

Sheltered Harbor Participation Agreement

GENERAL TERMS AND CONDITIONS

By signing and attaching the applicable Addendum to this Sheltered Harbor Participation Agreement General Terms and Conditions (collectively, this “Agreement”), you (“Participant”), agree to become a subscriber to, and to participate in, Sheltered Harbor LLC (“Sheltered Harbor”). Participation in Sheltered Harbor is contingent upon approval by Sheltered Harbor and payment of applicable fees. Participant agrees to the terms and conditions of this Agreement and the Sheltered Harbor LLC Operating Rules (the “Operating Rules”), which are incorporated into this Agreement by this reference. Sheltered Harbor reserves the right to revise such Operating Rules from time to time. Neither the Participant nor its agents may modify or waive any term of this Agreement.

1. Background.

Sheltered Harbor is a financial services, industry-driven and funded not-for-profit enterprise created to promote the stability of the U.S. financial markets by establishing data protection, portability, and resilience standards and recognizing participant adherence to these standards through certification. Sheltered Harbor maintains an independent Board of Directors responsible for its strategy and governance and is a subsidiary of the Financial Services Information Sharing and Analysis Center (“FS-ISAC”).

2. Participation.

- (a) To become a Participant of Sheltered Harbor, an entity must meet the eligibility requirements specified in the Operating Rules and must be approved for membership by Sheltered Harbor in consultation with FS-ISAC.
- (b) The Participant agrees to be contacted by Sheltered Harbor for the purpose of verifying (1) the existence of the company; (2) accuracy of address and physical location; (3) the applying individual is a valid employee of the applicant company with authority to bind the Participant; and (4) the applicant company is, to the extent applicable, a member in good standing of a recognized industry trade association or is duly licensed or registered with the applicable regulatory body.
- (c) The Participant agrees to promptly, but in no event more than ten business days after the occurrence, notify Sheltered Harbor if Participant becomes aware that its eligibility status has changed.
- (d) Participation Dues levels are specified in the Operating Rules.
- (e) The Participant agrees to use reasonable efforts to implement the Sheltered Harbor standards for securely storing and restoring critical financial account information within its organization using Sheltered Harbor-specified processes as specified in the Sheltered Harbor Specifications document made available to Participants (“Sheltered Harbor Specifications”).
- (f) The Participant agrees that it will not be eligible to use the Sheltered Harbor designations to describe its data protection protocols until it successfully completes the required certification process as described in the Sheltered Harbor Specifications and has received written authorization by Sheltered Harbor that it may do so. Participant’s eligibility to use the Sheltered Harbor designations will terminate upon termination of this Agreement. The Operating Rules and Sheltered Harbor Specifications provide more detail on Sheltered Harbor designations and the conditions governing their use.

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3. Term and Termination.

This Agreement is effective from the date of payment of fees and shall renew annually unless terminated by either party. Subscriber may terminate this Agreement without cause 30 days prior to renewal date.

