

StreamGuard Security Partner Program Terms & Conditions

Updated: August 29, 2019

THESE TERMS AND CONDITIONS GOVERN OUR SECURITY PARTNER RELATIONSHIP AND THE EXECUTED SECURITY PARTNER PROGRAM AGREEMENT BY WHICH THESE TERMS AND CONDITIONS ARE INCORPORATED.

BY EXECUTING A SECURITY PARTNER PROGRAM AGREEMENT ("SPPA") THAT REFERENCES THIS AGREEMENT, YOU ARE ACCEPTING THIS AGREEMENT; YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services, Products, or Marketing materials if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on the date listed at the top of this Agreement. It is effective between You and Us as of the execution date of Your SPPA.

1. Business Related Activities. To the extent indicated on Exhibit A of the SPPA, the parties agree to use commercially reasonable efforts to engage in the Business Related activities described on Exhibit A of the SPPA.

2. [Trademarks:] Reservation of Rights.

2.1 Materials. To the extent indicated on Exhibit B of the SPPA, each party will provide the other party with electronic files containing the trademarks, logos, marketing materials, and trade names of such party to be used under this Agreement, as specified in Exhibit B of the SPPA, if any (the "Marks").

2.2 License from StreamGuard to Company. Subject to the terms and conditions of this Agreement, StreamGuard hereby grants to Company a worldwide, non-exclusive, non-assignable, non-sublicensable, royalty-free, paid up, limited license to use and display StreamGuard's Marks solely as necessary to perform Company's obligations under this Agreement and as specifically described on Exhibit A of the SPPA.

2.3 License from Company to StreamGuard. Subject to the terms and conditions of this Agreement, Company hereby grants to StreamGuard a worldwide, non-exclusive, non-assignable, non-sublicensable, royalty-free, paid up, limited license to use and display Company's Marks solely as necessary to perform StreamGuard's obligations under this Agreement and as specifically described on Exhibit A of the SPPA.

2.4 Trademark Guidelines. In its use of the Marks of the other party ("Licensor"), each party ("Licensee") will comply with any trademark Brand Usage Guidelines and Specific Usage Guidelines that Licensor may communicate to Licensee from time to time and are initially laid out in the SPPA. Each use of Licensor's Marks by Licensee will be accompanied by the appropriate trademark symbol (either "TM" or "®") and a legend specifying that such Marks are trademarks of Licensor as specified on Exhibit B of the SPPA, and will be in accordance with Licensor's then-current trademark usage policies as provided in writing to Licensee from time to time. Licensee will provide Licensor with copies of any materials bearing any of Licensor's Marks as requested by Licensor from time to time. If Licensee's use of any of Licensor's Marks, or if any material bearing such Marks, does not comply with the then-current trademark usage policies provided in writing by Licensor, Licensee will promptly remedy such deficiencies upon receipt of written notice of such deficiencies from Licensor. Other than the express licenses granted herein with respect to each Licensor's Marks, nothing herein will grant to Licensee any other right, title or interest in Licensor's Marks. All goodwill resulting from Licensee's use of Licensor's Marks will inure solely to Licensor. Licensee will not, at any time during or after this Agreement, register, attempt to register, claim any interest in, contest the use of, or otherwise adversely affect the validity of any of Licensor's Marks (including, without limitation, any act or assistance to any act, which may infringe or lead to the infringement of any such Marks).]

2.5 Reservation of Rights. The parties acknowledge and agree that, except for the rights and licenses expressly granted by each party to the other party under this Agreement, each party will retain all right, title and interest in and to its intellectual property, products, services, Marks, and all content, information and other materials on its website(s), and nothing contained in this Agreement will be construed as conferring upon such party, by implication, operation of law or otherwise, any other license or other right.

3. Warranties; Limitation of Liability.

3.1 Warranties. Each party represents and warrants to the other that (a) it has the full power to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, and (c) this Agreement does not contravene, violate or conflict with any other agreement of such party.

3.2 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, ANY WARRANTIES ARISING OUT OF A COURSE OF PERFORMANCE, DEALING OR TRADE USAGE, AND THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION.

3.3 Limitation of Liability. [EXCEPT FOR THE PARTIES' OBLIGATIONS PURSUANT TO SECTION 5,] NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

4. No Agency; No Disparagement. Notwithstanding anything in this Agreement, neither party will make any claims, representations or warranties on behalf of the other party or bind the other party, and neither party is authorized to do so by this Agreement. The relationship between the parties will be that of independent contractors. Nothing contained herein will be construed to imply a joint venture, principal or agent relationship, or other joint relationship, and neither party will have the right, power or authority to bind or create any obligation, express or implied, on behalf of the other party. **During the term of this Agreement, each party shall not make any public statements disparaging the other party, the other party's [Marks], products or services.**

5. Indemnification. Except as expressly set forth in this Section 5, neither party shall have any obligations to indemnify the other party.

