

SOFTWARE LICENSE AGREEMENT

This agreement is between SecurityGate, Inc., a Delaware corporation (**SecurityGate**), and the Customer agreeing to these terms (**Customer**), and it is effective as of the date of the last signature below.

1. SCOPE.

This agreement describes the licensing of the SecurityGate software, which includes: (i) all workflow processes, the user interface, designs, and other technologies provided by SecurityGate as part of the software, (ii) all modifications and enhancements made to the software, and (iii) all technical documentation and license keys provided to Customer with the software (collectively, the "**Software**"). Consulting services (**Consulting Services**) may also be provided by SecurityGate if specified under an order. This agreement contemplates one or more orders for the Software, which orders are governed by the terms of this agreement.

2. LICENSE GRANT AND RESTRICTIONS.

- a. **License Grant.** Subject to the other terms of this agreement, SecurityGate grants Customer a non-exclusive, non-transferable license, up to the license capacity purchased under an order, to use the Software only in Customer's internal business operations.
- b. **Affiliates and Contractors.** Customer may allow its Affiliates and contractors to use the Software solely on behalf of Customer, provided that Customer is responsible for its Affiliates' and contractors' compliance with the terms of this agreement. **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. **Restrictions.** Customer *may not*: (i) transfer, assign, sublicense, or rent the Software, or use it as a service bureau or a service provider on behalf of third parties; (ii) reverse engineer, decompile, disassemble, translate, or create derivative works of the Software; (iii) evaluate the Software for the purpose of competing with SecurityGate; or (iv) operate the Software other than in accordance with its technical documentation.
- d. **Reservation of Rights.** The Software is the proprietary property of SecurityGate and its licensors, and all right, title, and interest in and to the Software, including all associated intellectual property rights, remain only with SecurityGate and its licensors. The Software is protected by applicable copyright and other intellectual property laws. Customer may not remove any product identification, copyright, trademark, or other notice from the Software. SecurityGate reserves all rights in the Software unless expressly granted in this agreement.

3. SUPPORT.

Support. SecurityGate's annual technical support and maintenance services (**Support**) are provided under SecurityGate's Support policies then in effect, which policies are detailed at www.securitygate.io/support-terms. Support is included with the Software license as one subscription.

4. WARRANTY, REMEDY, AND DISCLAIMER.

- a. **Software Warranty.** For new license purchases, SecurityGate warrants that the Software will perform in substantial accordance with its technical documentation for a period of 90 days from the date of the initial order. This warranty will not apply to any problems caused by software not licensed to Customer by SecurityGate, use of the Software other than in accordance with the technical documentation, or misuse of the Software. SecurityGate's obligations in the section are conditioned upon Customer providing SecurityGate's written notice of the covered claim during the warranty period.
 - i. **EXCLUSIVE REMEDY AND SOLE LIABILITY. SECURITYGATE WILL USE COMMERCIALY REASONABLE EFFORTS TO EITHER: (I) REMEDY COVERED WARRANTY CLAIMS WITHIN A REASONABLE PERIOD OF TIME, (II) REPLACE THE SOFTWARE, OR IF NEITHER OF THESE IS COMMERCIALY REASONABLE, IT WILL REFUND TO CUSTOMER THE LICENSE FEE PAID FOR THE SOFTWARE. THIS REMEDY IS CUSTOMER'S**

EXCLUSIVE REMEDY AND SECURITYGATE'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS.

- b. **Consulting Services Warranty.** SecurityGate warrants that it will perform the Consulting Services in a skilled and competent manner, and in accordance with the applicable statement of work (**SOW**), for a period of 90 days after delivery of the Consulting Services under the SOW. SecurityGate's obligations in the section are conditioned upon Customer providing SecurityGate's written notice of the covered claim during the warranty period.
 - i. **LIMITED REMEDY. SECURITYGATE WILL USE COMMERCIALY REASONABLE EFFORTS TO EITHER: (I) REMEDY COVERED WARRANTY CLAIMS WITHIN A REASONABLE PERIOD OF TIME, (II) REPLACE THE NON-CONFORMING SERVICES, OR IF NEITHER OF THESE IS COMMERCIALY REASONABLE, IT WILL REFUND TO CUSTOMER THE FEE PAID FOR THE NON-CONFORMING SERVICES. THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY AND SECURITYGATE'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS.**
- c. **DISCLAIMER. SECURITYGATE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS THAT THE SOFTWARE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.**

5. PAYMENT.

Customer must pay all fees within 30 days of receipt of an invoice, unless otherwise set forth in an order. All 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 prescribed by applicable law.

