

# Subscription Services Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE OR CLICKING “AGREE” CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON YOUR EMPLOYER'S BEHALF.

This agreement is between SecurityGate, LLC, a Texas corporation (**SecurityGate**), and the customer agreeing to these terms (**Customer**).

1. **SOFTWARE SERVICE.** This agreement provides Customer access to and usage of an Internet based software service as specified on an Order (**Service**). Managed services and implementation services (**Additional Services**) may also be provided by SecurityGate if specified under an order or statement of work (**Order**).
2. **USE OF SERVICE.**
  - a. **Customer Owned Data.** All data uploaded by or on behalf of Customer remains the property of Customer, as between SecurityGate and Customer (**Customer Data**). Customer grants SecurityGate the right to use the Customer Data solely for purposes of performing under this agreement.
  - b. **Access and Usage.** Customer may allow its contractors and vendors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer or its vendors. Customer is responsible for the compliance with this agreement by its contractors and vendors.
  - c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify SecurityGate promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's user guide and applicable law.
  - d. **SecurityGate Support.** SecurityGate must provide customer support for the Service under the terms of SecurityGate's Customer Support Policy (**Support**) which is located at [www.securitygate.io/customer-support-policy](http://www.securitygate.io/customer-support-policy).
  - e. **7-Day Trial Version.** If Customer has registered for a trial use of a limited features version of the Service, Customer may access the limited features version of the Service for a 7-day time period (unless extended by SecurityGate in writing). The limited features version of the Service is provided AS IS, with no warranty during this time period.
  - f. **Data Security Measures.**
    - a. **Security Measures.** In order to protect Customer's Confidential Information, SecurityGate will (i) implement and maintain all reasonable security measures appropriate to the nature of the Confidential Information including without limitation, technical, physical, administrative and organizational controls, and will maintain the confidentiality, security and integrity of such Confidential Information; (ii) implement and maintain industry standard systems and procedures for detecting, preventing and responding to attacks, intrusions, or other systems failures and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designate an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Customer's Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks (collectively, **Security Measures**).
    - b. **Notice of Data Breach.** If SecurityGate knows that Customer Confidential Information has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this agreement, SecurityGate will alert Customer of any such data breach without undue delay, and immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. SecurityGate will give highest priority to immediately correcting any data breach and devote such resources as may be required to accomplish that goal. SecurityGate will provide Customer with all information necessary to enable Customer to fully understand the nature and scope of the data breach. To the extent that Customer, in its sole reasonable discretion, deems warranted Customer may provide notice to any or all parties affected by any data breach. In such case, SecurityGate will consult with Customer in a timely fashion regarding appropriate steps required to notify third parties. SecurityGate will provide Customer with information about what SecurityGate has done or plans to do to minimize any harmful effect or the unauthorized use or disclosure of, or access to, Confidential Information.
3. **SERVICE LEVEL AGREEMENT & WARRANTY.**
  - a. **Warranty.** SecurityGate warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (*excluding* maintenance outages, force majeure, and outages that result from any Customer technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.

**Availability Warranty**

**Credit**

- 99.5 - 95% =	10% of monthly fee.
- 94.99 - 90% =	25% of monthly fee.
- Less than 90% =	50% of monthly fee.

