

SAFE by Swann App & ExtraSafe Cloud Storage Plans

Terms of Use

IMPORTANT! PLEASE READ CAREFULLY THESE TERMS OF USE IN THEIR ENTIRETY BEFORE USING THE APP AND THE SUBSCRIPTIONS (AS DEFINED BELOW). THESE TERMS OF USE ARE A LEGALLY BINDING AGREEMENT BETWEEN EACH USER (“YOU” OR “YOUR”) AND US (AS DEFINED IN SECTION 1(C) BELOW). DO NOT USE THE SUBSCRIPTIONS IF YOU DO NOT AGREE TO THESE TERMS OF USE.

FOR AUSTRALIAN USERS: SECTION 16.1(a) INCORPORATES YOUR CONSUMER RIGHTS, INCLUDING THE AUSTRALIAN CONSUMER LAW. YOU CAN FIND OUT MORE ABOUT YOUR CONSUMER RIGHTS FROM CONSUMER ORGANISATIONS AND BODIES SUCH AS THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION AND STATE/TERRITORY FAIR TRADING AUTHORITIES.

FOR U.S. USERS: SECTION 16.2(a) LIMITS OUR LIABILITY TO THE LESSER OF \$1,000.00 OR TWELVE (12) TIMES THE MONTHLY SUBSCRIPTIONS FEE IF YOU OR ANYONE ELSE SUFFERS ANY LOSS OR DAMAGE BECAUSE THE SUBSCRIPTIONS OR CAMERA FAILED TO OPERATE PROPERLY OR WE WERE CARELESS OR ACTED IMPROPERLY. SECTION 16.2(b) REQUIRES YOU TO INDEMNIFY US AND OUR CONTRACTORS IF A CLAIM OR A LAWSUIT ARISING OUT OF THE SUBSCRIPTIONS IS BROUGHT AGAINST US OR OUR CONTRACTORS. READ THESE PROVISIONS PARTICULARLY CAREFULLY.

These Terms of Use are effective from 26th October 2017.

1 Acceptance of these Terms

- (a) This document sets out the terms and conditions (**Terms**) on which You may access and use:
 - (1) the SAFE by Swann app and website <https://safe-by-swann.com> (together, the **App**) and;
 - (2) the ExtraSafe cloud video recording subscriptions offered by Us in accordance with the subscription description on the App (the **Subscriptions**).
- (b) These Terms apply in addition to any other terms and conditions to which You are subject in relation to the App and Subscriptions, including:
 - (1) the terms of use for Our general website which are available at <http://www.swann.com>;
 - (2) the terms of use relating to any compatible devices You register for use with the App or the Subscriptions (**Your Devices**); and
 - (3) any relevant third party terms and conditions, including any relevant terms for <https://www.apple.com/au/itunes/>, <https://play.google.com/store> or associated websites and any other third party websites to which the App may be linked,

(collectively, **Other Terms**). In the event of any inconsistency between these Terms and the Other Terms, these Terms will prevail to the extent of the inconsistency.

- (c) By accessing or using the App or the Subscriptions or both, You accept and agree to these Terms without any limitation or qualification. These Terms constitute a legally binding agreement between You and:
- (1) if You or Your Property are in Australia: Swann Communications Ltd (ABN 86 289 780 584) of Unit 13, 331 Ingles Street, Port Melbourne, Victoria, 3207;
 - (2) if You or Your Property are in the United Kingdom: Swann Communications (Europe) Ltd of 2 Canon Harnett Court, Wolverton Mill, Milton Keynes, MK12 5NF; or
 - (3) if You or Your Property are in the United States: Swann Communications USA Inc. of 12636 Clark Street, Santa Fe Springs, CA 90670,
- (We, Us or Our).**
- (d) You warrant to Us that You have the authority to enter into these Terms.

2 Changes to the Terms

- (a) We may change these Terms from time to time by posting the changed Terms through updates to the App, and bringing these changes to Your attention when You next log on to Your Account.
- (b) If We make any:
- (1) changes to these Terms that do not alter Your rights, such changes will apply from the time that You continue using the App;
 - (2) reasonable changes to these Terms that alter Your rights, such changes will apply 7 calendar days after You have been notified of those changes in accordance with clause 2(a); and
 - (3) any other material changes to these Terms that alter Your rights and could cause You material detriment, such changes will apply on and from the next Billing Date if You are registered for a Subscription, unless you cancel your Subscription in accordance with clause 6.2(b).

