Axis Security Master SAAS Agreement

IMPORTANT - READ THE FOLLOWING MASTER SAAS AGREEMENT (THIS "**AGREEMENT**") CAREFULY BEFORE INSTALLING THE SOFTWARE. BY INSTALLING, ACCESSING OR USING THE SAAS SERVICES (DEFINED BELOW), YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE OR INSTALL THE SOFTWARE.

THIS AGREEMENT CONSTITUTES THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN YOU, OR THE COMPANY ON WHOSE BEHALF YOUR ARE INSTALLING THE SOFTWARE, ("**YOU**") AND AXIS SECURITY INC. ("**AXIS SECURITY**"), WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION RELATING TO THE SUBJECT MATTER HEREOF.

YOU HEREBY WAIVE ANY RIGHTS OR REQUIREMENTS UNDER ANY LAWS OR REGULATIONS IN ANY JURISDICTION WHICH REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW. YOU ASSUME ALL RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND THE SAAS SERVICES TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE AND THE SAAS SERVICES.

1 DEFINITIONS

All capitalized terms shall have the meaning ascribed to them, including the following:

Affiliate. Any entity which now or in the future controls, is controlled by, or is under common control with the signatory to this Agreement, with "control" defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract, or otherwise. With respect to Customer, an Affiliate may not be a competitor of Axis Security. For each Order signed by or on behalf of an Affiliate, "Customer", "Axis Security" and "party" (each as applicable) as used herein shall mean for all purposes the Affiliate identified therein.

Axis Security Intellectual Property. All Intellectual Property Rights in the SaaS Services, Software, Documentation, Hosted Environment and all other Confidential Information provided by Axis Security hereunder.

Confidential Information. Any non-public information, technical data, or know-how, including, without limitation, that which relates to: **(i)** research, product plans, products, pricing, services, customers, personnel, markets, software, software code, software documentation, developments, inventions, lists, trade secrets, data compilations, processes, designs, drawings, engineering, hardware configuration information, marketing or finances, which is designated in writing to be confidential or proprietary at the time of disclosure if provided in tangible form, or if provided in non-tangible form, shall be identified by the disclosing party at the time of disclosure as confidential or proprietary, or which, given the nature of such information, a reasonable person would consider such information to be confidential or proprietary, **(ii)** with respect to Axis Security, information concerning the SaaS Services, Hosted Environment, Documentation and any Software provided hereunder and/or materials resulting from Professional Services, and any derivatives thereto, **(iii)** with respect to Customer, any Customer Data, and **(iv)** the terms and conditions of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how that is: **(a)** in the public domain or becomes available to the public and not as a result of the act or omission of the receiving party; **(b)** without restriction on disclosure, rightfully obtained by the receiving party from a third party; **(c)** without restriction on disclosure, is lawfully in the possession of the receiving party at the time of disclosure; or **(d)** is approved for release by written authorization of the disclosing party.

Customer Data. All data either provided by Customer or entered on its behalf through use of the SaaS Services, or generated by the SaaS Services on behalf of Customer.

Customer Environment. The computing environment separately procured, prepared and maintained by Customer for the access, integration and use of the SaaS Services, as further specified in Section 7.2.

Documentation. Axis Security's documentation describing the specifications and use of the SaaS Services and any Software provided.

Error. A failure of the SaaS Service to substantially conform to the Documentation.

Error Correction. Revisions, modifications, alterations, and additions to the SaaS Services, installed by Axis Security in the Hosted Environment as bug fixes or workarounds to resolve Errors.

Fees. The Professional Service Fees, SaaS Access Fees and/or other fees as specified in this Agreement or in an Order.

Hosted Environment. Axis Security or its third party's technical environment required to operate and provide access to the relevant SaaS Services, as further specified in Section 5.2.

Intellectual Property Rights. Any and all tangible and intangible rights, title and interest in and to: **(i)** works of authorship, including but not limited to copyrights, neighbouring rights, moral rights, and mask works, and all derivative works thereof, **(ii)** trademarks and trade names, **(iii)** Confidential Information, trade secrets and know-how, **(iv)** patents, designs, algorithms and other industrial property, **(v)** all other intellectual and industrial property rights whether arising by operation of law, contract, license, or otherwise, and **(vi)** all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force.

