

Silver Peak Security End User SAAS Agreement

CUSTOMER, AS DEFINED BELOW SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE USE OF THE SAAS SERVICES AND SOFTWARE MADE AVAILABLE FROM SILVER PEAK SYSTEMS LLC. USE OF THE SAAS SERVICES AND/OR SOFTWARE SHALL BE DEEMED TO CONFIRM YOUR ACCEPTANCE OF THESE TERMS.

This End User SaaS Agreement (“**Agreement**”) is between Silver Peak Systems LLC (“**Silver Peak**”) and the customer purchasing the SaaS Services and Software (“**Customer**”)

For and in consideration of the representations and promises of the parties set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

This Agreement consists of this introductory page, Schedule A - Definitions, Schedule B - General Terms and Conditions, Schedule C – Service Levels, any Orders executed during the term of this Agreement:

In addition to the terms defined elsewhere in this Agreement, capitalized terms shall have the meaning set forth in Schedule A entitled “Definitions”. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof, superseding all prior or contemporaneous agreements, representations, promises and understandings, whether written, electronic, oral or otherwise.

SCHEDULE A **DEFINITIONS**

This Schedule A is made a part of the Agreement. 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 a party 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 Silver Peak.

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

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 2.2 of Schedule B.

Documentation. Silver Peak or its Affiliate'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 Silver Peak 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. Silver Peak's, its Affiliate's or its third party's technical environment required to operate and provide access to the relevant SaaS Services, as further specified in Section 3.2 of Schedule B.

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) 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. An order for SaaS Services placed by Customer through Silver Peak's or its Affiliates website, if applicable, Silver Peak's authorized partners, or by letter, fax or e-mail as applicable, which is accepted by Silver Peak.

Personnel. With respect to Customer, each Customer employee or independent contractor (not a competitor of Silver Peak) 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 Silver Peak, each Silver Peak employee or subcontractor under obligations of confidentiality and nondisclosure which performs on behalf of Silver Peak hereunder.

Professional Services. Consulting, training, and/or other services, if any, provided to Customer, as described in a particular Order and statement of work. Professional Services are not provided as part of the SaaS Services, but they need to be purchased independently.

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 Silver Peak, 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 Silver Peak 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 Silver Peak with respect to the maintenance and support of the Hosted Environment and SaaS Services.

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

Subscription Term. The subscription term for which Silver Peak 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 Silver Peak's sole discretion, is subject to additional fees.

User. any employee of the Customer or a Customer Affiliate, or any agent, contractor, or other third party (defined by a unique SAML identity or username) that is granted access by Customer or a Customer Affiliate to any application, server, network, or any other IP-enabled resource or asset using the Silver Peak platform during the Subscription Term. An individual whose access is terminated shall still be considered a User but may be replaced by another individual as a User during a Subscription Term. Notwithstanding the foregoing, a Subscription Term for a User may not be simultaneously shared between individuals at any time. Per User subscriptions do not include nonstandard computing devices, robotic automation, or batch process tools.

SCHEDULE B

GENERAL TERMS AND CONDITIONS

This Schedule B is made a part of the Agreement. The following general terms and conditions shall apply to this Agreement:

1 ACCESS RIGHTS.

1.1 Access Use Rights. During the applicable Subscription Term, and solely for Customer's internal business use, Silver Peak 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.

1.2 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 Silver Peak Intellectual Property (including any derivatives thereto) are expressly reserved, owned by and remain vested in Silver Peak and 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 Silver Peak 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 Silver Peak third party vendor.

1.3 TERM. This Agreement shall be valid until terminated as provided in Section 8. Silver Peak 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 Silver Peak'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.

2 SILVER PEAK RESPONSIBILITIES.

2.1 Procedures and Technical Protocols. Silver Peak 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.

2.2 SaaS Services. Silver Peak 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 Silver Peak may specify in the Documentation to access the Hosted Environment.

2.3 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, Silver Peak agrees to deliver any Professional Services in accordance with Section 4.

