



# Terms of Service

Last Updated: April 19, 2022

When you use GoalSpan, these are the terms of service.

YOUR USE OF THE PROPRIETARY GOALSPAN SERVICE OFFERED AT GOALSPAN.COM (THE "SERVICE"), IS SUBJECT TO THESE TERMS OF SERVICE. IN ORDER TO USE THE SERVICE, YOU MUST AGREE TO BE BOUND BY THESE TERMS OF SERVICE ("AGREEMENT") WITH GOALSPAN, INC. ("GOALSPAN"). IF YOU DO NOT AGREE TO ALL TERMS OF THIS AGREEMENT, YOU MAY NOT USE THE SERVICE.

This Agreement governs your use of the Service however accessed, including via an Internet browser, smartphone, tablet, or other mobile device.

If you sign up for the Service on behalf of a Client, you represent that you are duly authorized to represent the entity and accept the terms of this Agreement on behalf of such entity, and any references to "you" in this Agreement refer to such entity and all its employees, consultants, and agents. You are responsible for all activity on the Service that occurs under your account.

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## Term and Termination

1.1 This Agreement will remain in effect until all your subscriptions activated in accordance with this Agreement have expired or this Agreement is terminated by you or GoalSpan (the "Term"). Any free trial or other promotion that provides access to the Service must be used within the specified time of the trial. At the end of the trial period, your use of that Service will expire, and any further use of the Service is prohibited unless you pay the applicable subscription fee.

1.2 Subscriptions purchased by you commence on the start date as specified in the effective date of your Service Agreement and continue for the subscription term specified in that Agreement. Subscriptions automatically renew, as described in Section 4.1.

1.3 You are solely responsible for the proper cancellation of your subscription. You may cancel your subscription per the terms of your Service Agreement by emailing [billing@goalspan.com](mailto:billing@goalspan.com) or calling 1-800-350-9574.

1.4 GoalSpan may terminate this Agreement at any time in the event you materially breach this Agreement and do not cure such breach within 30 days of GoalSpan providing you with written notice (including notice by email). However, in the case of your nonpayment (including in the event when your credit card cannot be charged), GoalSpan may suspend your access to the Service upon any such nonpayment and may terminate this Agreement, if such breach is not remedied within 30 days of notice

by GoalSpan to you. Notwithstanding the foregoing, GoalSpan may immediately suspend or terminate your access to the Service without liability if you are in violation of Sections 3.1, 3.5 or 12 of this Agreement, as determined by GoalSpan in its sole discretion. GoalSpan may also downgrade, suspend or terminate your access to the Service without liability, after providing you with 30 days' advance written notice, if (a) you fail to affirmatively agree to material modifications of this Agreement pursuant to Section 2.1 below, or (b) you do not log in to or otherwise use the Service for a period of 180 days or more if you have a paid account and for a period of 60 days or more if you have a free account. Notice via email by GoalSpan to you will be sent to the email address you have provided to us.

1.5 In the event your subscription is terminated, other than in instances where it is terminated by GoalSpan for your nonpayment or violation of Sections 3.1 or 12, you will continue to have the ability to download the information provided, inputted, or uploaded to the Service by you or on your behalf ("Data") for 30 days after the effective date of expiration or termination. After such 30-day period or if your subscription is terminated due to your nonpayment or violation of Section 3.1, GoalSpan shall have no obligation to maintain any Data and shall thereafter, unless legally prohibited to do so, delete all of your Data contained in GoalSpan's systems or otherwise in its possession or under its control.

## **Modification of Service or this Agreement**

2.1 The Service may be made available in free or paid versions at different levels. Not all features and functionality of the Service may be available in each version or level. GoalSpan reserves the right, in its sole discretion, to modify, add, or remove portions and/or functionality of the Service on a temporary or permanent basis, without liability to you or any third party.

2.2 GoalSpan may modify, add, or remove portions of this Agreement at any time. In the event GoalSpan determines it is necessary to make a material modification to this Agreement, you will be notified of such change and asked to affirmatively agree to such modified Agreement. Note, however, that your use of the Service after modifications to the Agreement become effective constitutes your binding acceptance of such changes. You may review the most current version of this Agreement at: <https://www.goalspan.com/Terms-of-use.php>.

2.3 If you are dissatisfied with the terms of this Agreement or any modifications to this Agreement or the Service, you agree that your sole and exclusive remedy is to terminate this Agreement and discontinue any use of the Service.

