

Terms and conditions

1. Agreement

- 1.1 These terms and conditions ("Conditions") together with the Work Order completed and executed by an authorised representative of the Customer and SAFESHARK constitutes the entire agreement between the Customer and SAFESHARK ("Agreement") regarding the Services and supersedes any previous communication, agreement or representations regarding the Services.
- 1.2 In the event of a conflict between a provision in the Work Order and a provision in these Terms and Conditions, the conflict shall be resolved by according the provision in the Work Order priority over the conflicting provision in these Terms and Conditions

2. Definitions

- 2.1 In this Agreement the following terms will have the meaning set out below:

"Agreed Start Date" means the date set out as such in the Work Order;

"Work Order" means SAFESHARK's Product Test Work Order setting out the Product information, platform, product tests required as well as any Special Terms agreed by the Parties;

"Charges" means the charges payable by Customer for the Services as set out in the Work Order;

"Confidential Information" means:

- (a) the terms of this Agreement;
- (b) all information disclosed to a Party by or on behalf of the other Party in connection with this Agreement and which relates to the provisions of this Agreement and/or the negotiations relating to this Agreement;
- (c) know-how, secret processes and inventions disclosed to a Party by or on behalf of the other Party in connection with this Agreement; and
- (d) all other information disclosed to a Party by or on behalf of the other Party (whether before or after the Agreed Start Date) which is marked as or has been otherwise indicated to be confidential or which derives value to a Party from being confidential or which would be regarded as confidential by a reasonable business person;

"Customer" means the Party named as the customer in the Work Order;

"Insolvency Event" means where a person ceases or threatens to cease to carry on business, is found unable to pay its debts within the meaning of the Insolvency Act 1986 section 123, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction) or undergoes any similar or equivalent process in any jurisdiction;

"Intellectual Property Rights" means all intellectual property rights including, without limitation: patents (including supplementary protection certificates), petty patents, utility models, registered and unregistered designs, trade marks and service marks, business and trade names and get up, rights in domain names, copyrights (including rights in computer software) and neighbouring rights, database rights and know how and in each case rights of a similar or corresponding character (whether or not any of these rights are registered and including all applications and rights to apply for the protection of them) and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these which may be submitted anywhere in the world in each case for their full terms and together with any renewals or extensions;

"Product" means the Customer's product or prototype to be tested by SAFESHARK and set out in the Work Order;

"Report" means the report prepared by SAFESHARK for the Customer as a result of and as part of the Services;

"SAFESHARK" means SafeShark Limited a company

registered in England No. 07566599 whose registered office is situated at 5th Floor, 89 Albert Embankment, London SE1 7TP, UK;

"Service" means the testing services provided by SAFESHARK under this Agreement in relation to a specific product or prototype, as specified in the Work Order;

"Virus" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

"Vulnerability" means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly; and

"Working Day" means a day (other than a Saturday or Sunday) on which banks in the city of London are open for ordinary business.

- 2.2 In this Agreement, unless the contrary intention appears:

- (a) a reference to a provision of law is a reference to that provision as extended, applied, amended or enacted from time to time and includes any subordinate legislation and any official guidance issued from time to time;
- (b) the singular includes the plural and vice versa;
- (c) references to any Party to this Agreement include a reference to its successors and permitted assignees and permitted transferees under this Agreement;
- (d) the words "including" and "in particular" and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions; and
- (e) references to Clauses and Schedules refer to clauses of, and schedules to, these Terms and Conditions.

- 2.3 The headings in this Agreement do not affect its interpretation.

3. Services

- 3.1 In respect of each Product submitted for testing, SAFESHARK will perform the Services using the version of the cyber test suite current at the time the first test is started.
- 3.2 In consideration of the Customer paying the Charges, SAFESHARK will perform the Services in accordance with the Work Order and these Conditions.
- 3.3 Provisions of the Services is conditional upon the Customer delivering the Product to SAFESHARK in accordance with Clause 4.1 below.
- 3.4 On completion of any assessment of the Product, SAFESHARK will provide the Customer with a Report. Any recommendation given in a Report is not binding on any Certification Body and the decision to issue a Certificate is at the sole discretion of the Certification Body.
- 3.5 Reports are issued on the basis of information known to SAFESHARK at the time the Services are provided. Although SAFESHARK will use reasonable endeavours to ensure accuracy, the Services depend on the co-operation of the Customer and on the information submitted by the Customer in connection with the Product. All Reports are prepared on the basis that:
- (a) the Report constitutes SAFESHARK Confidential Information and shall not be disclosed by the Customer to third parties except in accordance with Clause 11 of this Agreement;

- (b) there is no responsibility to any person other than the Customer;
- (c) the information contained in the Report relates only to the Product tested and does not express any opinion upon the lot or batch from which the Product was drawn;
- (d) no statement is deemed to be or give rise to a representation or warranty unless specifically stated;
- (e) SAFESHARK is entitled to be paid the Charges irrespective of the results or conclusions reached in the Report.