2.4 Support. As part of the SaaS Services, Silver Peak 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 Section 2.

2.5 Support and Updates. In addition to establishing and maintaining the Hosted Environment, Silver Peak shall maintain the components of the Hosted Environment with all current Updates that Silver Peak deems necessary for the SaaS Services. Silver Peak 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 Levels specified in Schedule C, and Customer

shall, in accordance with the terms of Schedule C, have access to support through Silver Peak's standard telephone, email and/or web support services.

2.6 Backup and Recovery of Data. As a part of the SaaS Services, Silver Peak shall maintain a backup of all Customer Data that Silver Peak 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, Silver Peak shall use commercially reasonable efforts to remediate and recover such corrupt data from any backup that has been agreed upon in a particular Order.

2.7 Security. Silver Peak 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.

2.8 CUSTOMER DATA. Silver Peak 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. Silver Peak 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 Silver Peak is required to do so by law or court order. Silver Peak 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 Section 3.2 below. Customer acknowledges and agrees that Silver Peak 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. Silver Peak may remove any violating content posted on the SaaS Services or transmitted through the SaaS Services, without notice to Customer.

3 CUSTOMER RESPONSIBILITIES.

3.1 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 Silver Peak assigned Customer with administrative rights to create access codes and passwords for its Personnel, Customer shall be responsible for issuing such passwords.

3.2 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.

3.3 SaaS Services Restrictions. Except as otherwise specified in this Agreement, expressly permitted in writing by Silver Peak, 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 Silver Peak Intellectual Property; or use any of the Silver Peak 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 Silver Peak Intellectual Property; or fail to ensure that all such notices and legends appear on all full or partial copies of Silver Peak Intellectual Property or any related material;
- c. Sell, sublicense, lease, assign, delegate, transfer, distribute, encumber or otherwise transform any Silver Peak Intellectual Property or any of the rights or obligations granted to or imposed on Customer hereunder.

4 PROFESSIONAL SERVICES.

4.1. Execution of an Order and a Statement of Work. Professional Services will only be delivered if Silver Peak and Customer execute and Order and a statement of work agreeing on the scope and pricing of the Professional Services. SaaS Services do not include the provision of Professional Services.

5 WARRANTIES; DISCLAIMER.

5.1 Limited Performance Warranty. Silver Peak 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 Silver Peak to use commercially reasonable efforts to correct any Errors; provided, in the event Silver Peak 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.

5.2 Disclaimer of Warranties. THE LIMITED WARRANTY AND EXCLUSIVE REMEDY SET FORTH IN SECTION 5.1 ARE MADE FOR THE BENEFIT OF CUSTOMER ONLY, AND ARE EXPRESSLY SUBJECT TO CUSTOMER'S PAYMENT OBLIGATIONS AND CUSTOMER'S OBLIGATIONS TO MAINTAIN ITS CUSTOMER ENVIRONMENT. SILVER PEAK 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, SILVER PEAK DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SAAS SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE.

6 LIMITATION OF LIABILITY AND CONFIDENTIALITY.

6.1 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.

6.2 Non-Excluded Liability. NOTHING IN SECTION 6.1 SHALL EXCLUDE OR LIMIT LIABILITY FOR: (I) A PARTY'S INDEMNIFICATION OBLIGATION IN SECTION 7, (II) PERSONAL INJURY OR DEATH CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (III) CONFIDENTIALITY OR (IV) FRAUD.

6.3 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 Silver Peak 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, when applicable, 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.

7 INDEMNIFICATION.

7.1 Silver Peak Indemnity. Silver Peak, 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 Silver Peak's opinion is likely to become, subject of such a claim of infringement, Silver Peak shall be entitled, at Silver Peak'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 Silver Peak, Silver Peak 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. Silver Peak shall have no obligation or liability hereunder for any claim resulting from: (i) modification of the SaaS Service (a) by any party other than Silver Peak, or (b) by Silver Peak 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 Silver Peak 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.

7.2 Customer Indemnity. Customer, at its sole expense, shall defend, indemnify and hold harmless Silver Peak from any action based upon a claim resulting from any breach of Sections 3 or 6.2 by Customer, its Affiliates or Personnel of either, and shall reimburse Silver Peak for all damages, costs, and expenses (including reasonable attorneys' fees) awarded against Silver Peak pursuant to any such actions.