## **Usage Rights; Restrictions; Support**

3.1 During the Term, GoalSpan grants you a limited, non-transferable, non-sublicensable, non-exclusive right to access and use the hosted software products and related documentation included in the Service and all modifications and/or enhancements to any of the foregoing ("Software") via a web browser or other device owned or controlled by you for your internal business use. Nothing in this Agreement obligates GoalSpan to deliver or make available any copies of computer programs or code from the Software to you, whether in object code or source code form. You agree to use the Service only in compliance with all applicable local, state, national, and international laws, rules and regulations

("Applicable Law"). You shall not, and shall not agree to, and shall not authorize, encourage or permit any third party to:

- 3.1.1. Use the Service to upload, transmit or otherwise distribute any content that is unlawful, defamatory, harassing, abusive, fraudulent, obscene, threatening, abusive, hateful, contains viruses, or is otherwise objectionable as reasonably determined by GoalSpan;
- 3.1.2. Use the Service for any fraudulent or inappropriate purpose;
- 3.1.3. Attempt to decipher, decompile, delete, alter or reverse engineer any of the Software;
- 3.1.4. Duplicate, make derivative works of, reproduce or exploit any part of the Service without the express written permission of GoalSpan;
- 3.1.5. Use any robot, spider, other automated device, or manual process to monitor or copy any content from the Service other than copying or exporting of the Data as contemplated in the documentation; or
- 3.1.6. Rent, lease, distribute, or resell the Software, or access or use the Software or Services for developing a competitive solution (or contract with a third party to do so), or remove or alter any of the logos, trademark, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Software or displayed in connection with the Service.

3.2 GoalSpan shall: (i) provide you with basic support in connection with your use of the Service at no additional charge, (ii) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for: (a) planned downtime (which GoalSpan shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 4:00 a.m. Monday Pacific Time), or (b) any unavailability caused by circumstances beyond GoalSpan's reasonable control, including acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Service only in accordance with Applicable Law.

3.3 GoalSpan shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the Service, and the security of your Data. GoalSpan shall not (a) disclose your Data except as compelled by Applicable Law or as you expressly authorize in writing, or (b) access your Data except to provide the Service and prevent or address service or technical problems, or at your express request in connection with customer support matters. In the event we are compelled by Applicable Law to disclose your Data, we will provide you with notice thereof, (in advance, if possible) if permitted by Applicable Law.

3.4 You are solely responsible for your Data, and all uses of your Data that occur through your account.

3.5 If you integrate with GoalSpan using our API, you must use efficient programming, which will not cause too many requests to be made in too short a period, as-determined solely by GoalSpan. GoalSpan reserves the right to throttle your API connections, or suspend or terminate your GoalSpan account.

## **Payment Terms**

4.1 Your subscription to the Service renews automatically for the Grant term defined in your Software as a Service Agreement. The Grant begins on the Effective Date (the “Initial Term”), and will be automatically renewed for successive terms (each, a “Renewal Term”; and each Initial Term and Renewal Term being, a “Term”) unless terminated by either party by written notice to the other no more than sixty (60) days and no less than thirty (30) days prior to the expiration of the applicable Term.

4.2 Annual subscription pricing requires a minimum term commitment as defined in your Software as a Service Agreement.

4.3 All fees are exclusive of all taxes or duties imposed by governing authorities. Other than sales taxes which GoalSpan may be required to collect from you and remit to appropriate taxing authorities, you alone are responsible for payment of all such taxes or duties.

4.4 GoalSpan may at any time, upon notice of at least 30 days, or a longer period if required by Applicable Law, change the price of your subscription or any part thereof, or institute new charges or fees. Price changes and institution of new charges implemented during your annual subscription period will come into effect for any subsequent annual subscription periods and to all new subscribers after the effective date of the change. If you do not agree to any such price changes, then you must cancel your subscription and stop using the Service prior to the commencement of the renewal subscription period for which the price change applies.

## **Intellectual Property Rights**

5.1 As between the parties, GoalSpan owns and shall retain all right, title and interest in and to (a) the Software and the Service, including all intellectual property rights, and (b) transactional and performance data related to your use of the Service. GoalSpan may collect, use and disclose all such transactional and performance data for its business purposes (including software use optimization and product marketing) provided that such use does not reveal your identity, any of your confidential information or any personally identifiable information that belongs to you or your employees.

5.2 You retain all right, title and ownership interest in and to your Data. GoalSpan has no right, title or interest in any personally identifiable information contained in or related to your Data.