3 Requirements for using the App

- (a) In order to access and use the App and Subscriptions, You will need to:
- (1) acquire and correctly install Your Devices and ensure they are functional and operating;
 - (2) acquire and correctly install all hardware, telecommunications equipment, software, Wi-Fi/wireless internet connection using 2.4GHz & 5GHz frequency and bandwidth required to run the App and properly use the Subscriptions, and ensure they are functional and operating;
 - (3) register in the App for an account, which involves accepting these Terms, providing certain personal information, generating a password

and selecting the type of Subscription(s) You wish to acquire. You will also be asked to provide details of a Payment Card in certain circumstances (see clause 6.1(a)).

- (b) For the avoidance of doubt, You acknowledge that:
- (1) at all times, You are solely responsible for acquiring and correctly installing Your Devices and ensuring they are functional and operating;
 - (2) at all times, You are solely responsible for providing all hardware, telecommunications equipment, software, network connectivity, Wi-Fi/wireless internet connection and bandwidth required to run the App and properly use the Subscriptions; and
 - (3) You may not be able to access and use the Subscriptions unless You have successfully complied with, and continue to comply with, clause 3(a).

4 Acquiring Subscriptions

- (a) If you register a compatible camera device with Your Account (**Connected Camera**), once You have successfully completed the set-up requirements outlined in clause 3 above, You will be automatically provided with the functionality of the “SAFE by Swann” local camera storage (which provides 7 days’ worth of clip storage saved to an internal SD card located inside the Connected Camera, plus 2 days’ worth of cloud storage) for no monthly fee.
- (b) You can choose to acquire Subscriptions by following the prompts on the App and purchasing a Subscription plan on a subscription basis in either of the following ways:
- (1) a ExtraSafe Plan (Monthly), which provides 30 days’ rolling cloud storage (for example, footage captured on day 31 records over day 1 footage, and so on) (the “**ExtraSafe Plan (Monthly)**”). The Minimum Term for the ExtraSafe Plan (Monthly) is 30 days; or
 - (2) an ExtraSafe Plan (Annual), which provides 30 days’ rolling cloud storage (for example, footage captured on day 31 records over day 1 footage, and so on) (the “**ExtraSafe Plan (Annual)**”). The Minimum Term for the Annual Plan is 12 months. You must pay Fees for the equivalent of 10 months’ Subscription, but receive 12 months’ (365 days’ rolling) cloud storage,
- (each, a “**Subscription Plan**”).
- (c) Each Subscription service commences on the date that You register for that Service (**Subscription Date**) and continues in full force and effect for the minimum term in accordance with clause 4(b). At the end of the applicable Minimum Term, the Subscription will automatically renew on a month-to-month basis unless You terminate the Subscription in accordance with clause 10.
- (d) You must ensure that any Connected Camera:
- (1) is used only for the purpose of maintaining the security of Your Property; and
 - (2) is not used in a way which unreasonably infringes on the privacy of any individual (e.g. by placement in restrooms or toilets).

5 Using the App

5.1 Entering information using the App

- (a) You must set up Your account by downloading the App from the Apple iTunes or Google Play stores by submitting the required details in accordance with the visual and text prompts in the registration section of the App, including:
 - (1) Your personal details;
 - (2) contact details of the people who you authorise the App or Us to contact in accordance with your instructions to act on Your behalf in the event of an Alert (**Your Assigned Contacts**);
 - (3) details of Your Devices which You require access to or control of using the App, and the place they will be connected (**Your Property**);
 - (4) rules in relation to the usage of Your Devices at Your Property; and
 - (5) rules in relation to the notifications You would like to receive regarding specified activities that occur at Your Property (**Alerts**) and how You would prefer those Alerts to be communicated to You and Your Assigned Contacts (e.g. by email or push notifications),
(together, **Your Account**).
- (b) Together, all information and details that You enter into Your Account, and any data that is not Our Materials (as defined in clause 8 below) including any video recordings which you make from the App or which are stored remotely using the Subscriptions (**Your Data**), are **Your Content**.