Order. The details of an order by Customer provided by or through Axis Security **(i)** on an order form or schedule provided by Axis Security and signed by Customer, or **(ii)** on Customer's purchase order provided to and accepted in writing by Axis Security, or (iii) purchased via AWS Marketplace.

Personnel. With respect to Customer, each Customer employee or independent contractor (not a competitor of Axis Security) under obligations of confidentiality and nondisclosure which Customer authorizes to use the SaaS Services purchased and/or the SaaS Access Rights procured hereunder; and with respect to Axis Security, each Axis Security employee or subcontractor under obligations of confidentiality and nondisclosure which performs on behalf of Axis Security hereunder.

Professional Services. Consulting, training, and/or other services, if any, provided to Customer hereunder, as described in a particular Order.

Professional Service Fees. In US Dollars, the fees identified at the time of and on each Order on a fixed fee or time and material basis for Professional Services to be performed.

SaaS Access Fees. In US Dollars, the fees due to Axis Security, as further specified in the Order, for use of the SaaS Services to the extent of the SaaS Access Rights.

SaaS Access Rights. The type and quantity of SaaS access rights granted to Customer for use during the applicable Subscription Term.

SaaS Services. The online services offered by Axis Security as more fully described in the Documentation, and all SaaS Access Rights, each as specified on an Order.

Service Levels. The service level commitments from Axis Security with respect to the maintenance and support of the Hosted Environment and SaaS Services, which can be provided to Customer upon request.

Software. Computer application programs (including, if applicable, any Updates and other developments provided to Customer hereunder) in object code form developed and owned by Axis Security or its licensor(s) and licensed hereunder.

Subscription Term. The subscription term for which Axis Security has contractually agreed to provide Customer with access to the SaaS Services in accordance with an Order.

Updates. Periodic improvements or additions to the SaaS Services, including Error Corrections and other changes to the SaaS Services, that may be provided hereunder, but excluding any new feature or substantial additional functionality available for the SaaS Service, which, in Axis Security's sole discretion, is subject to additional fees.

2 ACCESS RIGHTS.

2.1   Access Use Rights. During the applicable Subscription Term, and solely for Customer's internal business use, Axis Security grants to Customer a non-exclusive, non-transferable, non-assignable, personal right to use the SaaS Services specified in an Order through internet access, up to the extent of the SaaS Access Rights specified in that Order. With respect to the Documentation applicable to the SaaS Services, Customer may make a reasonable number of copies of the Documentation solely as needed for Customer's internal business purposes.

2.2   Restrictions. Customer acknowledges and agrees that the use rights provided hereunder do not grant any rights not explicitly expressed. All other such rights and interests in Axis Security Intellectual Property (including any derivatives thereto) are expressly reserved, owned by and remain vested in Axis Security and, to the extent applicable, its third party vendor(s), and except for the limited use rights granted hereunder, Customer shall not assert any right, title, or interest in or to any Axis Security Intellectual Property, or portion thereof. Without limiting the foregoing, Customer acknowledges and agrees that no rights or any other interests are provided to Customer with respect to: **(i)** rights in or to the Hosted Environment or SaaS Services beyond those rights specified in Orders, **(ii)** rights to provide access or use of the Hosted Environment and SaaS Services to any other party, including, without limitation, any uses in the nature of a service bureau or application services provider, **(iii)** rights to obtain possession of a copy of any component of the Hosted Environment or any software used to provide or perform the SaaS Services, or **(iv)** representations, warranties or other third party beneficiary rights from any Axis Security third party vendor.

3   TERM. This Agreement shall continue in effect for the Subscription Term unless earlier terminated as provided in <u>Section 14</u>. Axis Security will provide Customer with access to the SaaS Services for the applicable Subscription Term. Each Subscription Term upon expiration shall automatically renew for additional annual terms at Axis Security's then current rates, unless either party provides the other with no less than sixty (60) days prior written notice of its intent to not renew.

