

SwannOne smart home and security solution

Terms of Use

IMPORTANT! Please read carefully these terms of use in their entirety before using the portal and the services (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 services if you do not agree to these terms of use.

For U.S. Users: section 17.2(A) limits our liability to the lesser of \$1,000.00 Or twelve (12) times the monthly services fee if you or anyone else suffers any harm (damage or loss of property, personal injury, or death) because the services or system failed to operate properly or we were careless or acted improperly. Section 17.2(B) requires you to indemnify us and our contractors if a claim or a lawsuit arising out of the services is brought against us or our contractors. Read these provisions particularly carefully.

THESE TERMS OF USE ARE EFFECTIVE FROM 1ST APRIL 2015.

1. ACCEPTANCE OF THESE TERMS

- a. This document sets out the terms and conditions (**Terms**) on which you (**You**) may access and use the SwannOne App and website <https://home.swannone.com> (the **Portal**) and:
 1. the Service Plans and Subscription Services defined and described in clause 4; and
 2. the professional monitoring services offered by Us in accordance with the service description on the Portal (**Monitoring Services**) and the cloud video recording service offered by Us in accordance with the service description on the Portal (**Cloud Video Service**)
(collectively with clause (1), the **Services**).
- b. These Terms apply in addition to any other terms and conditions to which You are subject in relation to the Portal and Services, including:
 1. the terms of use for our general website which are available at <http://www.swann.com>;
 2. terms of use relating to any compatible devices or appliances you register for use with the Portal or the Services (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 Portal 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.

1. ACCEPTANCE OF THESE TERMS (CONTINUED)

- c. By accessing or using the Portal or the Services 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 are in Australia: Swann Communications Ltd (ABN 86 289 780 584) of Unit 13, 331 Ingles Street, Port Melbourne, Victoria, 3207;
 - 2. if you 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 of the Portal, 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 Portal;
 - 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 Service.

3. REQUIREMENTS FOR USING SWANNONE

- a. In order to access and use the Portal and Services, 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, broadband internet connection and bandwidth required to run the Portal and properly use the Services, and ensure they are functional and operating;
 - 3. register on <http://www.swannone.com> (the **SwannOne Website**) for an account (**User Account**), which involves accepting these Terms, providing certain personal information, generating a password and selecting the type of Services You wish to acquire. You will also be asked to provide details of a Payment Instrument in certain circumstances (see clause 8.1(a)).
- b. For the avoidance of doubt, You acknowledge that:
 - 1. at all times, You are solely responsible for acquiring and correctly installing any devices or appliances you intend to monitor using Your Devices (for example, smoke alarms) and ensuring they are functional and operating;
 - 2. at all times, You are solely responsible for acquiring and correctly installing Your Devices and ensuring they are functional and operating;
 - 3. at all times, You are solely responsible for providing all hardware, telecommunications equipment, software, network connectivity, broadband internet connection and bandwidth required to run the Portal and properly use the Services; and
 - 4. You may not be able to access and use the Services unless You have successfully complied with, and continue to comply with, clause 3(a).

4. ACQUIRING SERVICE PLANS

- a. The Portal has various functionalities available which We offer as service plans, which are described on the SwannOne Website and are updated or replaced from time to time (**Service Plans**). These Service Plans may vary by price, Minimum Term, Alert capabilities, number of Assigned Contacts, device features and other matters, as described on the SwannOne Website.
- b. Once You have successfully completed the set-up procedure outlined in clause 3 above, You will be automatically provided with the functionality of the 'Home Essentials' Service Plan for no monthly fee.

4. ACQUIRING SERVICE PLANS (CONTINUED)

- c. You can choose to enable increased functionality by following the prompts on the Portal and purchasing Service Plan upgrades on a subscription basis (**Subscription Services**).
- d. 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 set out in the applicable Service Plan for that Service (**Minimum Term**). At the end of the Minimum Term, the Subscription Service will automatically renew on a month-to-month basis unless You terminate it in accordance with clause 12.