5.2 Accessing and recording information through the App

The App allows you to connect to Your Devices in accordance with the rules you establish using the App, so that you can access or record certain input being captured by Your Devices.

5.3 Communicating Alerts

- (a) We will send Alerts to You and Your Assigned Contacts via push notifications on Your Device.
- (b) You may also view Your Alerts in the 'Camera Settings' and 'Activity' sections of the App.

5.4 Subscriptions

- (a) If You have registered for a Subscription, You acknowledge and agree that a third party service provider engaged by Us may store Your Data at one or more offshore locations, including the United States of America.
- (b) We only commit to storing Your Data for the limited time described in Your Subscription Plan, and may permanently delete Your Data after expiry of the relevant time.
- (c) You may access, download or delete Your Data via the App.
- (d) We acknowledge that You own the rights to Your Data and nothing in these Terms is intended to give Us any ownership rights in respect of Your Data.

- (e) You authorise Us to access and use Your Data for purposes related to providing the Subscription to You under these Terms.
- (f) You acknowledge that:
 - (1) Your Data is only intended to be a resource to assist You with the personal monitoring of the security of Your Property. Your Data may not capture every incident or security breach or related occurrence in Your Property, and should therefore be used in conjunction with other appropriate measures for the personal monitoring of and protection of Your Property security and safety; and
 - (2) there are many things outside Our control which may affect the recording, live streaming and storage of Your Data, and Your ability to access Your Data using the App or Subscriptions. We do not guarantee that Your access to Subscriptions will be uninterrupted or error free. In the unlikely event that any of Your Data is lost or corrupted such that it is not accessible, we will take reasonable steps to repair or recover Your Data at no cost to You. Subject to clause 16, it is Your responsibility to take all appropriate measures to minimise any loss or damage that may flow from any interruption, breakdown or failure of the App or Subscriptions, including ensuring that Your Devices which are required to record and transmit Your Data to the Subscriptions, are operating and functional at all times.

6 Fees and payment

6.1 Payment method

- (a) In registering for and setting up Your Account, if you subscribe to a Subscription You will be required to provide details of an approved credit or debit card (**Payment Card**). In providing Your Payment Card, You authorise Us to charge Your Payment Card with any fees or charges that apply as detailed in Your Subscription Plan (**Fees**).
- (b) You are responsible for keeping the details of Your Payment Card correct and up-to-date by making any relevant changes in the 'Your Account' section of the App, for example if you want to use a different Payment Card or Your Payment Card has expired.
- (c) You acknowledge that if Your Payment Card expires or becomes invalid, and You do not edit Your Payment Card or cancel Your Subscription, You authorise Us to continue charging Your Payment Card with any fees or charges that continue to apply in accordance with Your Subscription Plan and that You remain responsible for any outstanding debts owed to Us.

6.2 Billing cycle and changes to your Subscription Plan

- (a) If You have registered for a Subscription Plan, You will pay the Fees monthly in advance. We will automatically charge the Fees to Your Payment Card each month on the calendar day corresponding to the Subscription Date (**Billing Date**).
- (b) You acknowledge that each Subscription has a Minimum Term. After the Minimum Term (or during the Minimum Term, only in accordance with clause 2(b)(3)), if You would like to cancel Your Subscription, You must cancel Your Subscription at least 7 calendar days before it renews on the next Billing Date in order to avoid being charged the following month's Fees. If You decide to

cancel Your Subscription, Your Subscription will remain active until the end of the later of:

- (1) the current billing cycle; and
- (2) the Minimum Term applicable for that Subscription Plan,

after which it will become inactive, and no further Fees will be charged. Under no circumstances will We issue refunds if You cancel Your Subscription part way through the term of the Subscription, including during the Minimum Term. Notwithstanding the foregoing, if You cancel Your Subscription in accordance with clause 2(b)(3), in we will promptly issue a refund to your Payment Card for the period from which we receive notice of termination to the end of the then-current Billing Date.