3.6 The Services are limited to those specified in the relevant Work Order and any extensions to the Services requested or required may incur additional charges or delays in completing tests. Additional charges, as set out in the Work Order, will apply to any retests resulting from any changes made to the Product by the Customer.

3.7 SAFESHARK reserves the right to refuse to carry out partial retesting of a Product where, in the opinion of SAFESHARK, a full retest is required to determine conformance with the appropriate specification. SAFESHARK further reserves the right to refuse to carry out further testing where, in the opinion of SAFESHARK, the amount of retesting required will unreasonably impair its ability to provide adequate services to other customers.

3.8 Minor variations to the Services which, in SAFESHARK's reasonable opinion, do not adversely affect the quality of the provision of the Services for the purpose for which they are supplied, will not constitute a breach of contract by SAFESHARK or impose any liability on SAFESHARK.

4. Customer Obligations

4.1 The Customer shall, at its own cost and expense, deliver the Product to SAFESHARK on or before the Agreed Start Date.

4.2 If the Customer believes that it will not be able to deliver the Product to SAFESHARK by the Agreed Start Date, the Customer shall notify SAFESHARK and the parties shall endeavour to agree a new Agreed Start Date. If less than 10 Working Days' notice is provided, SAFESHARK may invoice and Customer agrees to pay SAFESHARK a re-booking fee, as set out in the Work Order.

4.3 The Customer will:

- (a) provide SAFESHARK in advance of the commencement of the Services with all information and/or material that SAFESHARK reasonably requires in order to perform its obligations under the Agreement;
- (b) ensure that any such information and/or material is true, accurate and complete in all respects;
- (c) inform SAFESHARK in advance of any known hazards or dangers, actual or potential, associated with the use and/or testing of the Product including for example the presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons and the Customer assumes full liability for any accident or damage to persons or property on SAFESHARK's premises caused by or arising out of the condition or nature of the Product not disclosed to SAFESHARK except to the extent that such damage is caused by SAFESHARK's negligence;
- (d) not request that software updates be performed during a first test;
- (e) ensure that the Product is sufficiently stable for testing to be carried out;
- (f) ensure that all Products, information and/or material provided to SAFESHARK are free from any defamatory or unlawful content and do not infringe any Intellectual Property Rights or other rights of any third party;
- (g) ensure that all Products are free from any Viruses and Vulnerabilities.

5. Title and Security

5.1 Title to the Product and risk of loss of or damage to the Product remains with the Customer at all times, save for loss or damage caused by SAFESHARK's negligence. The Customer shall be responsible for effecting and maintaining its own insurance of the Product.

5.2 SAFESHARK may retain all Property delivered to it until all sums due to SAFESHARK under this Agreement have been paid.

6. Warranties

6.1 SAFESHARK warrants that the Services will be provided with reasonable skill and care.

6.2 SAFESHARK will use its reasonable endeavours to provide complete, accurate and reliable information, advice and services and these are provided in good faith based upon information available at the time. SAFESHARK does not warrant the accuracy of information provided. It is for the Customer to decide whether or not to accept SAFESHARK's advice in making its own management decisions.

6.3 Except as expressly set out in this Agreement, the parties make no other warranties or representations and, to the maximum extent permitted by law, each party excludes all other warranties, representations or conditions, express or implied, including warranties of fitness for a particular purpose.

7. Limitation of Liability

7.1 Subject to Clauses 7.2 and 7.3, SAFESHARK's total liability under or in connection with this Agreement (whether by reason of any negligence by SAFESHARK or any of its employees or agents, any non-fraudulent misrepresentation, any breach of contract or otherwise) in relation to any Service shall not exceed the Charges paid or payable by the Customer under the Work Order or if the term of the Agreement is 12 months or longer, the Charges paid or payable in the 12 month period immediately preceding the date on which the claim arose].

7.2 Nothing in this Agreement shall operate to limit or exclude SAFESHARK's liability to the Customer for:

- (a) any death or personal injury caused by the negligence of SAFESHARK or any of its employees or agents;
- (b) any fraud or fraudulent misrepresentation; or
- (c) for any other matter in respect of which liability cannot lawfully be limited or excluded.