4   ORDERS.

4.1   Order Submittal. Customer and its Affiliate(s) may submit Orders to Axis Security, which may be sent via mail, telefax, email attachment, electronic procurement systems, and other means as the parties may decide from time to time. Each Order provided by Customer to Axis Security must reference the name and Effective Date of this Agreement, and contain information required by Axis Security, including, without limitation, as applicable: **(i)** the Axis Security quote number, **(ii)** the SaaS Services and quantity and types of SaaS Access Rights, **(iii)** any Professional Services to be provided, **(iv)** the billing address, **(v)** Customer contact names and phone numbers, and **(vi)** all applicable Fees. Customer and an Affiliate who submits an Order shall both be bound by this Agreement in relation to that Order and shall be jointly and severally liable to Axis Security for any breach of this Agreement by an Affiliate. Customer shall provide any Affiliate who submits an Order hereunder with a copy of this Agreement (although failure to provide such copy shall not limit or in any way affect Customer's or its Affiliate's obligations or liability hereunder).

4.2   Order Acceptance. All Orders are subject to Axis Security's acceptance, and to the terms and conditions of this Agreement. For each Order in accordance with this <u>Section</u>, Axis Security shall acknowledge acceptance of the Order by issuing an invoice in accordance with <u>Section 9</u>. Notwithstanding the foregoing, Axis Security shall have no obligation to deliver any SaaS Services, SaaS Access Rights, and shall otherwise have the right to withhold performance under this Agreement, if Customer is in arrears on any payments rightfully due to Axis Security or is otherwise in breach of this Agreement.

5   AXIS SECURITY RESPONSIBILITIES.

5.1   Procedures and Technical Protocols. Axis Security will specify to Customer procedures according to which Customer may establish and obtain access to and use the features and functions of the SaaS Services, including, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent any of the foregoing may be necessary for Customer to obtain access to the SaaS Service via the Internet.

5.2   SaaS Services. Axis Security will bear responsibility, at its own cost and expense, for the procurement, preparation, hosting, operation and maintenance of all facilities, telecommunication services, and all other technical requirements (the "**Hosted Environment**") necessary to provide access to and use of the SaaS Services; provided that Customer will be responsible for procuring and/or operating computer systems, software and telecommunications services meeting such minimum technical requirements

(the "**Customer Environment**") as Axis Security may specify in the Documentation to access the Hosted Environment.

5.3   Installation and Integration Services. With respect to any access to the Hosted Environment and use of the SaaS Services requiring integration and other services by and between Customer's systems and the Hosted Environment, to the extent specified on an Order, Axis Security agrees to deliver any Professional Services in accordance with <u>Section 8</u>.

5.4   Support. As part of the SaaS Services, Axis Security shall, either directly, or through its applicable third party vendor(s), provide support for the Hosted Environment and SaaS Services in accordance with the terms and conditions of this <u>Section 5</u>.

5.5   Support and Updates. In addition to establishing and maintaining the Hosted Environment, Axis Security shall maintain the components of the Hosted Environment with all current Updates that Axis Security deems necessary for the SaaS Services. Axis Security shall use commercially reasonable efforts to implement any required Error Corrections. Access to the SaaS Services and maintenance of the Hosted Environment shall be in accordance with the Service Level, and Customer shall, in accordance with the terms of the Service Level, have access to support through Axis Security's standard telephone, email and web support services.

5.6   Backup and Recovery of Data. As a part of the SaaS Services, Axis Security shall maintain a backup of all Customer Data that Axis Security is required to retain as a part of the SaaS Services, as described in a particular Order. In the event the Customer Data becomes corrupt, Axis Security shall use commercially reasonable efforts to remediate and recover such corrupt data from any backup that has been agreed upon in a particular Order/

5.7   Security. Axis Security shall, either directly, or through its third party service provider, implement and maintain commercially reasonable security precautions to prevent unauthorized access to the Customer Data that is retained within the Hosted Environment.