- (c) You may upgrade Your Subscription Plan to a more expensive Subscription Plan at any time, including during the Minimum Term, by updating the relevant details in Your Account. Any changes will take effect immediately (**New Billing Date**). If You were already registered for a Subscription, We will take into account any Fees You have already paid for the month in charging You any additional Fees that apply for that month to provide the upgraded Subscription; and
- (d) You may only downgrade Your Subscription Plan to a lower cost of Subscription after the expiry of the Minimum Term for that Subscription Plan.

7 Privacy and use of data

- (a) We may collect, use and disclose Your personal information, including Your Account and Your Content, to provide, administer, improve and personalise our products and Subscriptions (including the App), identify You, correspond with you, protect Our lawful interests and deal with Your concerns. We may not be able to do these things without Your personal information. For example, some functionality of the App may be limited.
- (b) You authorise Us to collect, use and disclose Your Content for purposes related to the Subscription, including details of your Payment Card (where applicable).
- (c) Our privacy policy (**Privacy Policy**) contains further details about how We handle and store personal information. The Privacy Policy (which is available at <http://www.swann.com/company/privacy-policy> or by contacting Us) also contains information about how you may access and seek correction of Your Content, as well as how we respond to privacy concerns. By accepting these Terms, You warrant that You have read, understood and agree with the handling of Your personal information in accordance with Our Privacy Policy.
- (d) If You provide personal information to Us (including by inputting it into the App or allowing it to be captured by one of Your Devices) about any third party (including any of Your Assigned Contacts), You must first ensure that they are aware that their personal information is being collected by Us and that it may be handled, stored and exchanged in accordance with these Terms and Our Privacy Policy.

8 Your use of Our materials

- (a) All rights in the App and content on the App (excluding Your Content), including without limitation copyright in the software and data comprising the App and Our

trademarks, are owned or licensed by Us (**Our Materials**). As between You and Us, We own all rights in and to Our Materials and the App. You must not remove, alter or conceal any copyright, trade mark or other proprietary rights notice incorporated in or accompanying Our Material and You must not reproduce, modify, adapt, perform, display or otherwise exploit Our Materials other than as permitted in paragraph (b) below.

- (b) We grant You a limited, non-exclusive, personal, non-transferable, royalty free licence to use Our Materials for the term of these Terms for the purposes of using the App's functionality and the Subscriptions.

9 Use of the App and Subscriptions

- (a) You must not:
- (1) submit, or use the App to send, any unauthorised commercial communications (such as spam);
 - (2) access the App using automated means;
 - (3) violate or attempt to violate the security of the App;
 - (4) upload viruses or other malicious code to the App;
 - (5) bypass any measure We may use to prevent or restrict access to the App, any part of the App or any other software, systems; or networks connected to the App;
 - (6) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying algorithms of any part of the App;
 - (7) create derivative works of any part of the App;
 - (8) rent, lease, lend, sell, transfer, redistribute, or sublicense the App;
 - (9) do anything that could disable, overburden, or impair the proper working of the App, such as a denial of service attack;
 - (10) disrupt or interfere with any Subscriptions, servers or networks connected to or accessible through the App;
 - (11) let anyone else access Your Account, other than Your Assigned Contacts; or
 - (12) use the App, the Subscriptions or Your Devices in any manner or for any purpose that it is unlawful, including in any way to:
 - (A) defame, abuse, harass, stalk, threaten or otherwise violate the rights of others.
 - (B) upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful material;
 - (C) upload or make available any material protected by intellectual property laws, unless you own or control the rights thereto or have received all necessary consents to do so.
- (b) You acknowledge that:
- (1) the App and the Subscriptions are not certified for emergency response;

- (2) We do not certify that the App or the Subscriptions have been designed or programmed to comply with any laws relating to security systems; and
- (3) You may opt out of the receipt of any messages and alerts from the App or the Subscriptions, but we do not recommend you do so.

10 Termination and suspension

- (a) Subject to clause 5.4(d), You may cancel, without receiving a refund:
 - (1) any of Your Subscriptions by updating Your Account; or
 - (2) Your access to all of the Subscriptions by deleting the App from Your Device without notice to Us.