5. ACQUIRING MONITORING SERVICES

- a. If You are currently registered with a Subscription Service, You may purchase Monitoring Services from Us in two ways:
 - 1. on a 'pay-as-you-go' basis, for a fixed period of time as agreed by You; or
 - 2. bundled with your Subscription Services on a monthly basis for an additional monthly fee as set out in the Service Plans.
- b. If you choose to purchase Monitoring Services on a 'pay-as-you-go' basis, your Payment Instrument will be charged the full amount in advance in accordance with clause 8.1(a).
- c. If you choose to bundle any Monitoring Services with your Subscription Services on a monthly basis, clauses 4(d) and 8.2 also apply to those Monitoring Services as though they were a Subscription Service.

6. ACQUIRING CLOUD VIDEO SERVICES

- a. If you register a compatible camera device with Your Account (**Connected Camera**), once You have successfully completed the set-up procedure outlined in clause 3 above, You will be automatically provided with the functionality of the 'Camera Essentials' Service Plan for no fee.
- b. You can choose to acquire upgraded Cloud Video Services by following the prompts on the Portal and purchasing Cloud Video Service Plan upgrades on a subscription basis.
- c. If you choose to purchase any upgraded Cloud Video Services, clauses 4(d) and 8.2 also applies to those Cloud Video Services as though they were a Subscription Service.
- 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).

7. USING THE PORTAL

7.1 Entering information using the Portal

- a. You must set up Your account using a web browser by submitting the required details in accordance with the visual and text prompts in the registration section of the SwannOne Website, including:
 - 1. Your personal details;
 - 2. contact details of the people who you authorise the Portal or Us to contact in accordance with your instructions to act on Your behalf in the event of a Verified Alert (**Your Assigned Contacts**);
 - 3. details of Your Devices which You require access to or control of using the Portal, 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 (eg by email or push notification)(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 10 below) including any video recordings which you make from the Portal or which are stored remotely using the Cloud Video Services (**Your Data**), are **Your Content**.

7. USING THE PORTAL (CONTINUED)

7.2 Accessing and recording information through the Portal

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

7.3 Communicating Alerts

- a. We will send Alerts to You and Your Assigned Contacts in accordance with the rules you establish using the Portal.
- b. You may also view Alerts in the 'Alerts' section of the Portal.

7.4 Controlling devices

The Portal is connected via the internet to the Swann hub (described in the SwannOne Website) (the **Hub**) or any Connected Cameras, or both. You can input instructions into the Portal which are relayed to the Connected Cameras directly, or to Your Devices via the Hub.

7.5 Monitoring Services

- a. If You have registered for Monitoring Services, You acknowledge that this will involve the following:
 1. a third party company engaged by Us (**Monitoring Company**) will receive the Alerts;
 2. the Monitoring Company may take steps to verify whether or not the Alert relates to a genuine incident or whether it is a false alarm. To do this, you authorise the Monitoring Company to:
 - A. access an audio recording of the Alert;
 - B. access a video file relating to the Alert; and
 - C. view live streaming from the Connected Cameras from the time the Alert is received to the time the Monitoring Company closes the Alert;
 3. if the Monitoring Company considers that the Alert requires attention (**Verified Alert**) it will first attempt to contact You or Your Assigned Contacts; and
 4. if the Monitoring Company is unable to successfully contact You or Your Assigned Contacts in relation to the Verified Alerts, You authorise the Monitoring Company to, acting in their reasonable discretion, contact the relevant ambulance, fire or police services (**Emergency Services**) to respond to the Verified Alerts.
- b. You acknowledge that you understand that Emergency Services may charge a fee to respond to a Verified Alert, including for a 'false alarm' (**Emergency Services Charges**).
- c. You acknowledge that in registering for Monitoring Services, We may recover from You any Emergency Services Charges incurred when providing You with Monitoring Services as a debt due to Us and You authorise Us to charge your Payment Instrument with the amount of the Emergency Services Charges in accordance with clause 8.1(a) after using all reasonable efforts to contact You.