6   CUSTOMER DATA. Axis Security acknowledges it receives no ownership or, except to the extent specified herein, other rights in any Customer Data, and all rights, title and interest in such Customer Data remain with Customer. Axis Security shall not, and shall not permit its third party vendor(s) to disclose Customer Data to any third party, or make any use of the Customer Data, unless authorized by the Customer or if Axis Security is required to do so by law or court order. Axis Security may access Customer Data from time to time solely for purposes of support, administration and invoicing related to Customer's use of the SaaS Services, and to aggregate information regarding Customer Data for planning purposes. Customer agrees that Customer is solely responsible for: **(a)** obtaining any Customer Data and other information Customer provides while using the SaaS Services, **(b)** obtaining all rights necessary to use the Customer Data, and **(c)** the accuracy, completeness, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data. By providing any Customer Data or other information, Customer agrees that it will not, and represents and warrants that such information does not **(i)** violate any intellectual property rights, publicity rights, confidentiality or trade secret rights, or any other legal or equitable rights; **(ii)** violate any law, rule, order, judgment or regulation to which Customer or the Customer Data may be subject; and **(iii)** violate in any way Customer's obligations in <u>Section 7</u>.2 below. Customer acknowledges and agrees that Axis Security is not responsible or liable for any unlawful, harassing, defamatory, privacy invasive, abusive, threatening, offensive, harmful, vulgar, obscene, tortuous, hateful, racially, ethnically or otherwise objectionable information, or content, or information or content that infringes or may infringe any copyright, patent, moral right, trade secret, confidential information, trademark right or any other right of a third party. Axis Security may remove any violating content posted on the SaaS Services or transmitted through the SaaS Services, without notice to Customer.

7   CUSTOMER RESPONSIBILITIES.

7.1   Passwords. All access codes and passwords are personal to the individual to which it is issued. Customer and its Personnel are responsible for maintaining the confidentiality and security of all access codes and passwords issued, and ensuring that each access code and password is only used by the individual authorized. To the extent Axis Security assigned Customer with administrative rights to create access codes and passwords for its Personnel, Customer shall be responsible for issuing such passwords.

7.2   Use of SaaS Services. Customer shall be solely responsible for the actions of its Personnel while using the SaaS Services and the contents of its transmissions through the SaaS Services (including, without limitation, Customer Data), and any resulting charges. Customer agrees: **(i)** to abide by all local, state, national, and international laws and regulations applicable to Customer's use of the SaaS Services, including without limitation all laws and

administrative regulations (including, all U.S. and applicable foreign) relating to the control of exports of commodities and technical and/or personal data; **(ii)** not to upload or distribute in any way files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Hosted Environment, SaaS Services or another's computer; **(iii)** not to use the SaaS Services for illegal purposes; **(iv)** not to interfere or disrupt networks connected to the Hosted Environment or SaaS Services; **(v)** not to post, promote or transmit through the SaaS Services any unlawful, defamatory, privacy invasive, tortuous or otherwise objectionable information or content of any kind or nature; **(vi)** not to transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; **(vii)** not to interfere with another customer's use and enjoyment of the SaaS Services or another entity's use and enjoyment of similar services; **(viii)** not to engage in contests, chain letters or post or transmit "junk mail," "spam," or unsolicited mass distribution of email through or in any way using the SaaS Services; and **(ix)** to comply with all regulations, policies and procedures of networks through which Customer connects to, or uses in connection with the SaaS Services.

7.3   SaaS Services Restrictions. Except as otherwise specified in this Agreement, expressly permitted in writing by Axis Security, or otherwise cannot be precluded under mandatory applicable law, Customer shall not, and shall not permit any other party to:

a.   Disassemble, decompile, decrypt, or reverse engineer, or in any way attempt to discover or reproduce source code for, any part of the SaaS Services; adapt, modify, or prepare derivative works based on any of the Axis Security Intellectual Property; or use any of the Axis Security Intellectual Property to create any computer program or other material that performs, replicates, or utilizes the same or substantially similar functions as the SaaS Service;

b.   Alter, remove, or suppress any copyright, confidentiality, or other proprietary notices, marks or any legends placed on, embedded or otherwise appearing in or on any Axis Security Intellectual Property; or fail to ensure that all such notices and legends appear on all full or partial copies of Axis Security Intellectual Property or any related material;

c.   Sell, sublicense, lease, assign, delegate, transfer, distribute, encumber or otherwise transform any Axis Security Intellectual Property or any of the rights or obligations granted to or imposed on Customer hereunder.