If you cancel any of Your Subscriptions during the Minimum Term of that Subscription, You will remain liable to pay the Fees for the remainder of the Minimum Term in accordance with clause 6.2.

- (b) We may terminate, disable, block or suspend Your access to the App:
 - (1) immediately, if You breach, or We suspect on reasonable grounds that You have breached, these Terms; or
 - (2) at any other time, acting reasonably, with such notice period to be effective at the end of Your then-current Subscription Plan,

and if you have any outstanding debts to Us we reserve the right to pursue You for them in accordance with our rights under these Terms.
- (c) All provisions which by their nature survive termination, including clauses 1.1(a), 6.2(b), 7, 8, 11, 12 and 15, will survive termination of these Terms.

11 Your responsibilities

- (a) You are responsible for:
 - (1) all of the activity conducted using Your Account, whether or not they are conducted or authorised by You, and in connection with the App (including Your use of any Tools, as defined in clause 12 below);
 - (2) keeping Your password to Your Account safe, secure and confidential, and notifying Us if you become aware that access to Your Account has been compromised;
 - (3) ensuring that all of the information and details that You submit into the App are complete and correct at all times, including Your contact details and those of any of Your Assigned Contacts;
 - (4) ensuring that Your Devices are connected to the internet so that they can receive all firmware and other updates and upgrades via the App as they become available from time to time;
 - (5) monitoring Your Content, including Your Alerts and deciding how often You monitor Your Content;
 - (6) how You interpret or use the App and Your Content;

- (7) any actions (including making phone calls, sending text messages and emails, and contacting ambulance, fire or police services) that You take or not take as a result of the App or Your Content; and
 - (8) obtaining and maintaining all appropriate insurance as is reasonably prudent to protect against risks at Your Property including burglary, theft, robbery and fire and consequential loss and damage.
- (b) You remain responsible for any breach of contract or infringement of any intellectual property or other rights of any third party in connection with Your Content.
 - (c) We reserve the right to access, read, preserve and disclose any information as We reasonably believe is necessary to:
 - (1) satisfy any law or regulation;
 - (2) enforce these Terms, including investigation of potential violations of these Terms;
 - (3) detect, prevent or otherwise address fraud, security or technical issues; or
 - (4) respond to Alerts.
 - (d) Since electronic services are subject to interruption, breakdown and failure, access to the App and the Subscriptions (including your ability to receive Alerts and obtain remote access to and control of Your Devices) is offered on an 'as is' and 'as available' basis only. There are many things outside Our control which might mean that the App and the Subscriptions cannot function under all circumstances. Subject to clause 16, You acknowledge that it is Your responsibility to take appropriate measures to minimise any loss or damage that may flow from any interruption, breakdown or failure of the App or Subscriptions.

12 Third party tools

Certain hardware, tools, devices, software programs or other features (**Tools**) that can be used with the App may be provided by third parties. These Tools are not operated by Us or any agent of Us, and We are not responsible for examining or evaluating the suitability or compatibility of their use with the App or their performance, reliability, content, availability, accuracy, adequacy, timeliness, validity, copyright compliance, legality, decency, quality, completeness or any other aspect of these Tools.

13 Free Trial Offer

- (a) You are entitled to a single 30 day free trial offer for the ExtraSafe Plan (Monthly) (the "**30 Day Free Trial Offer**").
- (b) The 30 Day Free Trial Offers are applicable for a period of thirty (30) days from the moment that You activate the 30 Day Free Trial Offer by submitting Your Payment Card details (the "**30 Day Free Trial Offer Period**").
- (c) By submitting Your Payment Card details, You:
 - (1) accept the 30 Day Free Trial Offer;

- (2) consent to Us using your Payment Card details in accordance with our Privacy Policy; and
 - (3) acknowledge and agree to these Terms.
- (d) If You decide that You do not want to become a paying user of the Subscriptions upon the lapse of the 30 Day Free Trial Offer Period, You must cancel Your applicable Subscription at least 7 calendar days before it renews on the lapse of the 30 Day Free Trial Offer Period in order to avoid being charged the following month's Fees.
- (e) You may only use this 30 Day Free Trial Offer once. If You have previously used these Subscriptions, including through any other 30 Day Free Trial Offer or any other use, You will be ineligible for this 30 Day Free Trial Offer. We reserve the right, in Our absolute discretion, to withdraw or to modify this 30 Day Free Trial Offer and/or the terms of this clause 13 at any time without prior notice and without liability to You.