7.6 Cloud Video Services

- a. If You have registered for Cloud Video Services, You acknowledge and agree that a third party service provider engaged by Us will 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 Cloud Video Services Service Plan, and may permanently delete Your Data after expiry of the relevant time.
- c. You may access, download or delete Your Data via the Portal.
- 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:
 1. Us to access and use Your Data for purposes related to providing the Services to You under these Terms; and
 2. the Monitoring Company, if you have chosen to acquire Monitoring Services, to access and use Your Data for purposes related to providing the Monitoring Services to You under these Terms, including in accordance with clause 7.5(a)(2).

7. USING THE PORTAL (CONTINUED)

7.6 Cloud Video Services (continued)

- f. You acknowledge that:
 1. Your Data is only intended to be a resource to assist You with the personal monitoring of Your Property security. 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 Portal or Cloud Video Service. We do not guarantee that Your access to the Cloud Video Services 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 17, 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 Portal or Cloud Video Services, including ensuring that Your Devices which are required to record and transmit Your Data to the Cloud Video Service, are operating and functional at all times.

8. FEES AND PAYMENT

8.1 Payment method

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

8.2 Billing cycle and changes to your Service Plan

- a. If You have registered for a Subscription Service, You will pay the Fees monthly in advance. We will automatically charge the Fees to Your Payment Instrument each month on the calendar day corresponding to the Subscription Date (**Billing Date**).
- b. You acknowledge that each Subscription Service has a Minimum Term. If You cancel your Subscription Service before the end of the Minimum Term, You authorise Us to charge Your Payment Instrument the amount owing for the remainder of the Minimum Term.
- c. After the Minimum Term, if You would like to cancel Your Subscription Service, You must cancel Your Service 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 cancel Your Subscription Service on or after it has renewed for the following month, the cancellation will take effect on the next Billing Date and You will still be charged that month's Fees.
- d. You may upgrade Your Service Plan to a more expensive level of Service 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 Service, 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 Service; and
- e. You may only downgrade Your Subscription Service to a lower cost of Service after the expiry of the Minimum Term for that Plan.

9. 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 services (including the Portal), 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 Portal may be limited.
- b. If You have purchased Monitoring Services, You authorise Us and the Monitoring Company to collect, use and disclose Your Content for purposes related to the Monitoring Services, including exchanging Your personal information with Emergency Services to enable them to respond to Verified Alerts.

9. PRIVACY AND USE OF DATA (CONTINUED)

- c. You acknowledge that We and the Monitoring Company may record telephone conversations with You and You release all rights in and to such recorded telephone conversations. You consent to the use of such telephone conversations in legal proceedings with Us or the Monitoring Company and the disclosure by Us or the Monitoring Company of those conversations to any police or other law enforcement or Government investigatory body.
- d. Our Privacy Policy contains further details about how We handle and store personal information. The Privacy Policy (which is available at www.swann.com/au/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.
- e. If You provide personal information to Us (including by inputting it into the Portal or allowing it to be captured by one of Your Devices) about any third party (including any 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.

10. YOUR USE OF OUR MATERIALS

- a. All rights in the Portal and content on the Portal, including without limitation copyright in the software and data comprising the Portal 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 Portal. 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, royalty free licence to use Our Materials to the extent that they are incorporated with Your Content for the purposes of using the Portal's functionality and the Services.

11. USE OF THE PORTAL AND SERVICES

- a. You must not:
 - 1. submit, or use the Portal to send, any unauthorised commercial communications (such as spam);
 - 2. access the Portal using automated means;
 - 3. violate or attempt to violate the security of the Portal;
 - 4. upload viruses or other malicious code to the Portal;
 - 5. bypass any measure We may use to prevent or restrict access to the Portal, any part of the Portal or any other software, systems; or networks connected to the Portal;
 - 6. decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying algorithms of any part of the Portal;
 - 7. create derivative works of any part of the Portal;
 - 8. rent, lease, lend, sell, transfer, redistribute, or sublicense the Portal;
 - 9. do anything that could disable, overburden, or impair the proper working of the Portal, such as a denial of service attack;
 - 10. disrupt or interfere with any Services, servers or networks connected to or accessible through the Portal;
 - 11. let anyone else access Your Account, other than Your Assigned Contacts; or
 - 12. use the Portal, the Services or Your Devices in any manner or for any purpose that it is unlawful.
- b. You acknowledge that:
 - 1. the Portal and the Services are not certified for emergency response;
 - 2. You cannot specify an Emergency Services provider as an Assigned Contact;
 - 3. We do not certify that the Portal or the Services have been designed or programmed to comply with any laws relating to security systems and
 - 4. You may opt out of the receipt of any messages and alerts from the Portal or the Service, but we do not recommend you do so.