7.3 Subject to Clause 7.2, in no event will SAFESHARK be liable to the Customer or any third party for:

- (a) any direct or indirect loss of profits, revenue, anticipated revenues or savings, business opportunities, goodwill or damage to reputation;
- (b) any indirect loss, damage, cost, expense, claim or other liability whatsoever;
- (c) any failure of any software update requested by the Customer to be carried out by SAFESHARK which arise out of or in connection with this Agreement or any breach or non performance of it no matter how fundamental (including by reason of SAFESHARK's negligence) whether or not SAFESHARK has been informed of or was aware that there was a serious possibility of such loss; or
- (d) any loss or damage arising from claims of any third party (including product liability claims) that may be suffered by the Customer.

7.4 All time scales quoted are estimates, based on the information available at the date of the quotation and are subject to revision during the course of provision of the Services. SAFESHARK will not be liable for any loss, costs, damages, charges or expenses arising from any delay in the delivery of the Services.

7.5 SAFESHARK accepts no liability, whether direct or indirect, for the consequences of its Reports, information, opinions and advice.

7.6 Any failure by SAFESHARK to meet its obligations under this Agreement shall be excused to the extent that, such failure is caused by the Customer's failure to perform the Customer's obligations.

8. Charges and Payment Terms

8.1 In consideration of SAFESHARK providing the Customer with the Services, the Customer will pay the Charges set out in the Work Order.

- 8.2 SAFESHARK will invoice the Customer on the dates specified in the Work Order.
- 8.3 If the Customer requires SAFESHARK to perform services which fall outside the scope of the Services, such services shall be charged to the Customer by SAFESHARK on the time and materials rate notified by SAFESHARK prior to commencing the performance of any additional services.
- 8.4 The Customer shall pay SAFESHARK the Charges within 30 days of the date of any invoice submitted by SAFESHARK, which may be issued before or after the provision of the Services.
- 8.5 SAFESHARK reserves the right to delay the start of the Services or the issue of any Report until payment has been received for the related invoice and all outstanding amounts, if any, charged in respect of previous Services.
- 8.6 If the Customer fails to make payment on or before the due date, then without prejudice to any other right or remedy available to SAFESHARK, SAFESHARK shall be entitled to:
- suspend any further provision of the Services to the Customer;
 - terminate this Agreement in accordance with Clause 12; and/or
 - apply interest to the outstanding amount from time to time at a rate of 4% per annum above the base rate as varied of NatWest Bank Plc, accruing daily from the date payment fell due to the date of actual payment (both dates inclusive) or the maximum rate allowable by law, whichever is less. All costs and expenses incurred by SAFESHARK to recover any unpaid sums will also be due from the Customer.
- 8.7 Charges are exclusive of value-added tax ("VAT") or other sales taxes. The Customer will pay SAFESHARK any VAT properly chargeable on Services supplied by SAFESHARK under this Agreement.

9. Intellectual Property

- 9.1 Each Party shall retain all right, title and interest in and to their own pre-existing Intellectual Property Rights.
- 9.2 All Intellectual Property Rights in the Report provided by SAFESHARK to the Customer, and in any other information, advice or material created by SAFESHARK in performing the Services belong to SAFESHARK absolutely, and no rights in the Report or such information, advice or material are granted to the Customer, except that the Customer may use and make copies of the Report and such information, advice or material for the purposes of its own business. In relation to future copyright, such licence shall take effect as a present licence of future rights.
- 9.3 The Customer grants to SAFESHARK a free of charge, non exclusive licence to use, copy, modify the Products only to the extent necessary and for the purpose of:
- providing the Services to the Customer; and
 - performing SAFESHARK's other obligations under this Agreement.

10. Indemnity

- 10.1 The Customer shall defend, indemnify and hold harmless SAFESHARK against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) by a third party arising out of or in connection with the Customer's use of the Services or out of or in connection with use of the Product (including product liability claims), provided that:
- the Customer is given prompt notice of any such claim;
 - SAFESHARK provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - the Customer is given sole authority to defend or settle the claim.

11. Confidential Information

- 11.1 Each Party shall safeguard and keep confidential the other Party's Confidential Information. Neither Party shall use or disclose the other Party's Confidential Information without the written agreement of the other Party. Each Party shall

ensure that its officers and employees and any other persons to whom the Confidential Information is disclosed comply with the provisions of this Clause 11.