7.3 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.

8 TERMINATION.

8.1 Service Suspension. In the event Customer (i) fails to pay any amounts past due, or (ii) is in breach of Section 3.2, Silver Peak shall have the right to immediately suspend without notice any or all related SaaS Services provided to Customer hereunder.

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

- a. By Silver Peak immediately if Customer breaches Sections 3.2 or 3.3; 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.

8.3 Effects of Termination.

a. Termination of Agreement. Except for termination for material breach of Silver Peak, termination of this Agreement shall not entitle Customer to any full or partial fees' refund, and payment obligations are non-cancellable. Upon termination of this Agreement, and except to the extent specified herein, (i) all fees due for the current Subscription Term and any other amounts due 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 Silver Peak conduct a mass export of Customer Data. Subject to Customer paying Silver Peak for all Professional Service Fees applicable to such work, Silver Peak agrees to provide such Professional Services at its then current rates. Notwithstanding the foregoing, after thirty (30) days from termination, Silver Peak may delete and destroy all Customer Data without notice or liability to Customer.

c. Survival. Subject to the other provisions of this Section 8.3, Provisions herein which by their context and content are intended to survive termination or expiration hereof shall so survive, including Sections 1.2 (Restrictions), 3 (Customer Responsibilities), 5 (Warranties and Disclaimer), 6 (Limitation of Liability and confidentiality), 7 (Indemnification), 8.3 (Effect of Termination), 9 (Governing Law; Dispute Resolution), and 10 (General Provisions).

9 GOVERNING LAW; DISPUTE RESOLUTION.

9.1 Governing Law. The laws of the State of California apply to this Agreement to the exclusion of any other law. The parties submit to the non-exclusive jurisdiction of the courts of the State of California. 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.

9.2 Remedies. Customer acknowledges that each provision providing for ownership and/or protection of Silver Peak Intellectual Property is material to this Agreement, and that any threatened or actual breach thereof shall constitute immediate, irreparable harm to Silver Peak. If Customer breaches or threatens to breach any such provision, and in addition to any other remedies it may have, Silver Peak 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.

10 GENERAL PROVISIONS.

10.1 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 Silver Peak to withhold its consent if such consent could jeopardize the confidentiality of or Silver Peak's property interests in and to Silver Peak Intellectual Property or other business interests of Silver Peak.

10.2 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 Silver Peak. 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 Silver Peak, (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) Silver Peak may assign this Agreement or any Order issued hereunder to any Silver Peak Affiliate, or in connection with a merger or acquisition. 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.

10.3 Force Majeure. Except for the obligation of 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.

10.4 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, Silver Peak may use Customer's name and logo (so long as in accordance with any mark guidelines provided by Customer to Silver Peak) in Silver Peak's promotional materials, including, without limitation, press releases, customer lists, and presentations to third parties.

10.6 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 Silver Peak 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.

10.7 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.

10.8 Miscellaneous. In all cases, the use of "includes/ing" shall mean "includes/ing without limitation". 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.

SCHEDULE C SERVICE LEVELS

This Schedule C is made a part of the Agreement.

SERVICE AVAILABILITY. Silver Peak will use commercially reasonable efforts to ensure that the SaaS Services will be available 24 hours per day, 7 days per week, excluding any Scheduled Downtime. The SaaS Service availability shall be measured as the total number of minutes in a month, minus the total number of minutes in that month that comprise Schedule Downtime (“**Scheduled Uptime**”). Daily system logs will be used to track Scheduled Downtime and any other SaaS Service outages.

Scheduled Downtime. A minimum of seven (7) days advance notice will be provided for all scheduled downtime to perform system maintenance, backup and upgrade functions for the SaaS Services (the “**Scheduled Downtime**”). Scheduled Downtime will not exceed eight (8) hours per month and will be scheduled in advance during off-peak hours (based on ET). Silver Peak will notify Customer administrator via email of any Scheduled Downtime that will exceed two (2) hours. The duration of Scheduled Downtime is measured, in minutes, as the amount of elapsed time from when the SaaS Services are not available to perform operations, to when the SaaS Services become available to perform operations.

Unscheduled Downtime. Unscheduled Downtime is measured in minutes, and is defined as any time outside of the Scheduled Downtime when the SaaS Services are not available to perform operations.

Service Level Credits. If Silver Peak does not meet the Scheduled Uptime levels specified below, Customer will be entitled, upon written request, to a service level credit (“**Service Level Credit**”) to be calculated as follows:

- If Scheduled Uptime is at least 99.5% of the year’s minutes, no Service Level Credits are provided; or
- If Scheduled Uptime is 99.0% to 99.49% (inclusive) of the year’s minutes, Customer will be eligible for a credit of 5% of the yearly average fee derived from the then-current annual fee paid to Silver Peak; or
- If Scheduled Uptime is 98.50% to 98.9% (inclusive) of the year’s minutes, Customer will be eligible for a credit of 7.5% of the yearly average fee derived from the then-current annual fee paid to Silver Peak; or
- If Scheduled Uptime is less than 98.50% of the year’s minutes, Customer will be eligible for a credit of 10.0% of a yearly average fee derived from the then-current annual fee paid to Silver Peak.

Customer shall only be eligible to request Service Level Credits if it notifies Silver Peak in writing within thirty (30) days from the end of the year for which Service Level Credits are due. In the event after such notification Silver Peak determines that Service Level Credits are not due, or that different Service Level Credits are due, Silver Peak shall notify Customer in writing on that finding. Service Level Credits will be applied to the next invoice following Customer’s request and Silver Peak’s confirmation of available credits. Service Level Credits shall be Customer’s sole and exclusive remedy in the event of any failure to meet the Service Levels.

Exceptions. Customer’s right to receive Service Level Credits, and the inclusion of any minutes in the calculation of Unscheduled Downtime are conditioned upon: (i) prompt payment by Customer of all Fees, (ii) Customer performing all Customer obligations (including, without limitation, establishing and maintaining the Customer Environment), (iii) Customer’s continued compliance with Section 3.2 of Schedule B, (iv) Customer agreeing to use of the most current version of the SaaS Service, and (v) the Unscheduled Downtime not being caused by the failure of any third party vendors, the Internet in general, or any emergency or force majeure event.

SUPPORT. During any Subscription Term, Silver Peak shall provide support to Customer and with respect to the SaaS Services and Hosted Environment as follows:

a. Support Access. (i) Premier Support: Customer shall have direct access via telephone to Silver Peak’s support centre which will be available

24x7x365. Customer shall also have access to the Customer Support Portal and web support services knowledge base and user forum services.

(ii) Basic Support: Customer shall have direct access via telephone to Axis Security’s support centre which will be available during Support Hours. Customer shall also have access to Customer Support Portal and the web support services knowledge base and user forum services. For the purpose of this Schedule C “Support Hours” shall mean “Monday to Friday, in accordance with Customer HQ location”.

b. Contact Details. Customer’s Designated Employees may contact Silver Peak technical support personnel at the following contact information:

Telephone	Email
Customer Support Portal	supportportal.axissecurity.com
Toll Free	1-800-342-2946
Local	1-650-731-3088

d. Response Times. The following provides Error type classifications, and the response times provided by Silver Peak for each Error type:

Silver Peak offers two different support services: (i) Basic Support, and (ii) Premier Support with different Response Times as detailed below. Customer will be eligible to response times applicable to the level of support purchased.

Type	Priority Description	Response Time
Critical	System is inoperable	Premier Support: 30 minutes; efforts to correct problem begin immediately
		Basic Support: 60 minutes during Support Hours; efforts to correct problem begin immediately
High	System is operable but major product features and functions are not operable	Premier Support: 1 hour
		Basic Support: 2 hours during Support Hours; efforts to correct problem begin within 180 minutes
Medium	System is operable but major product features and functions are not performing properly	Premier Support: 4 hours
		Basic Support: 8 hours during Support Hours; efforts to correct problem begin within 8 hours
Low	System is experiencing minor operational problems, or general questions on the operational aspects of the product	Premier Support: 8 hours
		Basic Support: Within 1 business day during Support Hours; efforts to correct problem will be evaluated for release in next patch or release