- b. **LIMITED REMEDY.** Customer's exclusive remedy and SecurityGate's sole obligation for its failure to meet the warranty in a(i) above will be for SecurityGate to provide a credit for the applicable month, as provided in the chart above (if this agreement is not renewed, then a refund), for the month; provided that Customer notifies SecurityGate of such breach within 30 days of the end of that month.
- c. **Additional Services Warranty.** For Additional Services, SecurityGate warrants that, for a period of 10 days from delivery of any deliverable set forth in an Order, it has performed such services in conformance with generally accepted practices within the software services industry and with the Order. Customer must notify SecurityGate of any breach of this warranty no later than 10 days after delivery of any deliverable. CUSTOMER'S EXCLUSIVE REMEDY AND SECURITYGATE'S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR SECURITYGATE TO RE-PERFORM ANY NON-CONFORMING PORTION OF THE ADDITIONAL SERVICES, OR IF SECURITYGATE CANNOT REMEDY THE BREACH THEN REFUND THE PORTION OF THE FEE ATTRIBUTABLE TO SUCH NON-CONFORMING PORTION OF THE DELIVERABLE. THIS WARRANTY WILL NOT APPLY TO THE EXTENT CUSTOMER, ITS CONTRACTORS OR AGENTS HAVE MODIFIED ANY DELIVERABLE.
- d. **DISCLAIMER.** SECURITYGATE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE SECURITYGATE TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, SECURITYGATE DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.
4. **PAYMENT.** Customer must pay all fees as specified on the Order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more Orders for the Service, which Orders are governed by the terms of this agreement.
5. **MUTUAL CONFIDENTIALITY.**
- a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). SecurityGate's Confidential Information includes without limitation the Service, its user interface design and layout, and pricing information.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.
6. **SECURITYGATE PROPERTY.**
- a. **License.** Subject to the other terms of this agreement, SecurityGate grants Customer a non-exclusive, non-transferable license to use any deliverables provided through Additional Services, solely for use with the Service for the term of the Service subscription, as set forth in an Order.
- b. **Reservation of Rights.** The software, workflow processes, user interface, designs, and other technologies provided by SecurityGate as part of the Service or Additional Services are the proprietary property of SecurityGate and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with SecurityGate. Customer may not remove or modify any proprietary marking or restrictive legends in the Service. SecurityGate reserves all rights unless expressly granted in this agreement.
- c. **Restrictions.** Customer *may not* (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service; or (vi) access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- d. **Anonymized Data.** During and after the term of this agreement, SecurityGate may use and owns all anonymized data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes.

7. **TERM AND TERMINATION.**

- a. **Term.** This agreement continues until all Orders have expired or are terminated for material breach under Section 7(b).
- b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c. **Effect of Termination.** Upon termination of this agreement for any reason, Customer must pay SecurityGate for any unpaid amounts, and destroy or return all property of SecurityGate. Upon SecurityGate's request, Customer will confirm in writing its compliance with this destruction or return requirement. SecurityGate will keep Customer Data for 6 months after termination, and after such period of time, SecurityGate has no obligation to maintain the Customer Data and may destroy it.
- d. **Suspension for Violations of Law.** SecurityGate may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. SecurityGate will attempt to contact Customer in advance.
- e. **Suspension for Non-Payment.** SecurityGate may temporarily suspend the Service if Customer is more than 30 days late on any payment due pursuant to an Order.

8. **LIABILITY LIMIT.**

- a. **EXCLUSION OF INDIRECT DAMAGES.** SecurityGate is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss or if the damage or loss is foreseeable.
- b. **TOTAL LIMIT ON LIABILITY.** Except for SecurityGate's indemnity obligations, SecurityGate's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 12 month period prior to the event that gave rise to the liability.
- c. **LIABILITY DISCLAIMER.** If Customer implements any or all of the results or recommendations from the Service, Customer understands that its system(s) may still be violated, and SecurityGate is not responsible or liable for any such violation or for any damages that may result from such violation.

9. **INDEMNITY.**

- a. **Defense of Third Party Claims.** SecurityGate will defend or settle any third party claim against Customer to the extent that such claim alleges that SecurityGate technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies SecurityGate of the claim in writing, cooperates with SecurityGate in the defense, and allows SecurityGate to solely control the defense or settlement of the claim. **Costs.** SecurityGate will pay infringement claim defense costs it incurs in defending Customer, and SecurityGate negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then SecurityGate may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If SecurityGate determines that none of these are reasonably available, then SecurityGate may terminate the Service and refund any prepaid and unused fees. **Exclusions.** SecurityGate has no obligation for any claim arising from: SecurityGate's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; use of Customer Data; or technology or aspects not provided by SecurityGate. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND SECURITYGATE'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. **By Customer.** If a third-party claims against SecurityGate that any part of the Customer Data violates a law or infringes or violates that party's patent, copyright or other right, Customer will defend SecurityGate against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that SecurityGate: promptly notifies Customer in writing of the claim; and allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

10. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Harris County, Texas, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

11. **OTHER TERMS.**

- a. **Entire Agreement and Changes.** This agreement and the Order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it. No waiver is effective unless the party waiving the right signs a waiver in writing.

- b. **No Assignment.** Neither party may assign or transfer this agreement or an Order to a third party, except that this agreement with all Orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
- d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.
- e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- f. **No Additional Terms.** SecurityGate rejects additional or conflicting terms of any Customer form-purchasing document.
- g. **Order of Precedence.** If there is an inconsistency between this agreement and an Order, the Order prevails.
- h. **Survival of Terms.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
- i. **Feedback.** If Customer provides feedback or suggestions about the Service, then SecurityGate (and those it allows to use its technology) may use such information without obligation to Customer.