14 Platform terms

- (a) You acknowledge that We (and not any other party) are responsible for the App and Our Materials in accordance with these Terms. Both You and We acknowledge that We (and not any other party) are responsible for providing any maintenance and support services for, and addressing complaints in relation to, the App.
- (b) You represent and warrant that You are not:
- (1) located in a country that is subject to a US government embargo, or that has been designated by the US government as a "terrorist supporting" country; or
 - (2) listed on any US government list of prohibited or restricted parties.

The following paragraph 14(c) applies for the Android version of the App available on Google Play.

- (c) We grant You a non-exclusive, worldwide licence to perform, display and use the App in accordance with these Terms on Your Device that is capable of accessing Google Play.

The following paragraphs 14(d) to 14(h) apply for the Apple version of the App available on the iTunes Store.

- (d) You acknowledge that these Terms are between Us and You, and that Apple Inc (**Apple**) is not a party to these Terms.
- (e) We grant You a non-exclusive, revocable, royalty free, non-transferable licence to use the App in accordance with these Terms on an iOS Product (that is, any Apple-branded product that runs the iOS operating system software provided by Apple) or any other product permitted by Apple from time to time that You use or control and as permitted by the "Services and Content Usage Rules" set out in the "Apple Media Services Terms and Conditions".
- (f) Both You and We acknowledge that in the event of any third party claim that the App or Your possession and use of the App infringes that third party's intellectual property rights, You will immediately notify Us and provide assistance reasonably requested by Us in respect of such claim, and We (not

Apple) will (subject to clause 11(b)) be solely responsible for the investigation, defence, settlement and discharge of such claim.

- (g) You acknowledge that Apple has (to the maximum extent permitted by law) no warranty obligations with respect to the App and that any claims, losses, liabilities, damages, costs or expenses attributable to any failure of the App to conform to any warranty implied or imposed by law will be Our responsibility (not Apple's). Without limiting any other provisions of these Terms, both You and We also acknowledge that We (not Apple) are responsible for addressing any claims that You or a third party has relating to the App or Your possession or use of the App, including without limitation any product liability claims, any claim that the App fails to conform to any applicable legal or regulatory requirement and claims arising under consumer protection or similar legislation.
- (h) Where permitted under applicable laws, both You and We acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms, and that, on Your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against You as a third party beneficiary of these Terms.
- (i) Please note that You may incur data and/or other telecommunications usage charges for downloading, streaming or using any content that You access via the App. We are not responsible for any data charges incurred by You in connection with the use of the Subscriptions. You are advised to check with your internet or telecommunications provider for any data charges that may apply.

15 General

- (a) If any provision of these Terms is invalid under the law of any jurisdiction, that provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Subject to clause 15(c), these Terms are governed by the laws of Victoria, Australia and the courts of Victoria, Australia (and the courts of appeal from them) have exclusive jurisdiction to resolve any disputes arising under or in connection with these Terms.
- (c) If you are in:
 - (1) the United States, these Terms are governed by the laws of the State of California and the courts of the State of California (and the courts of appeal from them) have exclusive jurisdiction to resolve any disputes arising under or in connection with these Terms; or
 - (2) the United Kingdom, these Terms are governed by United Kingdom law and the courts of the United Kingdom have exclusive jurisdiction to resolve any disputes arising under or in connection with these Terms.
- (d) If We fail to enforce any of Our rights under these Terms, that does not mean We waive those rights. If You fail to enforce any of Your rights under these Terms, that does not mean You waive those rights.
- (e) These Terms are personal to You and You may not assign or otherwise transfer any rights under these Terms without Our prior written consent. We may assign or otherwise transfer Our rights and obligations under these Terms as We require.

