

Field Effect MDR™ Terms of Service

These terms of service (“**Terms of Service**”) govern the Services (as defined below) to be provided to Customer by Field Effect (as defined below) whether they are acquired directly from Field Effect or via an Authorized Partner. By executing an Order Form referencing these Terms of Service and/or by using the Services as permitted under these Terms of Service, Customer agrees to be bound by these Terms of Service, the Privacy Policy (as defined below) and any additional terms that may be incorporated by reference (collectively, the “**Agreement**”).

1. Definitions

- 1.1 “**Authorized Partner**” means a third-party authorized by Field Effect to resell and provide the Services to Customers subject to the terms of this Agreement;
- 1.2 “**Ancillary Services**” are secondary services that may be provided in support of a Customer engagement, and for which additional costs may be applicable, including incident response services, computer and network forensic analysis, log retention, general IT advice and guidance, and recommendations of IT security best practices;
- 1.3 “**ARO**” means Actions, Recommendations and Observations, which are contained within reports provided to Customers through the Services.
- 1.4 “**Confidential Information**” means any data, documentation, or other information of a proprietary or confidential nature, whether or not identified as being confidential or proprietary, which is disclosed or made available by a party to the other party in connection with this Agreement. With the exception of Personal Information, Confidential Information does not include information that the receiving party can establish, with reasonable evidence, that: (i) the receiving party already knew; (ii) becomes publicly available through no fault of the receiving party; (iii) was independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information; or (iv) was rightfully given to the receiving party by a third party;
- 1.5 “**Customer**” means the customer identified in the applicable Order Form, either directly as a customer of Field Effect or indirectly through an Authorized Partner, and includes, as applicable, Users;
- 1.6 “**Customer Data**” means any data or other information (other than Derivative Data and Security Intelligence) provided, transmitted, contributed, displayed or made available by or through the Services by Customer or Users (or by an Authorized Partner on behalf of Customer or any Users) and processed, retained or stored by Field Effect or its affiliates and their employees, agents or contractors in the course of providing the Services;
- 1.7 “**Derivative Data**” has the meaning given to such term in Section 2.5 hereof.
- 1.8 “**DPA**” means the Data Processing Agreement, which applies if Customer is located in the European Economic Area or the United Kingdom, a copy of which is found at: <https://fieldeffect.com/terms-data-sharing>;
- 1.9 “**Effective Date**” means the “Effective Date” specified in an Order Form or, if no “Effective Date” is specified in an Order Form, then the date that Customer signs an Order Form;
- 1.10 “**FES Parties**” means Field Effect and its affiliates and each of their directors, officers, employees, agents, subcontractors, successors and permitted assigns.

- 1.11 **"Field Effect"** means Field Effect Software Inc., 207-825 Exhibition Way, Ottawa, Ontario, K1S 5J3, Canada, except as otherwise provided in Section 15.9(b);
- 1.12 **"Hardware"** means any Field Effect proprietary hardware as set out in an Order Form;
- 1.13 **"High Risk Activity"** means activities with a likelihood of injury or death, including controlling aircrafts or other modes of human mass transportation, nuclear or chemical facilities, life support systems, weaponry systems or any similar scenario where failure could lead to personal injury, death or environmental damages;
- 1.14 **"Intellectual Property Rights"** means any right that is or may be granted or recognized under any Canadian or foreign legislation regarding patents, copyrights, neighbouring rights, moral rights, trademarks, trade names, service marks, industrial designs, mask work, integrated circuit typography, privacy, publicity, celebrity or personality rights and any other statutory provision or common or civil law principle regarding intellectual and industrial property, whether registered or unregistered, and including rights in any application for any of the foregoing;
- 1.15 **"Licensed Software"** means the proprietary Field Effect MDR™ software and any other Field Effect software and corresponding documentation specified in an Order Form in whatever form or media and which includes upgrades, enhancements and new releases;
- 1.16 **"Managed Service Network"** means Field Effect's computer network used to provide the Services, which includes all hardware and software owned and/or controlled by Field Effect;
- 1.17 **"Order Form"** means an order form for the Services entered into between Field Effect and Customer, or an Authorized Partner on Customer's behalf, and which incorporates these Terms of Service by reference;
- 1.18 **"Personal Information"** means information about an identified or identifiable individual as defined under applicable data protection laws;
- 1.19 **"Services"** means Field Effect's managed cyber security monitoring service, including any Support Services, Licensed Software or Ancillary Services, as specified on the applicable Order Form;
- 1.20 **"Support Services"** means the technical support services for the Services provided by Field Effect as set out and described in section 5 below;
- 1.21 **"System Logs"** means both the logs generated by the Service and logs generated by a system other than the Service and provided to Field Effect by Customer for cloud-based storage;
- 1.22 **"Third Party Materials"** means data, services, content, software, hardware, add-ons or applications provided by a third party that interoperates with or is complimentary to the Service. Third Party Materials may include applications listed in a catalog or package offered by Field Effect; and
- 1.23 **"User"** means an employee or contractor of Customer who has been authorized by Customer to access and use one or more of the Services on behalf of Customer through an Account (as defined below).

2. Use of the Services

- 2.1 Customer may only receive and use the Services: (i) during the Term; (ii) for its own internal business purposes; (iii) in accordance with this Agreement; and (iv) subject to any restrictions or limits on the number of Users based on the selected package or other usage limits set out in an Order Form. If Customer does not understand these Terms of Service or any part of this Agreement, or

does not agree to any of these Terms of Service or the Agreement, then Customer must not use the Services.

- 2.2 Field Effect may deliver the Services with the assistance of its affiliates, subcontractors, Authorized Partners, or suppliers. Field Effect will be responsible to Customer for delivery of the Services, unless the Customer has entered into an agreement with an Authorized Partner for the delivery of one or more of the Services, in which case, such Authorized Partner will be responsible and liable to Customer for the delivery of such Services.
- 2.3 Customers must comply with all laws, rules, and regulations applicable to the use of the Services and to any Customer Data, including but not limited to import and export controls and economic sanctions. Customers and Users agree that the sale, supply, delivery, servicing, export, re-export and/or use of the Services is subject to applicable export controls, economic sanctions, customs, import, and export laws and regulations promulgated and enforced by Canada, the United States, the United Kingdom, European Union, Australia, Customer's and User's country of residence and any other governmental body having jurisdiction over the parties ("**Trade Controls**"). Customer and/or User agrees not to sell, supply, deliver, service, export, re-export, use, transfer or disclose any portion of the Services or any related technical information or materials, directly or indirectly, in violation of any applicable Trade Controls. Customer represents and warrants that neither it nor its shareholders, members, partners, or other owners are listed on, or ultimately owned more than 30%, collectively or individually by anyone listed on a restricted or designated entity and/or persons list maintained by the United Nations, Canada, the United States, the United Kingdom, European Union, Australia or other local restricted or designated entity and/or persons list. Customer and/or User is responsible to obtain all necessary approvals and authorizations to import, export, or re-export the Services or any portion of the Services or any related technical information or materials, directly or indirectly. Field Effect will not be liable to Customer or User for any loss or expense for its failure to comply with any Trade Controls. Customer shall indemnify and hold the FES Parties harmless from any claims, fees, expenses or damages related to Customer's violation of any Trade Controls or this Section 2.3. Upon request, Customer will complete and provide an end use certificate in the form requested by Field Effect. Field Effect may suspend and/or cancel the sale, supply, delivery, servicing, export, and/or re-export of the Services, if: (i) Field Effect has not received requested end-user certifications; (ii) the parties have not received required government approvals to comply with Trade Controls, or (iii) Field Effect believes that any sale, supply, delivery, servicing, export, re-export and/or use of the Services may violate any Trade Controls. If the Services are resold or transferred in violation of any Trade Controls or the provision of this Agreement, Field Effect shall not be obligated to undertake any further activities related to the Services.
- 2.4 In order to use the Services, Customer must have an account, either directly or through an Authorized Partner, and which may be accessed through either a web-based or mobile application following set-up ("**Account**"). During registration, a User will be asked to provide business contact information in order to create an Account on behalf of Customer. Customer shall ensure that such Account activation information is accurate and complete and that such information remains current throughout the Term. Customer is responsible for the information provided to create an Account, the security and passwords for the Account, and for any use (or User's use), including notification settings or changes thereto, of the Account. Customer must keep login credentials confidential. If Customer believes its Account has been compromised, or if Customer becomes aware of any unauthorized use of its Account, Customer' will notify Field Effect by e-mail promptly at security@fieldeffect.com.
- 2.5 **Compliance and Monitoring.** Field Effect may monitor use of the Services to verify Customer's and Users' compliance with this Agreement, and collect configuration, performance, usage, and consumption data relating to such use (collectively, "**Derivative Data**"), in order to: (i) facilitate or

improve delivery of the Services; and (ii) improve Field Effect's products and services. Field Effect will not access any Customer Data except as necessary to provide the Services. As between Field Effect and Customer, all right, title, and interest in Derivative Data, and all Intellectual Property Rights therein, belong to and are retained solely by Field Effect. Customer acknowledges that Field Effect may compile Derivative Data based on Customer Data. All Derivative Data used, and disclosed by Field Effect will be in aggregate and anonymized form only and will not identify Customer, its Users, Customer Data, Personal Information, or any third parties utilizing the Services. Field Effect may request information from Customer to assist with such verification, and Customer shall provide such information to Field Effect. If Field Effect reasonably believes that a problem with the Services may result from Customer Data or Customer's use of the Services, Customer will promptly cooperate with Field Effect to identify and resolve the problem.

- 2.6 **Modification of the Services.** Field Effect may, from time to time: (i) change, update or upgrade (a) the Services, (b) these Terms of Service and the Privacy Policy (as defined below), or (c) any portion of the documentation relating to the Services; or (ii) elect to cease providing any aspect of the Services. Field Effect will give Customer prior notice of changes, and the effective dates of any changes, by posting a notice at <https://support.fieldeffect.com>, or via email or other communications Field Effect typically uses to notify Customer of changes. The modifications will become effective on the date specified in such notice. Customer's continued use of the Services after such effective date will be deemed acceptance of the modified Services and/or terms. If Field Effect makes a material and detrimental change to the Services, to the terms governing Customer's use of the Services, or to any part of the Services documentation that affects Customer's use or ability to use the Services, Customer may terminate this Agreement by notifying Field Effect in writing no later than thirty (30) days after the effective date of the change. If Customer terminates this Agreement pursuant to this Section 2.6, the termination will be effective as of: (i) the date Field Effect receives Customer's notice, or (ii) any later date specified in such notice. Customer will be responsible for all Fees incurred up to and including the effective date of any termination pursuant to this Section 2.6.
- 2.7 **Services Evaluation.** Customer may order certain Services for an evaluation period, as further described in an Order Form, and such Services will be subject to the terms of this Agreement. Notwithstanding anything contained herein to the contrary, Services provided for evaluation purposes are provided "AS IS" and "AS AVAILABLE" without indemnification, warranty or condition of any kind from Field Effect and without Support Services (unless otherwise specified in an Order Form).
- 2.8 **Services through Authorized Partner.** If Customer receives, accesses or uses the Services through an Authorized Partner, these Terms of Service will govern Customer's use of the Services, provided that some of Customer's rights, responsibilities and obligations, and some of Field Effect's rights, responsibilities and obligations, under this Agreement may be the responsibility of, or exercised by, such Authorized Partner, as specified in the relevant agreement between Customer and such Authorized Partner, which may include payment obligations, support services, and responsibility for Account set-up and management. Notwithstanding the foregoing, Field Effect's rights under this Agreement and any terms of this Agreement concerning liability, indemnification, restrictions on use, suspension and termination will remain unchanged, unmodified and in full force and effect regardless of anything to the contrary. Field Effect is not responsible for Support Services where such Support Services are provided entirely by an Authorized Partner.