12. TERMINATION AND SUSPENSION

- a. Subject to clause 7.6(d), You may cancel, without receiving a refund:
 1. any of Your Subscription Services by updating Your Account; or
 2. Your access to all of the Services by deleting the Portal from Your Device without notice to Us.
- b. We may terminate, disable, block or suspend Your access to the Portal:
 1. immediately, if You breach, or We suspect on reasonable grounds that You have breached, these Terms; or
 2. on 7 days' notice to You, at any other time, acting reasonablyand 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 8.2(b), 8.2(c), 9, 10, 13, 14 and 16, will survive termination of these Terms.

13. YOUR RESPONSIBILITIES

- a. You are responsible for:
 1. all of the activity conducted using Your User Account, whether or not they are conducted or authorised by You, and in connection with the Portal (including Your use of any Tools, as defined in clause 14 below);
 2. keeping Your password to Your User Account safe, secure and confidential, and notifying Us if you become aware that access to Your User Account has been compromised;
 3. ensuring that all of the information and details that You submit into the Portal are complete and correct at all times, including Your contact details and those of any 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 Portal 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 Portal and Your Content;
 7. any actions (including making phone calls, sending text messages and emails, and contacting Emergency Services) that You take or not take as a result of the Portal or Your Content;
 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; and
 9. providing such other assistance or permitting such other access to Your Property as We or the Monitoring Company may reasonably require for the proper provision of the Monitoring Services.
- b. If You register for Monitoring Services, you are also responsible for:
 1. ensuring that You and/or one or more of Your Assigned Contacts will be available to be contacted by the Monitoring Company in the event of a Verified Alert;
 2. authorising Your telecommunications provider to provide Us and the Monitoring Company with your calling line identification number; and
 3. taking all steps as may be necessary to prevent false alarms which originate other than through a fault in Your Devices as supplied to You.
- c. 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.
- d. 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
- e. Since electronic services are subject to interruption, breakdown and failure, access to the Portal and the Services (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 Portal and the Services cannot function under all circumstances. Subject to clause 17, 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 Portal or Services.

14. THIRD PARTY TOOLS

Certain hardware, tools, devices, software programs or other features (Tools) that can be used with the Portal 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 Portal or their performance, reliability, content, availability, accuracy, adequacy, timeliness, validity, copyright compliance, legality, decency, quality, completeness or any other aspect of these Tools.

15. FREE TRIAL OFFER

This offer (the “30 Day - Free Trial Offer”), which is made to you by SwannOne, entitles you to trial the following plans :

- Home Safe
- Cloud Video Storage (7 Day/30 Day rolling)

The free trial offers are applicable for a period of thirty (30) days from the moment that you activate the trial period by submitting your payment details (the “Free Trial Period”). By submitting your payment details, you accept the 30-Day Free Trial Offer and (i) consent to us using your payment details in accordance with our Privacy Policy, (ii) acknowledge and agree to SwannOne Terms of Use and these SwannOne 30-Days Free Trial Terms of Use. If you decide that you do not want to become a paying user of the SwannOne Home Safe or Cloud Video Storage services upon the lapse of the Free Trial Period, you will need to terminate your service by the end of the Free Trial Period. You may only use this Free Trial Offer once. If you have previously used these services, including through any other Free Trial Offers, you are not eligible for this 30-Day Free Trial Offer. SwannOne reserves the right, in its absolute discretion, to withdraw or to modify this Free Trial Offer and/or the SwannOne 30-Days Free Trial Terms and Conditions at any time without prior notice and with no liability.

Please note that you may incur data and/or other telecommunications usage charges for downloading, streaming or using any content that you access via SwannOne. SwannOne is not responsible for any data charges incurred by you in connection with the use of the SwannOne service – please check with your internet or telecommunications provider for the data charges that may apply.