4. License to Use of Information.

- (a) Notwithstanding anything to the contrary herein, Sheltered Harbor hereby grants to Participant, its affiliates, and those agents of Participant that (i) provide technology or security services directly related to the services and information provided by Sheltered Harbor and are (ii) responsible for acting upon Sheltered Harbor Information (“Sheltered Harbor Information”) to secure or maintain the Participant’s technology infrastructure or facilities or mitigate a specific threat, a non-exclusive, non-assignable, non-transferable, royalty-free, revocable, worldwide license to use Sheltered Harbor Information distributed to Participant under this Agreement, solely for the purpose contemplated herein. Sheltered Harbor Information includes, but is not limited to, the Sheltered Harbor Specifications.
- (b) Sheltered Harbor Information, regardless of medium, must only be given to relevant staff on a need-to-know basis and strictly in accordance with the Traffic Light Protocol (“TLP”) and the Operating Rules. Without Sheltered Harbor’s written consent, Participant shall not disseminate or provide access to, in whole or in part, any TLP: RED or TLP: AMBER Sheltered Harbor Information or the Sheltered Harbor Specifications to any person or entity, whether internal or external, who does not have a direct need to have and use the information to protect the Participant’s data, network, systems, people, or facilities.
- (c) Notwithstanding Section 4(b) of this Agreement, each party understands and agrees that the other party, pursuant to subpoena or other appropriate legal order, has authority to provide any information from the receiving party to the requesting law enforcement or government authority, including, but only to the extent so ordered, Sheltered Harbor Information. To the extent allowed by law, the receiving party will provide the disclosing party with advance notice of such disclosure to allow the disclosing party to seek an appropriate protective order or other relief to prohibit or limit such disclosure.
- (d) Participant’s license to use Sheltered Harbor Information will terminate upon termination of this Agreement.
- (e) Notwithstanding anything to the contrary herein, Participant hereby grants to Sheltered Harbor a non-exclusive, non-assignable, non-transferable, royalty-free, revocable, worldwide license to use information provided by Participant (“Participant Information”), solely for the purpose contemplated herein. All entities receiving Participant Information shall be bound to a confidentiality obligation at least as restrictive as the terms of this Agreement. Sheltered Harbor shall not identify Participant as the source of Participant Information except as provided in this Section 4. Nothing contained herein shall be deemed as granting, whether express or implied, any other license, right, title or interest in and to any Participant Information or other information provided or made available by Participant.
- (f) Sheltered Harbor’s license to use Participant Information will terminate upon termination of this Agreement.

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5. Representations and Warranties.

- (a) Participant represents, warrants and covenants that it is duly formed and existing and in good standing under the laws of the State or Country of its incorporation, if a corporation, or formation otherwise.
- (b) Sheltered Harbor represents warrants and covenants that it is a duly formed limited liability company and existing in good standing under the laws of the State of Delaware.
- (c) Participant acknowledges that implementation of the Sheltered Harbor Specifications by Participant is at the sole discretion of Participant.
- (d) Participant acknowledges that it has (alone or with the assistance of such advisors, consultants or other agents it has engaged on its behalf) the expertise, technology, resources and ability to determine whether its systems are capable of implementing the Sheltered Harbor Specifications and if its systems can securely store and restore account information in accordance with the Sheltered Harbor Specifications. Notwithstanding any implementation by Participant of the Sheltered Harbor Specifications, Participant is solely responsible for providing for the security and safety of its account information.
- (e) With respect to the Sheltered Harbor Specifications or any future Sheltered Harbor standards or processes, including any representations or warranties, Sheltered Harbor does not guarantee or make any representations or warranties, express or implied, that the Sheltered Harbor Specifications, or any future Sheltered Harbor standards or processes, will (i) prevent any cyber-attacks, breaches of its systems, network security incidents or other similar disruptions (any of the foregoing, a “Breach”), or (ii) enable Participant to securely store or restore its account information in the event of any Breach. Sheltered Harbor, its affiliates and each of their respective directors, officers, employees, consultants, agents and representatives are not responsible for any Breach or the failure of Participant’s system to securely store or restore account information, including without limitation potential liability to Participant’s customers or any reputational damage. Without limiting the foregoing, the Sheltered Harbor Specifications or any future Sheltered Harbor standards or processes are in each case provided on an “as is” basis and Sheltered Harbor makes no representations or warranties, whether express, implied or statutory, with respect thereto, including implied warranties of merchantability or fitness for a particular purpose, which are specifically disclaimed.

6. Indemnification.

- (a) Each Party shall indemnify, defend and hold harmless the other Party and its respective directors, officers, managers, employees and agents, from and against any claims, losses, damages or expenses (including reasonable attorney fees, expenses and disbursements) by third parties pertaining to the actual or alleged infringement of any intellectual property right, including, without limitation, patents, copyrights, trademarks, service marks, or misappropriation of trade secrets or any similar property rights, arising from the indemnified Party accessing, using or distributing information provided by the indemnifying Party, while in accordance with the terms and conditions of this Agreement.
- (b) In the event of any claim or suit relating to any matter for which one party has agreed to provide indemnification under this Agreement, the indemnified party shall promptly provide notice of such claim or suit to the indemnifying party. The indemnifying party shall then have the sole right