8   PROFESSIONAL SERVICES.

8.1   Services. Any Professional Services provided hereunder are subject to Customer's performance of its obligations herein, and in accordance with a mutually agreeable implementation plan. Customer shall provide all necessary information, access, workspace, computing resources, and other services and support materials as reasonably required by Axis Security to perform its duties in a timely manner, including, without limitation, establishing the Customer Environment. Any development (other than Updates) will only be by written agreement. Axis Security shall at all times own all Intellectual Property Rights in and to any such development, and such development shall become part of the SaaS Services for the purposes of this Agreement. All Professional Services provided on a time and material basis are per person unless otherwise specified, and charged hourly or daily as indicated for each person.

5.2   Scheduling Services. Customer shall request scheduling for Services ordered hereunder with reasonable notice. Axis Security shall use reasonable efforts to meet the requested time schedule; provided, all scheduling is dependent upon the allocation and availability of resources. In the event Customer reschedules or cancels scheduled Services, Axis Security may, to the extent Axis Security cannot reschedule its applicable resources, charge to Customer a rescheduling or cancellation fee.

9   FEES AND PAYMENTS.

9.1   Fees and Expenses. Axis Security shall invoice Customer one hundred percent (100%) of the Fees for the initial Subscription Term, and any fixed fee Professional Service Fees applicable to such Order, upon Axis Security's receipt and acceptance of the Order annually in advance or monthly instalments. Axis Security may invoice Customer for each renewal Subscription Term prior to such renewal, and for all other fees, assessments and expenses provided for under this Agreement as performed and/or incurred. Customer shall pay all Fees and other amounts due to Axis Security hereunder within thirty (30) days after the date of receipt of Axis Security's invoice and without deductions, except with respect to any amount disputed in good faith where prior notice is provided to Axis Security detailing the amount and reason for the dispute. The parties will immediately negotiate in good faith

to resolve any dispute. Except as expressly provided in this Agreement, all fees are non-cancellable and non-refundable and without right of set off.

9.2   Late Payment; Non-Payment; Collections. Time is of the essence in all payment terms. Axis Security reserves the right, in its discretion, to suspend or terminate the Services, or any portion thereof, for non-payment of undisputed Fees. Customer shall reimburse Axis Security for all costs of collection, including reasonable attorneys' fees.   This Section is without prejudice to any other rights and remedies available to Axis Security under this Agreement or at law.

9.3   Taxes, Assessments and Other Charges. All amounts due to Axis Security hereunder are net amounts, exclusive of, and Customer is responsible for paying, all duties, sales, use or value added taxes, customs duties, GST, tariffs, or other similar taxes, assessments, or excises, however designated or levied, (except for taxes on Axis Security's net income), whether payable directly by or indirectly through Axis Security in compliance with applicable law, and except as specified in Section 11.1, no reduction, deduction or off-set may be made by Customer for any reason whatsoever. Customer is also responsible for all shipping and handling charges for each shipment hereunder.

9.4   Accurate Records; Audit. Customer shall keep complete and accurate records of all its obligations hereunder. Customer shall allow Axis Security or its agent reasonable access to audit Customer's records and systems solely to verify general compliance with the terms and conditions of this Agreement; provided Axis Security shall conduct such audits during Customer's normal business hours with reasonable notice, or as otherwise reasonably requested by Customer.

10   WARRANTIES; DISCLAIMER.

10.1   Limited Performance Warranty. Axis Security warrants to Customer that during any Subscription Term, the SaaS Services will be accessible by Customer, and the SaaS Services will perform substantially in accordance with the Documentation. Customer's exclusive remedy under this Section shall be for Axis Security to use commercially reasonable efforts to correct any Errors; provided, in the event Axis Security is unable to correct that nonconformity, Customer shall have the right to terminate the remaining Subscription Term and receive a pro rata refund of any remaining prepaid SaaS Access Fees applicable to those SaaS Services.