16. PLATFORM TERMS

- a. You acknowledge that We (not any other party) are responsible for the Portal and its contents in accordance with these Terms. Both You and We acknowledge that We (not any other party) are responsible for providing any maintenance and support services for, and addressing complaints in relation to, the Portal.
- 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 15(c) applies for the Android version of the App available on Google Play.

- c. We grant You a non-exclusive, worldwide and perpetual licence to perform, display and use the Portal on Your device that is capable of accessing Google Play.

The following paragraphs 15(d) to 15(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 “Usage Rules” set out in the “App Store Terms of Service”.
- 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, We (not Apple) will (subject to clause 13(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.

17. 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 16(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 Service) 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.

18. COUNTRY-SPECIFIC TERMS

18.1 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 Portal, 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 Services or these Terms (other than Our liability in connection with Your Consumer Rights) to:
 - 1. supplying the Services again;
 - 2. refunding the cost of the Services; or
 - 3. paying the cost of having the Services 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.

18.2 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 Services we provide and not on the value of Your Property or its contents; (iv) alarm systems and our Services 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 Services 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 of Use 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 service, 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 SERVICES 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.

18. COUNTRY-SPECIFIC TERMS (CONTINUED)

- b. **THIRD PARTY INDEMNIFICATION. SUBROGATION WAIVER.** If anyone other than You, asks Us or the Monitoring Company 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 of Use or a failure of the Services or other equipment, (ii) Our or Our contractors' negligence, (iii) any other improper or careless activity of Ours in providing the Services or (iv) a claim for indemnification or contribution, You will pay Us (a) any amount which a court orders Us or the Monitoring Company to pay or which We or the Monitoring Company (as appropriate) 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 of Use or Services 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

19.3 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 Services), 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 Services, the amount of the projected Fees for the first year of the Services; and
 3. You shall indemnify and hold Us and the Monitoring Company harmless from and against any loss or damage (as described in clause 17.3(a)(2)) which We or the Monitoring Company may incur or which may be launched against Us or the Monitoring Company by any third party as a result of or in connection with the performance of the Services unless such loss or damage arises from any negligent act or omission on the part of Us or the Monitoring Company's (as appropriate) or Our or the Monitoring Company's (as appropriate) employees, agents or subcontractors.
- b. The limitations of liability in clauses 17.3(a)(1) and 17.3(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.

20. DEFINITION

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

Alerts has the meaning given in clause 7.1(a)(5).

Billing Date has the meaning given in clause 8.2(a).

Cloud Video Service has the meaning given in clause 1(a)(2).

Connected Camera has the meaning given in clause 6(a).

Emergency Services Charges has the meaning given in clause 7.5(b).

Emergency Services has the meaning given in clause 7.5(a)(4).

Fees has the meaning given in clause 8.1(a).

Hub has the meaning given in clause 7.4.

Minimum Term has the meaning given in clause 4(d).

Monitoring Company has the meaning given in clause 7.5(a)(1).

Monitoring Services has the meaning given in clause 1(a)(2).

New Billing Date has the meaning given in clause 8.2(d).

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

Our Materials has the meaning given in clause 10(a).

Payment Instrument has the meaning given in clause 8.1(a).

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

Privacy Policy has the meaning given in clause 9(d).

Service Plan has the meaning given in clause 4(a).

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

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

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

SwannOne Website has the meaning given in clause 3(a)(3).

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

Tools has the meaning given in clause 14.

User Account has the meaning given in clause 3(a)(3).

Verified Alert has the meaning given in clause 7.5(a)(3).

Your Account has the meaning given in clause 7.1.

Your Assigned Contacts has the meaning given in clause 7.1(a)(2).

Your Consumer Rights has the meaning given in clause 17.1(a).

Your Content has the meaning given in clause 7.1(b).

Your Data has the meaning given in clause 7.1(b).

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

Your Property has the meaning given in clause 7.1(a)(3).

If you have any questions or complaints about the Portal or any of the Services, please contact us on the details below:
Telephone number: +61(0)3 8412 4600
Email address: info@swannone.com