- 11.2 The obligations on a Party set out in this Clause 11 shall not apply to any information to the extent that such information:
- is publicly available or becomes publicly available through no act or omission of that Party;
 - is required to be disclosed by law or by order of a court of competent jurisdiction or other competent authority; or
 - is disclosed on a necessary basis and under similar confidentiality obligations to the professional advisers, auditors and bankers of such Party.
- 11.3 If the Work Order states that the Customer wishes to apply for Certification of the Product, the Customer consents to SAFESHARK disclosing all and any information relating to the Product and the Services (including the booking and cancellation of test slots and all performance information resulting from testing and retesting including full details of Reports and the passing or failing of individual test items) to BSI UK Assurance Limited.
- 11.4 The provisions of this Clause 11 shall survive any termination of this Agreement for a period of 5 years.

12. Term and Termination

- 12.1 This Agreement shall commence on the Agreed Start Date and continue for the period specified in the Work Order, unless terminated earlier in accordance with this Clause 12.
- 12.2 Either Party may at any time terminate this Agreement immediately by serving written notice if:
- the other Party undergoes an Insolvency Event;
 - the other Party commits a material breach of any of the provisions of this Agreement and if such breach is capable of remedy, fails to remedy such breach within 30 days after being served with a written notice specifying the breach and requiring it to be remedied; or
 - the circumstances set out in Clauses 8.6 and 19.2 occur.
- 12.3 Following termination of the Agreement (howsoever arising), the Customer will be responsible for collecting the Product from SAFESHARK. If the Customer does not collect the Product from SAFESHARK within 30 days of termination of the Agreement, SAFESHARK may dispose of the Product at its discretion without any liability to the Customer.
- 12.4 Termination of this Agreement for whatever reason shall not affect any of its provisions that are intended to continue or have effect after termination, including but not limited to Clauses 7 (Limitation of Liability), 6 (Warranties), 9 (Intellectual Property), 10 (Indemnity), 11 (Confidential Information), 14 (Publicity), 16 (Effect of Waiver), 17 (Severability), 18 (Third Party Rights), 20 (Notices), 21 (No Partnership or Agency), 24 (Governing Law) or 22 (Entire Agreement).

13. Data Protection

- 13.1 The Parties will comply with Schedule 1 in relation to the processing of any personal data under or in connection with this Agreement.

14. Assignment/Sub-Contracting

- 14.1 SAFESHARK may sub-contract its rights and obligations under this Agreement at any time.
- 14.2 Except as set out in Clause 15.1, neither Party shall be entitled to assign, sub-contract or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

15. Effect of Waiver

No delay or failure on the part of either Party in enforcing any provision in this Agreement shall be deemed to operate as a waiver or create a precedent or in any way prejudice that Party's rights under this Agreement, nor shall any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right of remedy. The rights and remedies provided in this Agreement are cumulative and are additional to any rights or remedies provided by law.

16. Severability

If any provision in this Agreement is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, that provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of this Agreement not affected by such invalidity or unenforceability shall remain in full force and effect. If any provision in this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

17. Third Party Rights

The Parties agree that the provisions of this Agreement are personal to them and are not intended to confer any rights of enforcement on any third party. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement or to any of its provisions.

18. Force Majeure

18.1 Any delay in the performance of any duties or obligations of either Party (except payment of the Charges) will not be considered a breach of this Agreement if such delay is caused by any event beyond the affected Party's reasonable control including any a strike, lockout, industrial action, riot, civil commotion, shortage of materials, failure of utility or communications providers, fire, earthquake, storm, flood, war, act of terrorism or any other event beyond the control of such Party ("Force Majeure Event"), provided that such Party uses reasonable endeavours to notify the other Party of the circumstances causing the delay and to resume performance as soon as possible.

18.2 If a Force Majeure Event effecting the provision of the Services continues for more than 30 days SAFESHARK may terminate this Agreement immediately by written notice.

19. Notices

19.1 All notices and other communications to be given under this Agreement shall be in writing and personally delivered or sent by email or first class pre-paid mail. Delivery shall be deemed to take place at the time of personal delivery and in the case of first class pre-paid mail 48 hours after posting.

19.2 All notices and other communications under this Agreement shall be made to:

For SafeShark Limited, 5th Floor, 89 Albert Embankment,
London SE1 7TP Attention: Chief Operating Officer
alex@safeshark.co.uk and:

for the Customer, the nominated contact set out in the Work Order or as otherwise specified in writing by the Customer.

