery
- SIM issues that relate to the manufacturer, **not the coverage of the cell network**

7.2 The Product or parts thereof that is replaced are warranted only for the remainder of the warranty period.

7.3 The warranty remains valid only by proper use by The User or a third party associated with The User.

7.4 The warranty will be void if The User or a third party associated with The User does any of the following:

- allows The Product to be exposed to excessive force, such as being thrown out of the car, thrown with force towards the ground, dropped from an excessive height, and so on, or;
- allows The Product to exceed the permitted exposure to water according to its IP waterproof rating, such as, being submersed in water, being placed in a washing machine, being exposed to soapy water, and so on, or;
- opens, tampers with, or modifies The Product in any way, or
- exposes The Product to excessive heat, including prolonged sun exposure or fire.

7.5 If you consider that that The Product we supply to you is defective, you must notify us of the defect.

7.6 If you give us a notice under Section 7.4, we will use our reasonable endeavours to assist you to make a Claim under The Product Warranty in respect of The Product.

7.7 You are responsible for the cost of returning The Product for repair or replacement under a Product Warranty.

7.8 If there is a manufacturing defect with a SIM Card, we will replace the SIM Card.

## - Obligations of The User -

### Testing

8.1 Test The Product when you receive it by pressing the SOS button and confirming that your call connects with CM. It is recommended to test The Product monthly. If there are any issues, The User is to call GSP (see Section 6.2).

8.2 GSP will also notify The User to test The Product via recommendation through email and via instructions given alongside The Product when posted in the mail.

8.3 Failure to test The Product when it arrives may remove liability from GSP and CM from any inability to reach CM in an emergency.

## Payment to Guardian Safety Pendants

9.1 You must assure there are sufficient funds to cover the Monthly Fees as described in Section 5 to avoid the conditions outlined in Section 5.5.

9.2 The first Monthly Fee will be deducted after The User confirms that the service works where The User resides.

9.3 You must notify GSP if your financial account details change within twenty-four (24) hours of any changes.

## Service Termination

10.1 The User must notify GSP their intent to terminate the services of CM at least seven (7) days before the end of their monthly cycle.

10.2 If you wish to terminate before the end of the monthly cycle, you will not be reimbursed for a portion of the remaining month's billing cycle.

10.3 Service Termination will also enact the terms outlined in Section 2, that is, the Termination of this Agreement.

## Product Usage Maintenance

11.1 You must recharge The Product daily to ensure The Product can work effectively. We are not responsible for SOS activations that are attempted by The Product when it is not charged.

11.2 You must observe safety guidelines and Product Terms and Conditions as stipulated on the back of The Product's User Guide.

11.3 Provide and accept responsibility for the protocol(s) which CM is to carry out as outlined in Section 12.3.

### **- Obligations of CM - Services**

12.1 Monitoring services will be provided to The User so long as this Agreement is in force and is not breached.

12.2 Services must be carried out in accordance with any applicable Australian Standards and Codes as they apply to Monitoring Services generally.

12.3 After The User presses the SOS button, CM will ask the User, "What assistance do you need?" or something similar.

12.4 If The User has agreed for CM to call 000 on their behalf, The User is responsible for all fees associated with the ambulance request. This is inclusive of all scenarios including but not limited to:

- The User requesting assistance verbally from CM for them to send an ambulance
- The User previously agreeing for CM to send an ambulance if there is no verbal response from The User after an SOS activation (accidental or intentional)
- The User giving CM their location, whether it is an accurate description or not, to request an ambulance
- The User being unable to verbally give their location after the device gives CM The User's last known location which may not necessarily be The User's actual location

### **- Liability - Your Indemnity**

13.1 You indemnify us against all Loss we suffer or incur as a result of or relating to:

- the injury (including mental illness) or death of any person;
- loss of or damage to our property or the property of a third party; or
- an infringement or alleged infringement of a third party's IP or Moral Rights.

13.2 The amount payable under the indemnity in Section 13.1 is reduced to the extent that the Loss is caused or contributed to by our Default.

## If You Have a Complaint

14.1 If you have a Complaint you must notify us of the Complaint via email or by calling us as outlined in Section 6.2.

14.2 We will make good faith efforts to resolve your Complaint by negotiation.

14.3 If the Complaint is not resolved within twenty-one (21) days, the Complaint may be referred for mediation by a mediator appointed by the Institute of Arbitrators and Mediators Australia or another mediator agreed by the parties.

14.4 Each party must continue to perform its obligations under this Agreement despite the continuation of an unresolved Complaint, but this Section [14.4] does not prevent a party from exercising a right to suspend a Service or terminate this Agreement.

14.5 You must not commence litigation in respect of a Complaint unless Sections 14.1 to 14.4 have been complied with and the Complaint has not been resolved.

## Limitations

15.1 You are not entitled to recover damages from us for any default or otherwise under this Agreement for indirect or consequential loss, including loss of use, loss of profits, loss of opportunity, damage to reputation or special, exemplary, or punitive damages.

15.2 If you are a consumer within the meaning of section 3 of the Australian Consumer Law, the Australian Consumer Law provides certain guarantees in relation to The Product and Services that cannot be excluded. Where the Product or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability for breach of any guarantee implied by the Australian Consumer Law is, to the extent permitted by the Australian Consumer Law, limited to:

- in the case of goods – the repair of the goods, or, at our option, the replacement of the goods or the supply of equivalent goods or the payment of the cost of repair, replacement or supply of equivalent goods; and
- in the case of services – the performance of our obligations under Section 6.

15.3 Neither GSP nor CM are liable to The User (or any person claiming through The User) for any loss suffered by The User which arises out of or in connection with this Agreement except where and to the extent that such loss arises out of a breach of this Agreement or any negligent act or omission in connection with this Agreement.

15.4 The User is solely responsible for, and will indemnify and keep indemnified both GSP and/or CM against all losses suffered by GSP and/or that arise by reason of:

- the failure of The Product to operate in accordance with the manufacturer's specifications; or
- any loss suffered by The User in connection with provision of, or any failure or defect in the provision of, the Services to The User.

15.5 Neither GSP nor CM are liable for any loss, liability, expense or damage The User may suffer or incur whether direct, indirect, or consequential as a result of or arising from any delay or failure in any alarm action response arising from a failure of CM to receive notification that The Product has been activated; whether by equipment error, power loss, communication error, or any other circumstances beyond the reasonable control of CM and/or GSP.

15.6 The User acknowledges that neither GSP nor CM will not be held responsible for:

- events that are beyond the control of GSP or CM; or
- any death or injury to any person that occurs as a result of any delay taken for alarm action response.

## - Confidentiality -

The User agrees to disclose Confidential Information to GSP, knowing that relevant personal information will be disclosed to CM with the exception of financial information provided to GSP.

GSP undertakes to handle The User's Confidential Information in accordance with the terms of its Privacy Policy (see <https://guardiansp.com.au/compliance/privacy-policy/>).

GSP will keep personal information of The User strictly confidential and will not sell, publish, or otherwise disclose it to any person in any manner without The User's consent; unless it is required to be disclosed under an applicable law or Australian Privacy Principles.