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to control the conduct of the claim or suit and the indemnified party shall reasonably cooperate in the conduct of such claim or suit at the expense of the indemnifying party; provided, however, that the indemnified party may, in its own discretion and at its own expense, participate in the defense of any claim including counsel of its own choosing but such participation shall not relieve the indemnifying party of its obligations to defend such claim. In no event, however, may there be a settlement of any such claim or suit without the written consent of the indemnified party. The indemnified party has the sole and exclusive authority to enter into any settlement that would impose an injunction or any other equitable relief on the indemnified party.

7. Limitation of Liability.

In no event shall either party be liable to the other party or to any third party for incidental, special, punitive, or consequential damages (including without limitation lost profits) arising from acts under this agreement even if such party or subscriber has been advised of the possibility of such damages. Each party's maximum liability under this agreement shall be limited to the amounts paid by Participant to the other party under this agreement.

8. Confidentiality.

Each party shall hold in strict confidence, and will not use or disclose to any third party, other than on a confidential basis to its and its affiliate's directors, officers, employees, consultants, agents, regulators and representatives with a need to know such information and who, except for regulators, are subject to obligations of confidentiality at least as stringent as those set forth herein (but in no case less than those reasonably employed to protect a company's confidential information) to effectuate the parties' mutual intent hereunder, any confidential or proprietary data or information obtained from the disclosing party, or to which the receiving party has access, including without limitation with respect to the disclosing party's business or financial condition, technical or sales information, customer lists or otherwise, except as provided for in Section 4 (collectively, the "Confidential Information"). Information generally known in the industry or otherwise publicly available at the time of disclosure, information that a party can demonstrate was lawfully in its possession prior to the date of disclosure, information which has been disclosed by third parties which have a right to do so, or information developed independently by the receiving party without reference to or use of the Confidential Information, shall not be deemed Confidential Information for purposes of this Section 8. Each party's obligations pursuant to this Section 8 shall survive the termination of this Agreement for any reason.

Each party shall have adequate and appropriate physical measures, policies and procedures to (i) ensure the security and confidentiality of the Confidential Information, (ii) protect against any anticipated threats or hazards to the security or integrity of such Confidential Information, (iii) protect against unauthorized access to or use of such Confidential Information that could result in harm or inconvenience to the disclosing party or its customers and (iv) where possible, ensure the complete, secure and permanent disposal of such Confidential Information, except Participant Information shared in accordance with Section 4, as may be directed by Participant or required by applicable law. Each party shall notify the disclosing party promptly if there is any actual or reasonably suspected (a) unauthorized or unlawful access to or disclosure of any Confidential Information, or (b) unauthorized access to any facility, computer network or system containing any Confidential Information (collectively, "Security Incidents"). Where a Security Incident has occurred, the breached party shall promptly take all steps necessary to mitigate the damages caused by the Security Incident.

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Sheltered Harbor may, in its sole discretion, provide a Participant's Primary Contact information to its Alliance Partners, a vetted and limited set of firms offering solutions and services related to Sheltered Harbor implementation.

Sheltered Harbor represents and warrants that all Participants, staff, contractors and consultants are bound by substantially similar obligations of confidentiality and restrictions regarding use of information as those set forth herein.

The parties acknowledge that improper disclosure of Confidential Information may cause irreparable injury to the disclosing party, and that remedies at law for any such breach could be inadequate. In the event of a breach or threatened breach, the disclosing party has the right to seek injunctive relief (in addition to any and all other remedies available at law or equity) without the need to post a bond or other security or demonstrate the confidential nature of its Confidential Information.