5.3 You have no obligation to give GoalSpan any suggestions, enhancement requests, recommendations, comments or other feedback (“Feedback”) relating to the Service. To the extent you provide any Feedback to GoalSpan, GoalSpan may use and include any such Feedback to improve the Service or for any other purpose. Accordingly, if you provide Feedback, you agree that GoalSpan shall own all such Feedback and GoalSpan and its affiliates, licensees, clients, partners, third-party providers and other authorized entities may freely use, reproduce, license, distribute, and otherwise commercialize the Feedback in the Service or other related technologies, and you hereby assign, irrevocably, exclusively and on a royalty-free basis, all such Feedback to GoalSpan.

5.4 From time to time during the Term, GoalSpan may develop, author or prepare custom documents, designs, computer programs, computer documentation and other tangible materials (“Deliverables”), in

each case pursuant to a statement of work executed by you and GoalSpan. GoalSpan shall own and retain all right, title and interest in and to such Deliverables and hereby grants to you a limited, non-transferable, non-sublicensable, non-exclusive license for you to use such Deliverables for your internal use during the Term. GoalSpan may reuse any Deliverables, provided that such use does not reveal your identity or your confidential information.

## **Publicity**

6.1 Unless otherwise agreed to by you and GoalSpan, during the Term, GoalSpan may disclose your name as a customer of GoalSpan and/or subscriber of the Service, and you hereby grant GoalSpan the right to display your name, company, and logo in GoalSpan's marketing materials and on GoalSpan's public website, in each case in accordance with any branding guidelines you may provide to GoalSpan.

## **User Content**

7.1 Certain features of the Site may enable users to submit, upload, post, share, or display (hereinafter, "post") comments or content, as well as to interact with others through user comment areas, message boards, direct messages, GoalSpan's blog, and similar user-to-user areas, as applicable (such comments and content shall be collectively referred to as "User Content"). User Content includes any comments or reviews you provide to GoalSpan about the Service, but excludes all Data.

7.2 You hereby grant to GoalSpan an irrevocable, perpetual, non-exclusive, transferable, sublicensable, royalty-free, worldwide right and license to use, reproduce, display, perform, distribute, and prepare derivative works of any User Content you post on or through the Service for any purpose and in all forms and all media, whether now known or that become known in the future, and you waive any and all claims that you may have now or may hereafter have in any jurisdiction to any moral rights and all rights of "droit moral" in your User Content. If you post User Content, you represent and warrant to GoalSpan that you own or control all rights in and to such User Content and have the right to grant the rights above to GoalSpan.

## **Warranties and Limitation of Liability**

8.1 GoalSpan represents, warrants, and covenants as follows: (a) the Service will perform substantially in accordance with the technical requirements documents that are generally provided by GoalSpan in connection with the Service ("Documentation"); and (b) any professional services performed for you by GoalSpan will be performed in a professional and workmanlike manner, with the degree of skill and care that is required by sound professional procedures and practices.

8.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, GOALSPAN HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICE, SOFTWARE, DOCUMENTATION, DELIVERABLES AND OTHER MATERIALS AND/OR SERVICES. GOALSPAN DOES NOT WARRANT THAT OPERATION OF THE SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED.

8.3 EXCEPT FOR (I) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (II) A PARTY'S VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (III) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, OR (IV) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT, AND (B) THE AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER WITH RESPECT TO THIS AGREEMENT IS LIMITED, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, TO THE FEES COLLECTED BY GOALSPAN FROM YOU PURSUANT TO THIS AGREEMENT IN THE SIX MONTHS PRECEDING THE EVENT FROM WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATIONS APPLY EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

## **Security Breach.**

9.1 External Breach: In the event of a security breach, as defined by Applicable Law, by anyone other than your employee, contractor or agent, upon discovery of such breach, GoalSpan will: (a) initiate remedial actions that are in compliance with Applicable Law and consistent with industry standards; and (b) notify you of the security breach, its nature and scope, the remedial actions GoalSpan will undertake, and the timeline within which GoalSpan expects to remedy the breach.

9.2 Internal Breach: In the event of a security breach, as defined by Applicable Law, by your employee, contractor or agent, you shall have sole responsibility for initiating remedial actions and shall notify GoalSpan immediately of the breach and steps you will take to remedy the breach.

## **Indemnification**

10.1 You agree to indemnify, defend and hold harmless GoalSpan, and its affiliates, officers, agents, and employees from and against any costs, damages, expenses (including reasonable attorneys' fees), judgments, losses and other liabilities (including amounts paid in settlement) ("Liabilities") incurred as a result of any third-party action, claim, demand, proceeding or suit ("Claim") to the extent arising from or in connection with your use of the Software and/or Service in violation of this Agreement.