10.2   Disclaimer of Warranties. THE LIMITED WARRANTY AND EXCLUSIVE REMEDY SET FORTH IN SECTION 10.1 ARE MADE FOR THE BENEFIT OF CUSTOMER ONLY, AND ARE EXPRESSLY SUBJECT TO CUSTOMER'S PAYMENT OBLIGATIONS TO AXIS SECURITY AND CUSTOMER'S OBLIGATIONS TO MAINTAIN ITS CUSTOMER ENVIRONMENT. AXIS SECURITY MAKES NO AND EXCLUDES ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS AND OTHER TERMS, WRITTEN OR ORAL, OR EXPRESS, IMPLIED, STATUTORY, COLLATERAL OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, INTEROPERABILITY, DATA ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY PRODUCT, SERVICES, SUPPORT, OR ANY COMPONENTS THEREOF. WITHOUT LIMITING THE FOREGOING, AXIS SECURITY DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SAAS SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE.

11   LIMITATION OF LIABILITY AND CONFIDENTIALITY.

11.1   Exclusion and Limitation of Liability.

IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUE, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS.

11.2   Non-Excluded Liability. NOTHING IN SECTION 11.1 SHALL EXCLUDE OR LIMIT LIABILITY FOR: (I) A PARTY'S INDEMNIFICATION OBLIGATION IN SECTION 13, (II) PERSONAL INJURY OR DEATH CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (III)

CONFIDENTIALITY, (IV) FRAUD, OR (V) CUSTOMER'S BREACH OF THE LICENSE RESITRCTIONS.

12   CONFIDENTIALITY.   The unauthorized disclosure or use of Confidential Information of a disclosing party or of a disclosing party's third party licensors, and all information and services related thereto, would cause great injury and harm to the owner thereof. Therefore, each party agrees to take all appropriate action to ensure the confidentiality and security of the other party's Confidential Information, but in any event no less than the same standard of care it uses to protect its own Confidential Information of like kind and value. Without limiting the generality of the foregoing, Customer and Axis Security each agree that it: **(i)** shall maintain the other's Confidential Information in the strictest confidence, including compliance with reasonable remote access security requirements; **(ii)** shall not disclose, display, publish, transmit, or otherwise make available such Confidential Information or take the benefit thereof, in whole or in part, except in confidence to its own Personnel on a need-to-know basis; and **(iii)** except as expressly permitted hereunder, shall not copy, duplicate, replicate, transform, or reproduce such Confidential Information. Notwithstanding anything to the contrary in this Section, neither party shall be liable to the other for damages resulting from disclosure of any Confidential Information required by law, regulation or valid court order; provided prior written notice is provided to the other party sufficiently in advance of such required disclosure to allow the other party to respond and take reasonable and lawful action to avoid and/or minimize the degree of such disclosure or seek appropriate protective orders.

13   INDEMNIFICATION.

13.1   Axis Security Indemnity. Axis Security, at its sole expense, shall defend, indemnify and hold harmless Customer from any action based upon a claim that the SaaS Service used as permitted infringes any valid third-party U.S. patent, copyright, trade secret, or other proprietary right, and shall reimburse Customer for all damages, costs, and expenses (including reasonable attorneys' fees) awarded against Customer pursuant to any such actions. If the SaaS Service becomes, or in Axis Security's opinion is likely to become, subject of such a claim of infringement, Axis Security shall be entitled, at Axis Security's sole option, to either procure the right for Customer to continue to use the SaaS Service, or replace or modify it so that it becomes non-infringing. If neither of the foregoing is commercially and reasonably available to Axis Security, Axis Security may terminate the SaaS Service and refund to Customer a pro rata refund of any remaining prepaid SaaS Access Fees applicable to those SaaS Services. Axis Security shall have no obligation or liability hereunder for any claim resulting from: **(i)** modification of the SaaS Service **(a)** by any party other than Axis Security, or **(b)** by Axis Security in accordance with Customer's designs, specifications, or instructions; **(ii)** use of the SaaS Service other than as granted in this Agreement; or **(iii)** use of the SaaS Service in conjunction with other products or services not provided by Axis Security or necessary for the operation of the SaaS Service, where such infringement would not have occurred but for such use; or **(iv)** use of a version of the SaaS Service other than the then-current version where Customer has requested the prior version remain in use.

13.2   Customer Indemnity. Customer, at its sole expense, shall defend, indemnify and hold harmless Axis Security from any action based upon a claim resulting from any breach of Sections 6, 7 or 9.2 by Customer, its Affiliates or Personnel of either, and shall reimburse Axis Security for all damages, costs, and expenses (including reasonable attorneys' fees) awarded against Axis Security pursuant to any such actions.

13.3   Conditions. Each party's indemnification obligations hereunder are contingent upon the indemnified party providing the indemnifying party with prompt written notice of the claim; complete control of the defence of and the right to settle such claim; and all available information, assistance, authority, and cooperation to enable the defence or settlement of such claim. This Section sets forth the exclusive remedy of the indemnified party against the indemnifying party, and the complete liability of indemnifying party with respect to any action or claim indemnified hereunder.

14   TERMINATION.

14.1   Service Suspension. In the event Customer **(i)** fails to pay Axis Security any amounts past due, or **(ii)** is in breach of Section 9.2, Axis Security shall have the right to immediately suspend without notice any or all related SaaS Services provided to Customer hereunder.

14.2   Agreement Termination. This Agreement may be terminated as follows:

a.   By Axis Security immediately if Customer breaches Sections 7.2 or 7.3; or

b.   By either party for material breach hereof which has not been cured within thirty (30) days after written notice of such breach; or

c.   By either party at any time if the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy or insolvency.

14.3   Effects of Termination.

a.   Termination of Agreement. Upon termination of this Agreement, and except to the extent specified herein, **(i)** all fees due to Axis Security for the current Subscription Term and any other amounts due Axis Security shall be immediately paid, and **(ii)** all Customer rights to access and use any of the SaaS Services and SaaS Access Rights shall immediately terminate without right of refund.

b.   Customer Data. Upon termination of this Agreement for any reason other than Customer's breach, Customer may request that Axis Security conduct a mass export of Customer Data. Subject to Customer paying Axis Security for all Professional Service Fees applicable to such work, Axis Security agrees to provide such Professional Services at its then current rates. Notwithstanding the foregoing, after thirty (30) days from termination, Axis Security may delete and destroy all Customer Data without notice or liability to Customer.

c.   Survival. Subject to the other provisions of this Section14.3, Provisions herein which by their context and content are intended to survive termination or expiration hereof shall so survive, including Sections 2.2, 7, 9, 10, 11, 12, 14.3, 15, and 16.

15   GOVERNING LAW; DISPUTE RESOLUTION.

15.1   Governing Law. The laws of the State of New York apply to this Agreement to the exclusion of any other law. The parties submit to the exclusive jurisdiction of the courts of the State of New York. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties. Furthermore, the Parties hereby waive their right to a jury.

15.2   Remedies. Customer acknowledges that each provision providing for ownership and/or protection of Axis Security Intellectual Property is material to this Agreement, and that any threatened or actual breach thereof shall constitute immediate, irreparable harm to Axis Security. If Customer breaches or threatens to breach any such provision, and in addition to any other remedies it may have, Axis Security shall be entitled, without the requirement to post bond or other security, to seek injunctive, equitable, or other equivalent relief against such breach directly from any court of competent jurisdiction.

16   GENERAL PROVISIONS.

16.1   Consent. Wherever in this Agreement consensus, approval, acceptance, or other consent is required, such consent shall not be unreasonably withheld, conditioned, or delayed; however, it shall not be considered unreasonable for Axis Security to withhold its consent if such consent could jeopardize the confidentiality of or Axis Security's property interests in and to Axis Security Intellectual Property or other business interests of Axis Security.