- (f) We may sub-contract or delegate the performance of all or some of Our duties, obligations and powers under these Terms (including the provision of any Subscription) without Your prior approval. However, We will remain liable for the acts or omissions of any sub-contractor or delegate in the performance of any of Our duties, obligations and powers as if they were Our acts or omissions.
- (g) These Terms govern any upgrades provided by Us that replace and/or supplement the original App, unless such upgrade is accompanied by separate terms, in which case those terms will govern the upgrade.

16 Country-specific terms

16.1 For Users in Australia: Your Consumer Rights and Our liability

- (a) Nothing in these Terms is intended to exclude, restrict or modify rights which You may have under any law (including the Australian Consumer Law) which may not be excluded, restricted or modified by agreement (**Your Consumer Rights**). Your Consumer Rights include the right for services to be fit for their specified purpose and to be provided with care and skill. You can find out more about Your Consumer Rights from consumer organisations and bodies such as the Australian Competition and Consumer Commission and State/Territory fair trading authorities.
- (b) Where You suffer any loss in connection with this App, You must take all reasonable steps to minimise your loss, including notifying Us without delay if there are steps We can take to help minimise Your loss.
- (c) We limit Our liability for any loss or damage arising in connection with the Subscriptions or these Terms (other than Our liability in connection with Your Consumer Rights) to:
 - (1) supplying the Subscriptions again;
 - (2) refunding the cost of the Subscriptions; or
 - (3) paying the cost of having the Subscriptions supplied again.
- (d) Subject to Your Consumer Rights, We are not liable:
 - (1) for any loss that was not reasonably foreseeable to You and Us or any loss of Your Data; and
 - (2) to the extent that Your loss was contributed to by You or any other matter outside Our reasonable control.

16.2 If You are in the United States: Our Limited Liability

- (a) **LIMITATION OF LIABILITY.** You understand that (i) We are not an insurer of Your Property or the personal safety of persons on Your Property; (ii) You should provide any insurance on Your Property and its contents; (iii) the amount You pay to Us is based only on the value of the Subscriptions we provide and not on the value of Your Property or its contents; (iv) alarm systems and our Subscriptions may not always operate properly for various reasons, including without limitation cyber security or data breaches; (e) it is difficult to determine in advance the value of the Your property that might be lost, stolen or destroyed if the Subscriptions or equipment fails to operate properly; (f) it is difficult to determine in advance how fast the police or fire department or others would respond to an Alert; and (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 failure to perform, Our negligence, or failure of Our contractors. Therefore, You agree that even if a court decides that Our breach of these Terms or other obligations, or Our or Our contractors' negligence (including sole negligence and gross negligence), or a failure of any equipment, website, installation, monitoring, repair services, or other services caused or allowed any harm or damage (whether property damage, personal injury or death) to You or anyone in or about Your premises, YOU AGREE THAT OUR LIABILITY SHALL BE LIMITED TO THE LESSER OF \$1,000.00 OR TWELVE (12) TIMES THE MONTHLY SUBSCRIPTION FEE, AND THIS SHALL BE YOUR ONLY REMEDY REGARDLESS OF WHAT LEGAL THEORY (INCLUDING WITHOUT LIMITATION, NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY OR PRODUCT LIABILITY) IS USED TO DETERMINE THAT WE WERE LIABLE FOR THE INJURY OR LOSS.

- (b) **THIRD PARTY INDEMNIFICATION. SUBROGATION WAIVER.** If anyone other than You, asks Us to pay for any harm or damages (including property damage, personal injury or death) connected with or resulting from (i) Our breach of these Terms or a failure of the Subscriptions or other equipment, (ii) Our or Our contractors' negligence, (iii) any other improper or careless activity of Ours in providing the Subscriptions 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. Your obligation to pay Us for such harm or damages shall not apply if the harm or damages happens while one of Our employees or subcontractors is in or about Your Property, and that employee or subcontractor solely causes such harm or damages. Unless prohibited by Your property insurance policy, You agree to release Us from any claims of any parties suing through Your authority or in Your name, such as Your insurance company, and You agree to defend us against any such claim. You will notify Your insurance company of this release.
- (c) **LIMITATION ON LAWSUITS; WAIVER OF JURY TRIAL.** Both You and Us agree that no lawsuit or any other legal proceeding connected with these Terms or Subscriptions shall be brought or filed more than two (2) years after the incident giving rise to the claim occurred. IN ADDITION, EACH OF THE PARTIES HEREBY IRREVOCABLY GIVES UP AND WAIVES ANY RIGHT TO A JURY TRIAL OF ANY CLAIM OR ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, DIRECTLY OR INDIRECTLY, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG THE PARTIES HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO COVER ALL DISPUTES THAT MAY BE FILED IN COURT, INCLUDING WITHOUT LIMITATIONS CONTRACT, TORT, BREACH OF DUTY, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING AND APPLIES TO ANY FUTURE AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS OF OR TO THIS AGREEMENT. IN THE EVENT OF LITIGATION COVERED BY THE SCOPE OF THIS WAIVER, THIS AGREEMENT MAY BE FILED IN COURT AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