10.2 GoalSpan agrees to indemnify, defend and hold harmless you, and your affiliates, officers, agents, and employees from and against any Liabilities incurred as a result of any third-party Claim to the extent arising from or connected with an allegation that your use of the Software and/or Service in accordance with this Agreement infringes the intellectual property rights of a third party. Notwithstanding the foregoing, in no event shall GoalSpan have any obligations or liability arising from: (a) use of the Software and/or Service in a modified form or in combination with materials or software not furnished by GoalSpan, and (b) any User Content, information or Data provided by you, your end users, or other third parties.

10.3 A party seeking indemnification hereunder shall (a) promptly notify the other party in writing of the Claim, (b) give the indemnifying party sole control of the defense of such Claim and all negotiations for the compromise or settlement thereof (provided that if any settlement requires any action or admission by the indemnified party, then the settlement will require the indemnified party's prior consent), and (c)

provide the indemnified party with all reasonable cooperation, information and assistance in connection with such Claim; provided, however, that failure by the indemnified party to provide prompt notice of a Claim, grant such sole control, and/or provide such cooperation, information and assistance, shall not relieve the indemnifying party of its obligations under this Article 10, except to the extent that the indemnifying party is materially prejudiced by such failure. The indemnified party may be represented by its own counsel, at its own expense.

## **Governing Law**

11.1 This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California, without reference to conflict of laws principles. Any legal action or proceeding with respect to this Agreement must be brought in the courts of the State of California, and or the courts of the United States District Court for the Northern District of California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

## **Compliance with Laws; Disclaimers**

12.1 Each Party shall comply with all Applicable Law in connection with its own activities under this Agreement. The Service can be configured and used in ways that do not comply with Applicable Laws and it is your sole responsibility to monitor your employees' use and your use of the Service to ensure that such use complies with and is in accordance with Applicable Law. In no event shall GoalSpan be responsible or liable for your failure to comply with Applicable Law in connection with your use of the Service.

12.2 GoalSpan does not provide its customers with legal advice regarding compliance, data privacy or other relevant Applicable Law in the jurisdictions in which you use the Service, and any statements made by GoalSpan to you shall not constitute legal advice.

12.3 You acknowledge that GoalSpan exercises no control over your specific human resource practices implemented using the Service or your decisions as to employment, promotion, advancement, termination, notification, or compensation of any employee or authorized user of the Service. You further agree and acknowledge that GoalSpan does not have a direct relationship with your employees and that you are responsible for all contact, questions, Data updates and collection, with your employees. In addition, you are responsible for the privacy (including adopting and posting your own privacy policies governing your treatment of your employees' Data), collection, use, retention and processing of your employees' Data, and providing any and all notices and information to your employees regarding the foregoing, in compliance with all Applicable Laws. GoalSpan hereby disclaims all liability arising from your decisions and from harmful data or code uploaded to the Service by you and/or your employees, contractors or agents.

12.4 You agree that you will not, directly or indirectly, ship, transfer, transmit, export or re-export, or knowingly permit any of the foregoing with respect to the Service or Software, or any technical information about the Service or Software, to any country for which the United States Export Administration Act, any regulation thereunder, or any similar United States law or regulation, requires

an export license or other United States Government approval, unless the appropriate export license or approval has been obtained.

12.5 You represent and warrant that (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties.

## **General Provisions**

13.1 Entire Agreement. This Agreement encompasses the entire agreement between you and GoalSpan with respect to the subject matter hereof and supersedes all prior representations, agreements and understandings, written or oral. No purchase order or other form submitted by you will modify, supersede, add to or in any way vary the terms of this Agreement.

13.2 Modification. This Agreement may only be altered, amended, or modified by a written or electronic instrument executed by both parties.

13.3 No Waiver. The failure of GoalSpan to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.

13.4 Severability. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall be interpreted so as to reasonably effectuate the intention of the parties, and shall not affect the validity and enforceability of any remaining provisions.

13.5 Survival. The provisions of this Agreement that should, by their nature survive termination and/or expiration, shall and do survive such termination and/or expiration.

13.6 Assignment. You may not assign or otherwise transfer any of your rights or obligations under this Agreement without GoalSpan’s prior written consent, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns. Any assignment in violation of the foregoing will be null and void.

13.7 No Legal Advice; Reliance. No part of this Agreement is intended or shall be construed as legal advice. GoalSpan shall not be liable for an errors or omissions in the content of this Agreement or for any actions taken in reliance thereon.

## **Contact Information**

14.1 If you have any questions about the Service or this Agreement, you may call us at 800-350-9574, email us at [support@goalspan.com](mailto:support@goalspan.com)

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