6. 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 Software, and pricing information.
- b. **Protection of Confidential Information.** Recipient agrees that it will use the Confidential Information solely for purposes of performing its obligations under this agreement, and that it will use the same degree of effort that it uses to protect its own Confidential Information (which must at least be a reasonable effort) to not disclose any Confidential Information to any third party; except that, Recipient may disclose Discloser's Confidential Information to a contractor who: (i) has a need to know Discloser's Confidential Information in order to perform hereunder, and (ii) has written obligations of confidentiality in place with Recipient at least as stringent as those in this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is known by Recipient or becomes known to the public other than as a result of a violation of this agreement by Recipient; (ii) is rightfully received from a third party without breach of any obligation owed to Discloser; or (iii) is independently developed by the Recipient without use of or access to Discloser's Confidential Information. Recipient may disclose Discloser's Confidential Information to the extent required by applicable law or court order, but it must attempt to promptly notify Discloser in advance of this disclosure to allow Discloser the opportunity to seek judicial protection against such disclosure.

7. TERM AND TERMINATION.

- a. **Term.** This agreement continues until all orders expire, unless earlier terminated as provided below.

- b. **Term of Orders.** Unless otherwise stated in an order, (i) orders and all subscriptions under them will automatically renew for additional periods equal in length to the prior subscription term, unless a party notifies the other of non-renewal 30 or more days before the renewal date, (ii) an automatically renewing order will remain unchanged from the prior term except for any per-unit price increase, of which SecurityGate has notified Customer 60 or more days before the renewal date, and (iii) upon automatic renewal, such per-unit price increase will not be more than the annual increase in the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index, unless the prior order's pricing was clearly designated in the order as promotional or one-time.
- c. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party will provide written notice of the breach, and the other may terminate this agreement 30 days from the date of the written notice, if the breach has not been cured during this 30 day period.
- d. **Effect of Termination.** Upon termination of this agreement or a license for any reason, Customer must discontinue using the Software, and de-install, destroy or return the Software and all copies thereof within 5 days of the agreement termination date. Upon SecurityGate's request, Customer will confirm in writing its compliance with this destruction or return requirement.

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.**

9. INDEMNIFICATION FOR THIRD-PARTY CLAIMS.

SecurityGate will defend or settle any third-party claim against Customer to the extent that such claim alleges that the Software 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 by SecurityGate, and court-awarded damages. **Process.** If such a claim appears likely, then SecurityGate may modify the Software, 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 Software and refund (as applicable) any prepaid and unused term license fees, service fees, or the license fee for perpetual licenses (amortized over a 5-year period from the date of the order). **Exclusions.** SecurityGate has no obligation for any claim arising from: SecurityGate's compliance with Customer's specifications; a combination of the Software with other technology or aspects where the infringement would not occur but for the combination; or technology or aspects not provided by SecurityGate. **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND SECURITYGATE'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.**

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.** 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. If any term of this agreement is invalid or unenforceable, the other terms remain in effect. The UN Convention on Contracts for the International Sale of Goods does not apply to this agreement.
- b. **No Assignment.** Neither party may assign or transfer this agreement to a third party, 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 or assets, not involving a competitor of the other party, or at any time to an Affiliate.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other, and neither party is an agent, employee, or partner of the other party or the other party's Affiliates.
- d. **Force Majeure.** Neither party is liable for its non-performance due to events beyond its reasonable control, including but not limited to natural weather events and disasters, labor disruptions, and disruptions in the supply of utilities.
- 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 of this agreement.
- f. **No Additional Terms.** SecurityGate rejects additional or conflicting terms of Customer's form-purchasing document (such as a purchase order).
- g. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- h. **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.
- i. **Compliance Audit.** No more than once in any 12-month period and upon at least 30 days' advance notice, SecurityGate (or its representative) may audit Customer's usage of the Software at any Customer facility, and Customer agrees to cooperate with such audit. Customer agrees to pay any fees applicable to Customer's use of the Software in excess of its license within 30 days of written notification by SecurityGate to Customer of the audit findings.
- j. **Export Compliance.** The Software 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 Software in a U.S.-embargoed country or in violation of any applicable export law or regulation.
- k. **U.S. Government Restricted Rights.** If Customer is a United States government agency or acquired the license to the Software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1), and DFAR §252.227-7014(a)(5), or otherwise, all Software provided in connection with this agreement are "commercial items," "commercial computer software," or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR

§12.212, any use, modification, reproduction, release, performance, display, disclosure, or distribution by or for the United States government is governed solely by the terms of this agreement and is prohibited except to the extent permitted by the terms of this agreement.

- l. **Open Source Software Licenses.** The Software may contain embedded open source software components which are provided as part of the Software and for which additional terms may be included in the technical documentation.
- m. **Feedback.** If Customer provides feedback or suggestions about the Software, then SecurityGate may use such information without obligation to Customer.

_____ (Customer)	SecurityGate, Inc.
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
Address:	Address: