



## MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”) is entered into between \_\_\_\_\_ a \_\_\_\_ company with its principal place of business at \_\_\_\_\_ (“**Customer**”) and Zilla Security, Inc., a Delaware corporation (“**Zilla**”), with its principal place of business at 8 Burnett Lane, Wellesley, MA 02481. This Agreement is made effective as of the last date signed below (the “**Effective Date**”).

Zilla and Customer agree that the following terms and conditions will apply to the rights granted and services provided under this Agreement and Orders (as defined below) placed hereunder.

### 1. Definitions

- a. “**Affiliate**” is an entity that controls, is controlled by or shares common control with Zilla or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.
- b. “**Anonymous Data**” means anonymous statistical and usage data, and data related to the functionality of the SAAS Services, provided such data cannot be used to identify Customer or its users.
- c. “**Customer Data**” means data and information input, uploaded, or otherwise made available by Customer via the SAAS Services.
- d. “**Deliverables**” means any report, information, software, or other work product resulting from Zilla’s provision of Professional Services hereunder.
- e. “**Documentation**” means the technical documentation relating to the SAAS Services made available by Zilla to Customer.
- f. “**Order**” means the document(s) by which Customer orders SAAS Services and/or Professional Services pursuant to this Agreement and which, in each case, are signed by an authorized representative of Zilla. An Order may consist of either (a) a schedule, statement of work, or quotation, that has been signed by both Customer and Zilla, and/or (b) if applicable, a purchase order issued by Customer pursuant to this Agreement that has been expressly accepted in writing by Zilla. Orders placed directly with Zilla, and all orders placed through a Reseller shall be governed solely by the terms of this Agreement.
- g. “**Professional Services**” means all technical and non-technical services performed or delivered by Zilla under this Agreement, including, without limitation, implementation services and other professional services, training and education services but excluding the SAAS Services and the Support Services. Professional Services will be provided on a time and materials basis at such times or during such periods as may be specified in an Order.
- h. “**Reseller**” means a reseller or distributor that has an agreement with Zilla that authorizes such reseller or distributor to resell SAAS Services and/or Professional Services.
- i. “**SAAS Services**” means the specific Zilla internet-accessible services identified in an Order that are hosted by Zilla or its service provider(s) and made available to Customer over a network on a term-use basis.
- j. “**Subscription Term**” means the period specified in an Order during which Customer will have online access and use of the SAAS Services.
- k. “**Support Services**” means the support services provided by Zilla to Customer pursuant to this Agreement.



## 2. Right to Access and Use SAAS Services

2.1 Zilla will make the SAAS Services available to Customer during the Subscription Term via the Internet. During the Subscription Term, Zilla hereby grants Customer a nonexclusive, non-transferable, non-sublicensable right to access and use the SAAS Services solely for Customer's internal business operations subject to the terms of this Agreement and up to the user limits documented in an Order.

2.2 Customer remains solely liable for any acts or omissions of Customer's employees and contractors in violation of this Agreement, and for all acts or omissions that take place under the login credentials for the SAAS Services commissioned to such employees and contractors.

2.3 **Customer Responsibilities.** Customer will use commercially reasonable efforts to prevent unauthorized access to or use of the SAAS Services and notify Zilla promptly of any such unauthorized access or use; use the SAAS Services only in accordance with the Documentation; and comply with all applicable laws, rules and regulations in connection with its activities under this Agreement, including obtaining all necessary consents, and providing all applicable disclosures, to individuals and/or entities whose data is uploaded and/or processed via the SAAS Services.

## 3. Ownership; Restrictions; Customer Data; Feedback

3.1 **Ownership; Reservation of Rights.** This Agreement confers no ownership rights to Customer and is not a sale of any rights in the SAAS Services, the Documentation, or any deliverables provided as part of the Professional Services. Customer does not acquire any rights, express or implied in the SAAS Services, the Documentation, or any deliverables provided as part of the Professional Services, other than those rights specified in this Agreement. Subject to the rights granted herein, Zilla shall own all right, title and interest in and to the SAAS Services, Documentation, and Deliverables provided under this Agreement, including all modifications, improvements, upgrades, and derivative works thereof and intellectual property rights therein. Customer hereby assigns all right, title and interest it may have in each of the foregoing to Zilla.

3.2 **Restrictions.** Customer shall not, and shall not permit anyone to, directly or indirectly: (a) copy, rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance on the SAAS Services; (b) make the SAAS Services available to any third party other than its authorized users; (c) use or access the SAAS Services to provide service bureau, time-sharing or other computer hosting services for the benefit of third parties; (d) modify, translate or create derivative works based on the SAAS Services or Documentation; (e) remove, modify or obscure any copyright, trademark or other proprietary notices contained on any of the SAAS Services or Documentation; (f) reverse engineer, decompile, disassemble, modify, or otherwise attempt to discover or derive the source code, object code, or underlying structure, ideas or algorithms of the SAAS Services; (g) access or use the SAAS Services or use the Documentation in order to build a similar product or competitive product; or (h) access or use the SAAS Services in violation of applicable law.

### 3.3 Customer Data.

- (a) Customer owns all Customer Data.
- (b) Customer hereby grants to Zilla a non-exclusive, worldwide, royalty-free, fully paid-up, non-sublicensable (except to Zilla's contractors and service providers) right and license to copy, distribute, display, create derivative works of and otherwise use the Customer Data solely as necessary to perform Zilla's obligations under this Agreement.
- (c) Customer reserves any and all rights, title, and interest in and to the Customer Data other than the licenses therein expressly granted to Zilla under this Agreement.



3.4 **Feedback.** Customer may from time to time provide suggestions, comments for enhancements or functionality or other feedback to Zilla with respect to the SAAS Services or other of Zilla's products and services ("**Feedback**"). Customer hereby grants Zilla a royalty-free, fully paid-up, worldwide, transferable, sublicensable (through multiple tiers), irrevocable, perpetual license to copy, distribute, transmit, display, perform, and create derivative works of the Feedback in whole or in part; and use the Feedback in whole or in part, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which practice or embody, or are configured for use in practicing, the Feedback in whole or in part. Customer agrees that Zilla may publish Customer's name and logo on its website in a listing of its customers.

#### 4. **Orders**

1. This Agreement may include an initial Order (which shall be attached hereto and incorporates the terms of this Agreement by reference). Customer may purchase additional SAAS Services and/or Professional Services by executing a follow-on Order or purchase order as mutually accepted by the parties in writing. In the event Customer does not issue a purchase order, a new Order shall be executed by Customer and Zilla to evidence such order. A purchase order issued by Customer shall be in writing and identify the SAAS Services or Professional Services being ordered, the shipping and invoicing locations, and shall be subject to acceptance by Zilla. Standard or printed terms contained in any Customer purchase order or sales confirmation are deemed rejected and mere commencement of work or payment against such forms shall not be deemed acceptance of the terms.

#### 5. **Price and Payment.**

5.1 **Price.** The fees for SAAS Services, Professional Services, and Support Services shall be set forth in an Order. The fees required to be paid hereunder do not include any amount for taxes, duties, or import/export fees. If withheld by a government entity, Customer shall reimburse Zilla and hold Zilla harmless for all sales, use, VAT, excise, property, or other taxes or levies, duties, or import/export fees which Zilla is required to collect or remit to applicable tax authorities (including any interest or penalties thereon). Unless Customer provides Zilla with a valid exemption certification from the applicable taxing authority, Customer shall pay to Zilla or its agents the amount of any such tax.

5.2 **Payment.** Unless otherwise stated in an Order or payment is made through a Reseller, Customer agrees to pay Zilla all fees due hereunder net thirty (30) days from date of invoice. Customer will be invoiced promptly following commencement of the provision of the SAAS Services. If payment of any fees is not made when due and payable, a late fee will accrue at the rate of the lesser of one and one-half percent (1.5%) per month or the highest legal rate permitted by law and Customer will pay all reasonable expenses of collection. In addition, if any past due payment has not been received by Zilla within ten (10) days from the time such payment is due, Zilla may terminate, suspend, or otherwise restrict Customer's access to or use of the SAAS Services until such payment is made. All fees will be paid in U.S. dollars. Customer's obligations to pay all accrued charges shall survive the expiration or termination of this Agreement.

#### 6. **Training, Support, and Professional Services**

6.1 **Support Services.** Zilla shall provide the Support Services to Customer in accordance with the terms and conditions of this Agreement and those set forth in Exhibit A and at the level selected by Customer in its Order.

6.2 **Professional Services.** The following terms and conditions shall apply to Professional Services supplied by Zilla to Customer. Customer may purchase Professional Services from Zilla to be performed on a time and material basis.

- (a) Scope of Professional Services. Professional Services will be documented in an Order. The scope of Professional Services provided hereunder may consist of but are not limited to: (i) program planning, (ii) SAAS Services deployment assistance, (iii) integration efforts, and/or (iv) training services.



- (b) Deliverables. Professional Services provided to Customer by Zilla shall not constitute works for hire. Zilla retains all right, title and interest in and to all Deliverables. Subject to the terms and conditions of this Agreement, Zilla hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use the Deliverables solely for Customer's internal business operations.
- (c) Term of Professional Services. Professional Services will begin and terminate on the dates or times defined in the applicable Order, unless earlier terminated in accordance with this Agreement.
- (d) Fees and Expenses. Fees for Professional Services will be defined in the Order. Zilla will submit invoices to Customer on a monthly basis for Professional Services actually performed, or in accordance with the payment schedule mutually agreed to and documented in the applicable Order. Professional Services fees exclude reasonable expenses for travel, food, and lodging, directly related to the performance of Professional Services. All actual and reasonable expenses incurred by Zilla for travel, food, and lodging, directly related to the performance of Professional Services will be included in the applicable invoice and reimbursed by Customer.
- (e) Termination or Delay of Professional Services. Professional Services may be terminated by Customer by giving thirty (30) days prior written notice to Zilla, and such termination shall be effective thirty (30) days after Zilla's receipt of such notice. If Customer delays the scheduled start of Professional Services, Customer shall reimburse Zilla for any actual non-refundable costs incurred due to such delay. If Customer terminates Professional Services before the end of the term of the Professional Services engagement set forth in the applicable Order, Customer shall pay Zilla for Professional Services completed prior to the effective termination date and reasonable and actual subcontractor costs incurred by Zilla as a result of such delay or termination.
- (f) Performance Standards. Zilla's performance of Professional Services under this Agreement will be conducted with standards of practice common in the industry for such services. Zilla will comply with all applicable laws and Customer privacy, customer information, network and safety rules, guidelines, and policies provided to Zilla in writing in advance, in the course of performing Professional Services.
- (g) Consent to Subcontract. Customer hereby consents for Zilla to subcontract Professional Services to persons or companies qualified and certified by Zilla to provide services on Zilla's behalf.

## 7. Representations, Warranties and Disclaimer.

7.1 **Mutual.** Each party represents and warrants to the other party that (a) such party has the required power and authority to enter into this Agreement and to perform its obligations hereunder; (b) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party; and (c) this Agreement constitutes a legal, valid, and binding obligation when signed by both parties.

7.2 **Zilla.** Zilla represents and warrants that the SAAS Services will materially conform to the Documentation.

7.3 **Customer.** Customer represents, warrants, and covenants that (a) Customer has and will have the legal authority and all rights necessary (i) to provide the Customer Data to Zilla and (ii) for Zilla to fulfill its obligations and exercise its rights with respect to the Customer Data as set forth this Agreement and (b) Customer will comply with all applicable laws, rules, and regulations in connection with its activities under this Agreement.

7.4 **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SAAS SERVICES ARE PROVIDED ON AN "AS-IS" BASIS AND ZILLA DISCLAIMS ANY AND ALL WARRANTIES. ZILLA DOES NOT WARRANT THAT THE OPERATION OF THE SAAS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR



THAT ALL SAAS SERVICES DEFECTS CAN BE CORRECTED. ZILLA DOES NOT WARRANT THAT THE RESULTS GENERATED BY THE SAAS SERVICES OR PROFESSIONAL SERVICES ARE ACCURATE OR WILL LEAD TO ANY PARTICULAR OUTCOME, AND ZILLA EXPRESSLY DISCLAIMS ALL LIABILITY WITH RESPECT TO SUCH RESULTS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. ZILLA MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO ANY THIRD-PARTY SOFTWARE.

## 8. Indemnification.

8.1 **Zilla Indemnification.** To the maximum extent allowed by law, Zilla agrees to defend or settle at its any claim, suit or other proceeding brought against Customer or Customer's officers, directors, shareholders, employees, and agents based on a third-party claim that the SAAS Services or Deliverables when used as permitted under this agreement infringes any copyright or misappropriates any trade secret of a third party. Notwithstanding the foregoing, the defense and indemnity obligations set forth below do not apply to any claim based upon or arising from (a) modification of the SAAS Services or Deliverables by any party other than Zilla without Zilla's express consent; (b) any use of the SAAS Services or Deliverables in combination with other hardware, software, products, processes or materials where the alleged infringement relates to such combination which were unauthorized by Zilla; or (c) where Customer's use of the SAAS Services or Deliverables is not strictly in accordance with this Agreement. Customer will reimburse Zilla for any reasonable out of pocket expenses incurred by Zilla if the cause of the infringement is attributable to Customer's actions as stated in this paragraph. In the event of such a claim, action or allegation being brought or threatened or in the event an injunction is issued or threatened, Zilla may, at its option and expense, (i) either procure for Customer the right to continue to use the SAAS Services or Deliverable, (ii) modify or replace the SAAS Services or Deliverable so as to avoid infringement, or (iii) if options (i) and (ii) are not reasonably practicable, terminate this Agreement and provide to Customer a pro-rata refund of any prepaid fees for the remainder of the then-current term. THIS SECTION 8.1 SETS FORTH ZILLA'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND/OR PROPRIETARY RIGHTS OF ANY KIND.

8.2 **Customer Indemnification.** To the maximum extent allowed by law, Customer agrees to defend or settle at its expense any claim, suit or other proceeding brought against Zilla's or Zilla's officers, directors, shareholders, agents and employees based upon a third-party claim arising from or related to (a) any use of the SAAS Services or Deliverables by Customer other than as contemplated under this Agreement or (b) the Customer Data.

8.3 **Administration.** The party seeking indemnification under this Section 8 (the "**Indemnified Party**") from the other party (the "**Indemnifying Party**") will (a) promptly notify the Indemnifying Party in writing of such claim; (b) promptly give the Indemnifying Party the sole and exclusive right to control and direct the investigation, preparation, defense and settlement of such claim with counsel of the Indemnifying Party's own choosing (provided that the Indemnified Party will have the right to reasonably participate, at its own expense, in the defense or settlement of any such claim); and (c) give assistance and full cooperation for the defense of same. If the Indemnifying Party does not assume the defense of such claim as aforesaid, the Indemnified Party may defend such claim but will have no obligation to do so. Subject to the Indemnified Party's compliance with the foregoing requirements, the Indemnifying Party will pay all damages and costs awarded by a court of competent jurisdiction against the Indemnified Party in such claim or amounts payable pursuant to a settlement agreed to by the Indemnifying Party pursuant to the terms of this Section 8.3, but will not be responsible for any cost, expense or compromise incurred or made by the Indemnified Party without the Indemnifying Party's prior written consent or for any lost profits or other damage or loss suffered by the Indemnified Party.



## 9. Limitation of Liability

9.1 **Liability Limit.** EXCEPT AS STATED IN SECTION 9.2 BELOW, IN NO EVENT SHALL EITHER PARTY (INCLUDING SUCH PARTY'S SUBCONTRACTORS, AGENTS, SUPPLIERS, DIRECTORS, OFFICERS OR EMPLOYEES) BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, RELIANCE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) WHETHER ARISING FROM CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS STATED IN SECTION 9.2 BELOW, IN NO EVENT SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY PURSUANT TO THIS AGREEMENT EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO ZILLA UNDER THIS AGREEMENT FOR THE SERVICES AT ISSUE DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

9.2 **Exceptions.** NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 9.1 SHALL NOT APPLY TO LIABILITY ARISING FROM (A) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS PURSUANT TO THIS AGREEMENT, (B) CUSTOMER'S BREACH OF THE PROVISIONS OF SECTION 3.2 (RESTRICTIONS), OR (C) EACH PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8 (INDEMNIFICATION).

## 10. Confidentiality.

10.1 **Treatment of Confidential Information.** Each party acknowledges that in the course of this Agreement it may be entrusted with Confidential Information from the other and agrees that it shall use commercially reasonable efforts to protect the confidentiality thereof. "Confidential Information" means all information disclosed by one party ("disclosing party") to the other party ("receiving party"), before or after the Effective Date of this Agreement, and generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by the receiving party to the extent that it contains, reflects, or is derived from the disclosing party's Confidential Information. Confidential Information of Zilla includes, without limitation, the SAAS Services, Deliverables and Documentation. The terms and conditions of this Agreement and the fees identified in an Order are Zilla's Confidential Information; however, the existence of this Agreement is not Confidential Information. The receiving party shall retain the Confidential Information of the disclosing party in confidence and shall use it solely for the purpose of performing its obligations and exercising its rights under, and in accordance with, this Agreement. The receiving party shall only disclose Confidential Information of the disclosing party to those of its employees with a need to know such Confidential Information and who have been informed of the obligations of confidence and have agreed in writing to confidentiality and nonuse obligations no less restrictive than those set forth herein. The receiving party shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, including, without limitation, securing all servers, drives or media on which the disclosing party's Confidential Information is stored or maintained to prevent the unauthorized use or disclosure of such Confidential Information.

10.2 **Exclusions.** The receiving party shall not be bound by any obligations restricting disclosure and use set forth in this Agreement with respect to Confidential Information, or any part thereof, which; (a) was lawfully known to the receiving party prior to disclosure; (b) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Agreement; (c) was disclosed to the receiving party by a third-party, provided that such third-party is not in breach of any confidentiality obligation in respect of such information; or (d) is independently developed by the receiving party.

10.3 **Required Disclosure.** If the receiving party is compelled pursuant to legal, judicial, or administrative proceedings, or otherwise required by law, to disclose Confidential Information, the receiving party shall use reasonable efforts to (a) seek confidential treatment for and minimize the disclosure of such Confidential Information, and (b) provide prompt prior written notice to the disclosing party to allow the disclosing party to seek protective or other court orders.



## 11. Term and Termination.

11.1 **Term.** This Agreement shall commence on the Effective Date and shall continue in effect unless terminated as set forth herein. Unless otherwise agreed to in an Order, the Subscription Term will renew automatically upon its expiration for successive periods of the same length as the Subscription Term unless either party provides the other party with written notice of its intent not to renew such Subscription Term at least ninety (90) days prior to the commencement of the renewal Subscription Term.

11.2 **Termination.** This Agreement, or a license granted hereunder, may be terminated (a) by mutual agreement of Zilla and Customer, (b) by either party if the other party commits a material breach of this Agreement (including Customer's failure to pay an invoice when due) and fails to cure such breach within thirty (30) days following receipt of breach notice, or (c) by either party if the other party becomes insolvent or is adjudged as bankrupt; makes an assignment for the benefit of creditors; has a receiver appointed; or files a petition of bankruptcy. If there are no outstanding Order Forms, upon thirty (30) days written notice to the other party, either party may terminate this Agreement as of the date specified in such notice of termination. Termination shall not relieve Customer of its obligation to pay any amounts due upon the date of termination.

11.3 **Effect of Termination.** Upon termination of this Agreement or expiration of a Subscription Term, Zilla shall cease providing the SAAS Services and/or any Professional Services to Customer. Upon such expiration or termination, Customer shall immediately pay all amounts due to Zilla. If the termination is due to an uncured breach of the Agreement by Zilla, Zilla shall immediately refund to Customer all pre-paid amounts for any unperformed Subscription Term and/or Professional Services, less any actual non-refundable costs incurred by Zilla in accordance with this Agreement as of the date of such termination.

11.4 **Survival.** Upon termination of this Agreement, all the parties' respective rights and obligations hereunder shall cease, except that Sections 3.1, 3.2, 3.3(c), 3.4, 5, 6.2(d), 7.4, 8, 9, 10, 11.3, and 12 shall survive such termination.

## 12. General

12.1 **Regulatory/Export Compliance.** Customer acknowledges and agrees that the SAAS Services and Deliverables are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "**Export Controls**"), and agrees not to export or re-export, or allow the export or re-export of the SAAS Services, Deliverables or any copy or portion thereof in violation of the Export Controls. Customer hereby represents that (a) Customer is not an entity or person to which provision of SAAS Services or shipment of Deliverables is prohibited by the Export Controls; and (b) Customer will not export, re-export or otherwise transfer the SAAS Services or Deliverables to (i) any country subject to a United States trade embargo, (ii) a national or resident of any country subject to a United States trade embargo, (iii) any person or entity to which provision of SAAS Services or shipment of Deliverables is prohibited by the Export Controls, or (iv) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

12.2 **Severability.** Should any provision of this Agreement be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

12.3 **Notice.** Notices to either Party shall be in writing to the address indicated in this Agreement (or as later amended) and deemed effective when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.



12.4 **Assignment.** Neither party shall assign this Agreement nor any of its rights or obligations hereunder without the prior written consent of the other party, and any such prohibited assignment shall be null and void. Notwithstanding the foregoing, (a) either party may assign this Agreement to any party that acquires all or substantially all of its related business by merger, sale of stock or assets, or a similar transaction, and (b) Zilla may subcontract its obligations hereunder to a third party, provided that Zilla shall remain liable for any breach thereof.

12.5 **Entire Agreement.** This Agreement and the schedules or exhibits attached hereto or incorporated by reference, constitute the entire agreement between the parties on the subject matter hereof and supersede all prior agreements, communications, and understandings of any nature whatsoever, oral or written. This Agreement may not be modified or waived orally and may be modified only in writing signed by duly authorized representatives of each party.

12.6 **Governing Law; Venue.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to conflicts of law principles. For all disputes relating to this Agreement, each party submits to the exclusive jurisdiction of the state and federal courts located in Boston, Massachusetts and waives any jurisdictional, venue, or inconvenient forum objections to such courts.

12.7 **Injunctive Relief; Attorneys' Fees.** Each party acknowledges and agrees that in the event of a material breach of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies. If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, court cost and other collection expenses, in addition to any other relief it may be awarded.

12.8 **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. Nothing in the foregoing shall be deemed to relieve Customer or its Affiliates of its obligation to pay fees owed under this Agreement.

12.9 **Deployment Verification.** Upon reasonable advance notice to Customer and on a non-interference basis with Customer's normal business operations, Zilla has the right to verify the proper usage of the SAAS Services Customer has ordered under this Agreement. Such verification shall not be conducted more frequently than once per year unless agreed otherwise in an Order.

12.10 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one Agreement.

12.11 **Independent Contractor.** Zilla is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations including, but not limited to Worker's Compensation Insurance. Nothing herein shall form or be construed to form a joint venture or partnership.

**IN WITNESS WHEREOF**, the parties hereby agree to the terms and conditions set forth in this Agreement and in any Order, schedule, or exhibit attached hereto as indicated by the signatures of their duly authorized representatives below.



**CUSTOMER**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ZILLA SECURITY, INC.**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_