16.3 If You are in the United Kingdom: Our Limited Liability

- (a) To the maximum extent permitted by law:
- (1) We shall not be liable to You for indirect, incidental or consequential loss or damage or for loss of data, loss of goodwill, loss of profits or revenues or loss of anticipated savings;

- (2) Our liability to You for any loss or damage, including but not limited to, any and all claims, losses, liabilities, damages, actions, demands or expenses (including, but not limited to, all reasonable attorneys' fees or costs of suit which We may incur as a result of or in connection with these Terms or in connection with the provision of Subscriptions), whether arising from negligence, breach of contract, or otherwise, shall in no event exceed a total of the Fees paid by You to Us during the period of one year preceding the occurrence giving rise to the claim or, in case the damage occurs during the first year of the Subscriptions, the amount of the projected Fees for the first year of the Subscriptions; and
 - (3) You shall indemnify and hold Us harmless from and against any loss or damage (as described in clause 16.3(a)(2)) which We may incur or which may be launched against Us by any third party as a result of or in connection with the performance of the Subscriptions unless such loss or damage arises from any negligent act or omission on the part of Us or Our employees, agents or subcontractors.
- (b) The limitations of liability in clauses 16.3(a)(1) and 16.3(a)(2) do not apply to any liability for fraud, wilful default or for death or personal injury arising from Our negligence or that of Our employees, agents or subcontractors.

17 Definitions

The meanings of the terms used in these Terms are set out below:

30 Day Free Trial Offer has the meaning given in clause 1.1(a).

30 Day Free Trial Offer Period has the meaning given in clause 13(b).

Alerts has the meaning given in clause 5.1(a)(5).

ExtraSafe Plan (Annual) has the meaning given in clause 4(b)(2).

App has the meaning given in clause 1(a)(1).

Billing Date has the meaning given in clause 6.2(a).

Connected Camera has the meaning given in clause 4(a).

Fees has the meaning given in clause 6.1(a).

Minimum Term means the minimum applicable term for a Subscription Plan, as further outlined in clause 4(b).

New Billing Date has the meaning given in clause 6.2(c).

Other Terms has the meaning given in clause 1(b).

Our Materials has the meaning given in clause 8(a).

ExtraSafe Plan (Monthly) has the meaning given in clause 4(b)(1).

Payment Card has the meaning given in clause 6.1(a).

Privacy Policy has the meaning given in clause 7(b).

Subscription Date has the meaning given in clause 4(c).

Subscription Plan has the meaning given in clause 4(b).

Subscriptions has the meaning given in clause 1(a).

Terms has the meaning given in clause 1(a).

Tools has the meaning given in clause 12.

We, Us, Our has the meaning given in clause 1(c).

Your Account has the meaning given in clause 5.1(a).

Your Assigned Contacts has the meaning given in clause 5.1(a)(2).

Your Consumer Rights has the meaning given in clause 16.1(a).

Your Content has the meaning given in clause 5.1(b).

Your Data has the meaning given in clause 5.1(b).

Your Devices has the meaning given in clause 1(b)(2).

Your Property has the meaning given in clause 5.1(a)(3).

If You have any questions or complaints about the App or any of the Subscriptions, please contact Us on the details below:

Email address: subscriptions@safebyswann.com