

# SUBSCRIPTION SERVICES AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE, CLICKING AGREE OR OTHER FORM OF ASSENT, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER OR A THIRD PARTY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON THEIR BEHALF.

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

## 1. SOFTWARE SERVICE.

This agreement provides Customer and its Affiliates (defined below) access to and usage of an Internet-based software service, including, without limitation, its features, functions, user interface, and underlying software, as specified on an order (**Service**). Implementation services (**Implementation Services**) may also be provided by SecurityGate if specified under an order (**Order**).

## 2. USE OF SERVICE

- a. **Customer Owned Data.** All data uploaded by or on behalf of Customer, or its client, to the Service 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. During the term of this agreement, Customer may export its Customer Data as allowed by functionality within the Service.
- b. **Affiliates and Contractors, and Clients.** Customer, including its Affiliates, may enter into orders with SecurityGate and its Affiliates. An Affiliate entering into an order agrees to be bound by this agreement as if it were an original party hereto. If Customer or Affiliate has purchased a subscription to the Service for its own internal use under an order, Customer may allow its Affiliates and contractors to use the Service, provided Customer is responsible for their compliance with the terms of this agreement, and use by its Affiliates and contractors is solely for Customer's or Affiliate's benefit. If Customer or an Affiliate has purchased a service provider subscription to the Service under an order, Customer or Affiliate and their clients may use the Service, provided Customer is responsible for their compliance with the terms of this agreement, and use by Customer, Affiliates or clients is solely for clients' benefit. **Affiliate** means any company controlled by or under common control with the subject entity, directly or indirectly, with an ownership interest of at least 50%.
- c. **Customer Responsibilities.** Customer: (i) must keep its passwords secure and confidential and use industry-standard password management practices; (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; (iv) may use the Service only in accordance with the Service's user guide and applicable law; and (v) if Customer has purchased a service provider subscription to the Service under and order, Customer must obtain proper authorization from clients to provide client data to SecurityGate.
- 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 <https://www.securitygate.io/support-terms>.

## 3. SERVICE LEVEL AGREEMENT AND WARRANTY.

- a. **Availability Warranty.** SecurityGate warrants to Customer that: SecurityGate will maintain the availability of the Service as provided in the chart below (excluding maintenance outages, outages beyond SecurityGate's reasonable control, and outages that result from any Customer technology issues).
  - i. **Credit for Availability Warranty.**

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

Less than 90% = 50% of monthly fee.

ii. **CUSTOMER'S EXCLUSIVE REMEDY AND SECURITYGATE'S SOLE OBLIGATION FOR ITS FAILURE TO MEET THIS WARRANTY 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.**

- b. **Warranty.** SecurityGate warrants to Customer that: (i) SecurityGate will not materially decrease the overall security of the Service; (ii) the Service will perform materially in accordance with its technical documentation; and (iii) SecurityGate will not materially decrease the overall functionality of the Service or the scope of Support. **For any breach of this warranty, Customer's exclusive remedies are those described in the "Mutual Termination for Material Breach" and "Effect of Termination" sections set forth in this agreement.**
- c. **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.

**Fees and Payment.** Customer must pay all fees as specified on the order, but if not specified, then within 30 days of receipt of an invoice. The fees are exclusive of sales, use, withholding, VAT and other similar taxes, and Customer is responsible for payment of such taxes at the rate and in the manner for the time being prescribed by law. If SecurityGate has the legal obligation to pay or collect taxes for which Customer is responsible under this section, SecurityGate will invoice Customer and Customer will pay that amount unless Customer provides SecurityGate with a valid tax exemption certificate authorized by the appropriate taxing authority. 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, and pricing information. Customer's Confidential Information includes, without limitation, the Customer Data.
- b. **Protection of Confidential Information.** Recipient must use the same degree of care that it uses to protect the confidentiality of its<sup>SEP</sup> own confidential information of like kind (but not less than reasonable care) to: (i) not use any Confidential Information of Discloser for any purpose outside the scope of this agreement; and (ii) limit access to Confidential Information of Discloser to those of its and its Affiliates' employees<sup>SEP</sup> and contractors who need that access for purposes consistent with this agreement and who have signed confidentiality<sup>SEP</sup> agreements with Recipient containing protections not materially less protective of the Confidential Information than<sup>SEP</sup> those in 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 before 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) is independently developed by the Recipient without use of 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.
- d. **Data Security Measures.**
- i. *Security Measures.* SecurityGate: (i) implements and maintains reasonable security measures appropriate to the nature of the Confidential Information including, without limitation, technical, physical, administrative, and

organizational controls, designed to maintain the confidentiality, security, and integrity of Customer's Confidential Information; (ii) implements and maintains industry standard systems and procedures for detecting, preventing, and responding to attacks, intrusions, or other systems failures and regularly tests, or otherwise monitors the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designates an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identifies 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 assesses the sufficiency of safeguards in place to control these risks (collectively, **Security Measures**).

ii. *Notice of Data Breach.* If SecurityGate becomes aware that Customer Data was accessed or disclosed in breach of this agreement, SecurityGate will so notify Customer without undue delay, immediately act to eliminate the breach and preserve forensic evidence, and provide available information to Customer regarding the nature and scope of the breach.