16.2   Assignment. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned, or otherwise transferred, in whole or in part, by Customer, and any such attempted assignment shall be void and of no effect without the advance written consent of Axis Security. Notwithstanding the foregoing, **(a)** such consent shall not be required if Customer assigns this Agreement to an Affiliate or in connection with a merger, or sale of all its stock or all or substantially all of its assets; provided, **(i)** the Affiliate or surviving entity is not a direct competitor of Axis Security, **(ii)** any such assignee has the financial and other abilities required to perform Customer's obligations and agrees to be bound in writing to Customer's obligations under this Agreement, and **(iii)** at the time of assignment, Customer is not in breach of this Agreement and **(b)** Axis Security may assign this Agreement or any Order issued hereunder to any Axis Security Affiliate. In no event shall this Agreement, or any rights or privileges hereunder, be an asset of Customer under any bankruptcy, insolvency, or reorganization proceedings, or in any other manner whatsoever; however, this Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, and permitted transferees, successors, and assigns.

16.3   Force Majeure. Except for obligations of confidentiality and payment, neither party shall be liable for any delay or failure in performing hereunder if caused by any factor beyond the reasonable control of the party, including force of nature, war, riot, civil action, terrorism, labour dispute, epidemic or pandemic, or failure of telecommunication systems or utilities. Performance shall be deferred until such cause of delay is removed, provided that the delayed party shall promptly notify the other party of such occurrence.

16.4   Publicity. Except as provided herein, each party agrees to not publicize or disclose the existence or terms of this Agreement to any third party without the prior written consent of the other, except as required by law. Notwithstanding the foregoing, Axis Security may use Customer's name and logo (so long as in accordance with any mark guidelines provided by Customer to Axis Security) in Axis Security's promotional materials, including, without limitation, press releases, customer lists, and presentations to third parties.

16.5   Notices. All notices or other communications required hereunder shall be made in writing and shall be deemed to be effectively given: **(i)** if made available to Customer's Personnel by Axis Security posting such notice to the SaaS Service; **(ii)** if hand delivered, when received; **(iii)** if faxed, on the date of the sending party's receipt of confirmation of transmission; or **(iv)** if mailed for overnight delivery, when delivery by the overnight carrier is made. For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by electronic mail. Each party may change its notices address by giving notice in the manner set forth herein.

16.6   Severability; Waiver. If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect, and the parties agree to negotiate in good faith an amendment to replace the rights and obligations contained in such invalid or unenforceable provision to cause it to be valid and enforceable; provided, if the parties are unable to agree on such amending terms, a court of competent jurisdiction or arbitrator (as applicable) shall so amend and restate such provision in light of the parties' apparent original intent. The invalidity or unenforceability of any provision shall not constitute a failure of consideration hereunder. Any failure or delay in exercising, or any single or partial exercise of, any right or remedy by either party hereto shall not be deemed a waiver of any further, prior, or future right or remedy hereunder, including the right of such party at any time to seek such remedies as may be available for any breach or breaches of such term or condition.

16.7   Miscellaneous. The official language of this Agreement is, and all attachments or amendments to this Agreement, contract interpretations, notices and dispute resolutions shall be in English. Translations of this Agreement shall not be construed as official or original versions. Headings are for convenience only and do not define, interpret or limit the scope of any provision hereof. In all cases, the use of "includes/ing" shall mean "includes/ing without limitation". References to a particular section within a schedule shall serve to reference the applicable section within that schedule or document, unless otherwise specified therein. Nothing in this Agreement shall make either party the agent of the other for any purposes whatsoever. No exclusive rights are granted by this Agreement. All rights or licenses not expressly granted to Customer herein are reserved to Axis Security, including the right to license the use of the SaaS Services and any Software to other parties. Any reference to a law or statute in this Agreement shall be deemed to include any amendment, replacement, re-enactment thereof for the time being in force and to include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents, or permissions (together with an conditions attaching to any of the foregoing) made in respect thereof. Axis Security reserves the right to modify this Agreement at any time by sending you a notification and/or publishing the revised Agreement on Axis Security's website. Such change will be effective ten (10) days following the foregoing notification thereof.