9. Assignment.

Neither party may assign this Agreement, or its rights and obligations hereunder, without the prior written consent of the other party except that either party may assign this Agreement or any rights or obligations hereunder to a parent, subsidiary or affiliate upon written notice to the other party. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

10. Rights and Remedies.

The remedies afforded to the parties in this Agreement are not intended to be exclusive, and each remedy shall be cumulative and shall be in addition to all other remedies available to the parties at law or in equity. This Agreement shall not be construed to confer any rights or remedies upon any person or entity, except Sheltered Harbor and Participant. No delay or omission by any party in exercising any rights or remedies under this Agreement or applicable law shall impair such right or remedy or be construed as a waiver of any such right or remedy.

11. Notice.

Any notice required or permitted to be given under this Agreement shall be given in writing and shall be hand delivered, sent by e-mail, sent by certified or registered mail or sent by overnight courier service to the (a) Participant as set forth in this Agreement, or at such address or e-mail address as it may have specified in writing to Sheltered Harbor, and (b) to Sheltered Harbor at the below address or at such location as Sheltered Harbor shall have specified in writing to Participant as its principal office.

Sheltered Harbor Membership
12120 Sunset Hills Road
Suite 500
Reston, Virginia 20190
membership@shelteredharbor.org

12. Governing Law; Dispute Resolution; Interpretation; Equitable Relief.

This Agreement will be interpreted and construed in accordance with the laws of the State of Delaware, without regard to its principles of conflict of law or choice of laws.

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Any unsettled controversy or claim between the parties arising out of or relating to this Agreement or any breach thereof shall be settled by binding arbitration in Washington, D.C. pursuant to the rules then in effect of the American Arbitration Association and in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement. The headings of the Sections contained in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

Each party hereto acknowledges that the remedies at law of the other parties for a breach or threatened breach of this Agreement would be inadequate and, in recognition of this fact, any party to this Agreement, without posting any bond, and in addition to all other remedies that may be available, shall be entitled to seek equitable relief in the form of specific performance, a temporary restraining order or a temporary injunction or any other equitable remedy that may then be available in any federal or state court located in the State of Delaware, in addition to any other remedy to which they are entitled at law or in equity.

13. Severability.

If any provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to amend this Agreement to preserve its intention. If the parties fail to agree on such an amendment, such invalid provision will be enforced to the maximum extent permitted by law or, if not enforceable, will be severed from the remaining terms, conditions and provisions, which will remain in full force and effect.

14. Waiver.

No failure on the part of one party to exercise, or delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy by such party preclude any other or further exercise thereof or the exercise of any other right or remedy. A waiver on one occasion shall not constitute a waiver on any further occasion.

15. Entire Agreement.

The provisions of this Agreement and all Addenda, including all documents incorporated herein by reference, constitute the entire agreement between the parties and supersede all prior agreements and understandings relating to the subject matter hereof.

16. Independent Contractors.

Nothing in this Agreement shall make Sheltered Harbor and Participant partners, joint venturers, or otherwise associated in or with the business of the other. Neither party shall be liable for any debts, accounts, obligations, or other liabilities of the other party, its agents, or employees. The parties are not authorized to incur debts or obligations of any kind, on the part of or as agent for the other except as may specifically be authorized in writing.

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ADDENDUM 1

The Participant is participating as a Participant and agrees to the Sheltered Harbor LLC Participation Agreement GENERAL TERMS AND CONDITIONS. The effective date of membership will begin upon full execution of this Agreement by both parties or on the date requested by the Participant.

Notices to Participant shall be provided at the following addresses:

Primary Contact Name: _____
Title: _____
Address: _____
City, State, ZIP: _____
Phone Number: _____
Email Address: _____

By signing this Addendum 1 of the Sheltered Harbor LLC Participation Agreement, you ("Participant") agree to become a Participant to, and to participate in, Sheltered Harbor, and you further accept and agree to the Sheltered Harbor LLC Participation Agreement General Terms and Conditions.

The cost for this subscription is \$25,000 annually, payable within 30 days of receipt of invoice. After 30 days, a late fee of 1.5% will be assessed monthly on the unpaid balance. These participation dues and late payment charges are based on the metrics and criteria as specified under Section 2.3 of the Operating Rules.

Participant Institution:	_____	Sheltered Harbor LLC	_____
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____