5.1 By Company. Company agrees to indemnify and hold harmless StreamGuard from and against any and all claims, damages, liabilities, losses, judgments, costs, and attorneys' fees arising directly out of, or relating to: (a) Company's gross negligence or willful misconduct in engaging in the marketing and promotional activities described in Section 1 hereof, **and (b) any statements made by Company during the term of this Agreement disparaging the Marks, products or services of Company, whether or not such statements are true, provided that occasional inadvertent breaches of this clause (b) by Company shall not be deemed a material breach of this Agreement.** Notwithstanding the foregoing, StreamGuard shall have the right, in its absolute discretion and at its sole cost, to employ attorneys of its own choice and to institute or defend any claim for which StreamGuard has a right to be indemnified.

5.2 By StreamGuard. StreamGuard agrees to indemnify and hold harmless Company from and against any and all claims, damages, liabilities, losses, judgments, costs, and attorneys' fees arising directly out of, or relating to: (a) StreamGuard's gross negligence or willful misconduct in engaging in the marketing and promotional activities described in Section 1 hereof, **and (b) any statements made by StreamGuard during the term of this Agreement disparaging the Marks, products or services of Company, whether or not such statements are true, provided that occasional inadvertent breaches of this clause (b) by StreamGuard shall not be deemed a material breach of this Agreement.** Notwithstanding the foregoing, Company shall have the right, in its absolute discretion and at its sole cost, to employ attorneys of its own choice and to institute or defend any claim for which Company has a right to be indemnified.

6. Term and Termination.

6.1 Term. This Agreement will be in effect for a one (1) year term commencing on the Effective Date unless earlier terminated pursuant to this Section 6. **If not earlier terminated, this Agreement will renew automatically for additional one (1) year terms unless either party delivers to the other party written notice of its intention not to renew at least thirty (30) days prior to the end of the initial or any renewal term.**

6.2 Termination. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.

6.3 Survival. Sections 2.5, 3.2, 3.3, 4, 5, 6.3, and 7 will survive any expiration or termination of this Agreement. Notwithstanding the foregoing, the expiration or termination of this Agreement will not relieve the parties of any liability or obligation that accrued prior to such expiration or termination. **Upon the expiration or termination of this Agreement, each party will cease the display and use of the Marks of the other party as described on Exhibit A and shall not use or display the Marks of the other party except as permitted by applicable law.**

7. Confidentiality

7.1 Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally 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. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Service Offering Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party

prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2 Use of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Service Offering Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, We may disclose the terms of this Agreement and any applicable Services Offering Form to a subcontractor or Non-StreamGuard Application Provider to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.

7.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

8. General.

8.1 Governing Law; Venue. This Agreement is to be construed in accordance with and governed by the internal laws of the State of Delaware without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Delaware to the rights and duties of the parties. Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in Miami-Dade County, Florida in connection with any claim, action, suit, or proceeding relating to this Agreement and agrees that all suits or proceedings relating to this Agreement shall be brought only in such courts, provided that either party may seek injunctive, equitable or similar relief from any court of competent jurisdiction.

8.2 Waiver; Severability. No waiver of a party's rights shall be effective unless such waiver is in writing signed by the waiving party. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, illegal, against public policy or is otherwise unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

8.3 Assignment. StreamGuard shall have the right to assign this Agreement and/or these Terms and Conditions to an affiliate, related party or entity with which StreamGuard engages in any form of business combination, provided that StreamGuard provides the other party prior written notice of such assignment .

8.4 Notices. Any notice required or permitted to be given by either party under this Agreement shall be in writing and sent to each party at its address or facsimile number set forth in the first paragraph of this Agreement, or such new address or facsimile number as may from time to time be supplied by the parties hereto in accordance with this Section 8.4.

8.5 Captions; Entire Agreement; Amendment. The captions or headings of the Sections of this Agreement are for reference only and are not to be construed in any way as part of this Agreement. This Agreement constitutes the complete understanding and agreement of the parties and supersedes all prior and contemporaneous negotiations, understandings and agreements with respect to the subject matter of this Agreement. Any modification or amendment of any provision of this Agreement will be effective only if in writing and signed by an authorized representative of both parties.

8.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which together shall constitute one instrument.

8.7 Compliance With Applicable Law. Both parties agree to comply with the requirements of all applicable laws, rules and regulations in carrying the purposes of this Agreement. In addition, both parties will comply with all laws, rules and regulations when non-compliance would adversely affect the ability of the other party to perform its obligations hereunder or otherwise affect such other party's business interests.
