



Date: **August 9, 2007**

Customer name: **John Homeowner**

Testing address: **123 Anystreet, Anytown, KY 40222**

BY ACCEPTANCE OF THE PROTECT RADON MEASUREMENT REPORT CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. PLEASE READ IT CAREFULLY.

This Measurement Agreement (hereinafter "Agreement") is effective on the date stated above, by and between Protect LLC (hereinafter "Protect"), and the customer(s) named above (hereinafter "Customer"). Customer represents they are the only customer, or if Customer is more than one person, they have full right, power and authority to bind all of the customers when signing this Agreement, and indemnifies Protect against any claims of any customer that they are not bound by the signature and initials herein. Customer desires to have radon measurement (hereinafter "Measurement") conducted by Protect on the home located at the above measurement address (hereinafter "Property") of this Agreement. For good and valuable consideration, the parties hereby agree as follows:

#### **1.0 Scope of Measurement and Report.**

The purpose of the Measurement is to provide Customer with information about the level of radon gas present within the Property as it exists for the duration of the measurement period. Radon gas levels may change due to natural causes and Protect cannot predict the fluctuation of such future changes, if any. The Measurement will be for the defined period of time, and using the radon measurement equipment, indicated in Section 3.0 herein.

The Measurement will be conducted in accordance with the protocols set forth in the Environmental Protection Agency (hereinafter "EPA") documents *Home Buyer's and Seller's Guide to Radon* (EPA 402-K05-005) and *A Citizen's Guide to Radon* (EPA 402-K02-006), whichever is applicable to this measurement. Customer acknowledges having received a copy of the applicable EPA document, which is incorporated herein by reference.

Protect will provide Customer with a written report describing: (i) the conditions existing throughout the measurement period; (ii) the placement of the radon measurement device within the Property for the Measurement; (iii) the radon gas level present within the Property for the duration of the measurement period; (iv) further recommendations, if any, by Protect in regards to radon gas levels within the Property. In the event Protect recommends further action, including but not limited to installation of a mitigation system by a qualified professional, Customer does so at their own expense or otherwise assumes all risks associated with failure to do so.

#### **2.0 Exclusions.**

Unless otherwise agreed to in writing, Protect does not conduct radon in water measurement as part of the Measurement. Customer acknowledges radon in water could result in elevated levels of radon gas within the Property. Radon in water measurement is available for an additional fee, if such measurement is desired by Customer.

The written report is not a warranty or guarantee of the future level of radon gas within Property. Protect is not required to: offer or perform any act or service contrary to law; offer warranties or guarantees of any kind; offer or perform any job function requiring an occupational license; perform additional measurement services beyond the scope defined in the applicable EPA protocols; enter any area or perform any procedure that, in the opinion of Protect's measurement professional, will or may damage the Property or be dangerous to Protect's measurement professional or other persons; predict future conditions, including but not limited to the level of radon gas within the Property.

#### **3.0 Measurement Fee(s).**

Customer agrees to pay the fee(s) stated herein for the Measurement conducted by Protect. This amount shall be paid in full prior to completion of the Measurement. Should Customer fail to pay the agreed upon fee(s) in accordance with this section of this Agreement, Customer shall be responsible for paying any and all collection fees, including but not limited to administration costs, reasonable attorney's fees and costs of litigation. The fees for the Measurement are as follows: \$135 for 48-hour short-term measurement of residential property using continuous radon monitoring device; \$95 fee for 90-day (up to 365 days) measurement of residential property using alpha track detector measurement device.

#### **4.0 Dispute Resolution.**

Customer acknowledges and agrees that any claim or complaint arising out of, or related to, any alleged act or omission of Protect in connection with the Measurement shall be reported to Protect, in writing, within ten (10) business days of discovery. Unless an emergency condition exists, Customer agrees to allow Protect a reasonable period of time to investigate and, in its sole discretion, correct the cause of the complaint. Customer acknowledges and agrees that any failure to provide timely notification to Protect and allow Protect adequate time to investigate in accordance with this section shall release Protect from any and all claims Customer may have against Protect related to the alleged act or omission.

Customer acknowledges and agrees that any dispute regarding the interpretation of this Agreement, or arising from the Measurement or written report (unless based on payment of fee) shall be resolved exclusively by binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except that the parties shall mutually agree upon an arbitrator who is familiar with the radon measurement industry.

          /           **By initialing here, Customer acknowledges having read, understood and received this page.**

**5.0 Limitation of Liability and Limitation Period.**

Due to the nature of the Measurement provided, it is difficult to foresee or determine potential damages in the event of negligence or breach of this Agreement by Protect. Thus, in the event Protect fails to perform the Measurement as provided herein, or is careless or negligent in the performance of the Measurement, or presenting the written report, Protect’s liability for any and all claims related thereto is limited to the fee paid for the Measurement provided, and Customer releases Protect from any and all additional liability, including but not limited to radon gas levels in the Property, differences between radon gas levels determined by other measurements conducted within the Property, failure by homeowner to maintain required measurement conditions, and health problems which may have been aggravated or caused by exposure to radon gas. No provision is made for recovery of consequential damages.

Any legal action arising from this Agreement or from the Measurement or written report, including but not limited to the arbitration proceeding described herein, must be commenced within one (1) year from the date of this Agreement. Failure to bring such an action within this time period shall constitute a full and complete waiver of any and all rights or claims by Customer. This time limitation may be shorter than provided by state law.

**6.0 Conflict of Interest and Statement of Commitment.**

Protect’s goal is to provide valuable and unbiased information that helps its customers make informed decisions. A portion of Protect’s business may be based on relationships with other professions – real estate sales professionals, mortgage loan officers, lawyers and other vendors. In some instances, Protect’s performance of the Measurement will sometimes conflict with the business interests of these parties. Protect does not allow these relationships to compromise the integrity of the services provided. Protect’s written report is intended to accurately reflect its impartial professional opinion, without exception.

**7.0 Confidential Information.**

Customer acknowledges the Measurement and written report are being prepared for their sole, confidential and exclusive benefit and use. The written report, or any portion thereof, is not intended to benefit any person not a party to this Agreement, including but not limited to any third party (i.e. seller or real estate salesperson). In the event Customer directly or indirectly allows or causes the written report, or any portion thereof, to be disclosed or distributed to any third party, Customer agrees to indemnify, defend and hold Protect harmless for any claims or actions based on the Measurement or written report brought by any third party.

Customer consents to release written report to the following parties:  Real estate agent for buyer:  
 Real estate agent for seller:  
 Mortgage loan officer:  
 Other related party:

**8.0 Hold Harmless Agreement.**

Customer agrees to hold harmless any and all real estate agents, mortgage loan officers or third party vendors involved in the purchase of the Property, if applicable, to be measured and to keep them exonerated from all loss, damage, liability or expense occasioned or claimed by reasons of acts or neglects of Protect, its employees, visitors or independent contractors engaged or paid by Protect for the purpose of measuring the Property.

**9.0 Severability and Entire Agreement.**

The parties agree that should an arbitrator or court determine that any provision of this Agreement is void, voidable or unenforceable, the remaining portions shall remain in full force and effect. This Agreement contains the entire agreement between the parties. No additional representations, warranties or commitments, except as specifically stated herein, have been made by the parties. This Agreement supersedes any and all representations, whether written or oral, among the parties related to this Agreement. This Agreement may be modified, altered or amended only if agreed to in writing and signed by both parties. This Agreement shall be governed by the laws of the state of Kentucky and shall be enforced in Kentucky courts.

Customer hereby acknowledges and agrees to the terms of this Agreement and requests Protect to conduct the Measurement and prepare the written report in accordance with the terms and conditions contained herein.

\_\_\_\_\_  
Customer / Date

\_\_\_\_\_  
Authorized Protect Representative / Date