20. No Partnership or Agency

Nothing in this Agreement shall constitute or be deemed to constitute a partnership or joint venture between the Parties or constitute or be deemed to constitute either Party as agent of the other for any purpose whatsoever and neither Party shall have authority or power to bind the other or to contract in the name of the other Party in any way or for any purpose.

21. Entire Agreement

21.1 This Agreement will constitute the entire agreement and understanding between the Parties in respect of its subject matter, and will supersede any previous agreements between the Parties in relation to the supply of the Services.

21.2 The Customer acknowledges and agrees that it has not been induced to enter into this Agreement in reliance upon, and does not have any remedy in respect of, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this Agreement.

22. Variations

No purported amendment or variation of this Agreement or any provision of this Agreement shall be effective unless it is in writing and duly executed by or on behalf of each of the Parties.

23. Governing Law and Applicable Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and Wales and any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English courts, to which each of the Parties irrevocably submits.

Schedule 1

Data Protection

1. Definitions

- 1.1 "controller", "processor", "data subject", "personal data", "processing" (and "process") and "special categories of personal data" shall have the meanings given in Applicable Data Protection Law;
- 1.2 "Applicable Data Protection Law" means all worldwide data protection and privacy laws and regulations applicable to the personal data in question, including EU Data Protection Law and UK Data Protection Law.
- 1.3 "EU Data Protection Law" means:
 - (a) all EU regulations or other legislation applicable (in whole or in part) to the processing of personal data (such as Regulation (EU) 2016/679 (the "GDPR"));
 - (b) the national laws of each EEA member state implementing any EU directive applicable (in whole or in part) to the processing of personal data (such as Directive 2002/58/EC); and
 - (c) any other national laws of each EEA member state applicable (in whole or in part) to the processing of personal data,as amended or superseded from time to time;
- 1.4 "UK Data Protection Law" means:
 - (a) the GDPR as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the "UK GDPR");
 - (b) the Data Protection Act 2018;
 - (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 as they continue to have effect by virtue of section 2 of the European Union (Withdrawal) Act 2018; and
 - (d) any other laws in force in the UK from time to time applicable (in whole or in part) to the processing of personal data,as amended or superseded from time to time;

2. Disclosure of data

Customer will disclose personal data consisting of the contact details of the Customer's employees and/or officers (the "Data") to SAFESHARK to process strictly for the purposes of enabling SAFESHARK to provide the Services (or as otherwise agreed in writing by the parties) (the "Permitted Purpose").

3. Relationship of the parties

The parties acknowledge that Customer is a controller of the Data it discloses to SAFESHARK, and that SAFESHARK will process the Data as a separate and independent controller strictly for the Permitted Purpose. In no event will the parties process the Data as joint controllers.

4. Compliance with Law

- 4.1 Each party shall be individually and separately responsible for complying with the obligations that apply to it as a controller under Applicable Data Protection Law. In particular (and without limitation):
 - (a) Customer shall be responsible for complying with all necessary transparency and lawfulness requirements under Applicable Data Protection Law in order to disclose the Data to SAFESHARK to process for the Permitted Purpose; and
 - (b) SAFESHARK shall be separately and independently responsible for complying with Applicable Data Protection Law in respect of its processing of Data it receives from Customer.

5. Security

SAFESHARK shall implement technical and organisational measures to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a "Security Incident").

6. Subcontracting

SAFESHARK may, at its election, appoint third party processors to process Data for the Permitted Purpose, provided that such processors: (a) agree in writing to process Data in accordance with SAFESHARK's documented instructions; (b) implement appropriate technical and organisational security measures to protect the Data against a Security Incident; and (c) otherwise provide sufficient guarantees that they will process the Data in a manner that will meet the requirements of Applicable Data Protection Law.

7. Cooperation

In the event that either Party receives any correspondence, enquiry or complaint from a data subject, regulator or other third party ("Correspondence") related to (a) the disclosure of the Data by Customer to SAFESHARK for the Permitted Purpose; or (b) processing of Data by the other Party, it shall promptly inform the other Party giving full details of the same, and the Parties shall cooperate reasonably and in good faith in order to respond to the Correspondence in accordance with any requirements under Applicable Data Protection Law.

8. International transfers

SAFESHARK shall not process any Data (nor permit any Data to be processed) in a territory outside of the UK and the European Economic Area unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law.

9. Survival

This Schedule shall survive termination or expiry of this Agreement. Upon termination or expiry of this Agreement, SAFESHARK may continue to process the Data provided that such processing complies with the requirements of this Schedule and Applicable Data Protection Law.