## 6. PROPERTY.

- a. **Reservation of Rights.** SecurityGate and its licensors are the sole owners of the Service and Software and Documentation, including all associated intellectual property rights, and they remain only with SecurityGate. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation. SecurityGate reserves all rights that are not expressly granted in this agreement.
- b. **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 unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit infringing 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 the Software and Documentation, except as allowed by applicable law despite this limitation; or (vi) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function, or graphic for competitive purposes. SecurityGate may suspend Service to Customer if SecurityGate believes in good faith that Customer's use of the Service poses an imminent threat to the security, availability or legality of the Service; in such event, SecurityGate will work with Customer to address the issue and restore Service as quickly as possible.
- c. **Software and Documentation.** All software provided by SecurityGate as part of the Service, and the Service documentation, sample data, marketing materials, training materials, and other materials provided through the Service or by SecurityGate (**Software and Documentation**) are licensed to Customer as follows: SecurityGate grants Customer a non-exclusive, non-transferable license during the term of this agreement, to use and copy such Software in accordance with the Documentation, solely in connection with the Service.
- d. **API.** SecurityGate provides access to its application-programming interface (API) as part of the Service for no additional fee. Subject to the other terms of this agreement, SecurityGate grants Customer a non-exclusive, nontransferable, terminable license to interact only with the Service as allowed by the API, and as follows:
- Customer may not use the API in a manner--as reasonably determined by SecurityGate--that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with any part of the API. If any of these occur, SecurityGate may suspend or terminate Customer's access to the API on a temporary or permanent basis.
  - SecurityGate may change or remove existing endpoints or fields in API results upon at least 30 days notice to Customer, but SecurityGate will use commercially reasonable efforts to support the previous version of the API for at least 6 months. SecurityGate may add new endpoints or fields in API results without prior notice to Customer.
  - The API is provided on an AS IS basis. SecurityGate has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.
- e. **Statistical Information.** SecurityGate may compile statistical information related to the performance of the Service and may make such information publicly available, provided that such information does not identify Customer Data, and there is no means to re-identify Customer Data. SecurityGate retains all intellectual property rights in such information.

## 7. TERM AND TERMINATION.

- a. **Term.** This agreement continues until the 30th day after all orders have expired, unless earlier terminated as provided below.

- b. **Term of Orders.** The term of each order must be specified in the order.
- c. **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.
- d. **Return of Customer Data.**
  - i. *Within 60 days after termination*, upon request SecurityGate will make the Service available for Customer to export Customer Data as provided in **Section 2(a)**.
  - ii. *After such 60-day period*, SecurityGate has no obligation to maintain the Customer Data and may destroy it.
- e. **Effect of Termination.** If this agreement is terminated for SecurityGate's breach, SecurityGate will refund Customer fees prepaid for the remainder of the term of all orders after the termination effective date. If this agreement is terminated for Customer's breach, Customer will pay any unpaid fees for the term of all orders. Upon request, following any termination of this agreement, each party will destroy or return all of the other party's property that it holds, subject to the "Return of Customer Data" section above.

## 8. LIABILITY LIMIT.

- a. **EXCLUSION OF INDIRECT DAMAGES. TO THE MAXIMUM EXTENT ALLOWED BY LAW, 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 OR FORESEEABILITY OF SUCH DAMAGE OR LOSS.**
- b. **TOTAL LIMIT ON LIABILITY. TO THE MAXIMUM EXTENT ALLOWED BY LAW, 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. INDEMNIFICATION FOR THIRD-PARTY CLAIMS.

- a. 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 infringes 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 indemnify and hold harmless Customer from any infringement claim defense costs it incurs in defending Customer under this indemnity, SecurityGate-negotiated settlement amounts agreed to by SecurityGate, 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; 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.**
- b. If a third party claims against SecurityGate that: (i) any part of the Customer Data violates a law or infringes or violates that party's patent, copyright, or other right, or (ii) Customer incorrectly or unauthorizedly uploads, modifies or deletes any of its clients' data in the Service, Customer will defend SecurityGate against that claim at Customer's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Customer, provided that SecurityGate promptly notifies Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim.

## 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 or waiver of any term of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by SecurityGate.
- b. **No Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all a party's businesses, assets, not involving a competitor of the other party, or at any time to an Affiliate.
- c. **Export Compliance.** The Service, Software and Documentation, and Confidential Information may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Neither party will permit its personnel or representatives to access any Service in a U.S.-embargoed country or in violation of any applicable export law or regulation.
- d. **Independent Contractors.** The parties are independent contractors with respect to each other.
- e. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.
- f. **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 of this agreement.
- g. **No Additional Terms.** SecurityGate rejects additional or conflicting terms of a Customer's form-purchasing document.
- h. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- i. **Survival of Terms.** All provisions of this agreement regarding payment, confidentiality, indemnification, limitations of liability, proprietary rights and such other provisions that by fair implication require performance beyond the term of this agreement must survive expiration or termination of this agreement until fully performed or otherwise are inapplicable. The UN Convention on Contracts for the International Sale of Goods does not apply.
- j. **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.