3. Customer Obligations and Restrictions on Use

- 3.1 Customer is responsible for ensuring that all Users comply with Customer's obligations under this Agreement. Customer is fully responsible for all activity that occurs in Customer's Account,

including for any actions taken by its Users as well as for the setting of notifications at the appropriate level of response in the active response section of Customer's Account.

- 3.2 Customer is responsible for maintaining a suitable connection to the Managed Service Network and for ensuring that Customer contacts identified in an Order Form are available and responsive when contacted by Field Effect to address and resolve Services-related incidents.
- 3.3 Customer and its Users must not: (i) resell, sublicense, or distribute any aspect of the Services, including any Licensed Software or Hardware; (ii) copy, modify, or create derivative works of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any source code of any Licensed Software; (iii) use the Services to directly or indirectly develop, create, provide or improve a substantially similar service or product for any competitive purposes; (iv) use the Services in connection with any High Risk Activity; (v) access the Services in a manner intended to avoid incurring Fees (as defined below) or accepting this Agreement or any other applicable terms; (vi) engage in, promote or encourage illegal activity; (vii) use the Services for any unlawful, invasive, infringing, defamatory or fraudulent purpose (e.g., phishing); (viii) use the Services to intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature; (ix) disable, interfere with or circumvent any aspect of the Services; (x) use the Licensed Software for purposes of benchmarking or other competitive analysis; or (xi) use the Services or any interfaces provided by the Services in any manner or for any purpose not authorized by this Agreement or to access any other Field Effect product or service in a manner that violates or avoids the terms with respect to such other Field Effect product or service.
- 3.4 If Customer becomes aware that any Customer Data or any use of the Services violates Section 3.3, Customer must take prompt action to remove the applicable Customer Data and/or suspend such use of the Services. Field Effect may require that Customer take action within a specified period of time. If Customer fails to comply with such request, then Field Effect may suspend Customer's use of the Services pursuant to Section 10.
- 3.5 As part of or through Customer's use of the Services, Customer may receive access to Third Party Materials. Customer is responsible for complying with any terms that may be presented to Customer when Customer accesses or receives such Third Party Materials. Except as may be expressly provided, Third Party Materials are made available to Customer by Field Effect "AS IS" without indemnification, support (unless otherwise specified), or warranty or condition of any kind from Field Effect.

4. Payment Terms

- 4.1 Customer will be responsible for paying any applicable fees for the Services (together the "**Fees**"), as set out in an Order Form. Unless otherwise expressly set out in an Order Form, payment obligations are non-cancellable and all Fees are non-refundable. Fees do not include any applicable commodity taxes, or other taxes levied or assessed by any local and/or government authority, as well as surcharges for foreign taxes or those imposed by third-party providers, and any applicable withholding tax (collectively "**Taxes**") and Customer will be responsible for paying such Taxes. Field Effect will invoice Customer monthly in advance (unless otherwise set out in an Order Form) for the monthly recurring Fees for the Services and Taxes. If Customer exceeds applicable limits on the number of Users, or other usage limits set out herein or in an Order Form, then such overage will be treated as an additional Customer order, as determined by Field Effect in its sole discretion, and shall be charged to Customer in accordance with the rates set out in the applicable Order Form.
- 4.2 **Payment.** Payment may be made by credit card, electronic funds transfer or wire transfer in the currency stated on an Order Form. Field Effect, in its sole discretion, reserves the right to change acceptable methods of payment upon prior notice to Customer. Customer must pay all Fees and

Taxes, in the amount and on the date specified in the applicable invoice. If no date is specified, payment shall be due no later than thirty (30) days after the invoice date. If any applicable laws permit the purchase of the Services (including any applicable Licensed Software and/or Hardware), without payment of commodity taxes, Customer must supply Field Effect with sufficient evidence of such authorization. Fees and Taxes are subject to a late payment charge at the rate specified in the invoice, which rate may vary from time to time, calculated from the invoice date, if Fees and Taxes are not paid when due.

- 4.3 **Disputed Charges.** Customer shall notify Field Effect within thirty (30) days of the date of the applicable invoice of any charges that Customer disputes and Customer shall provide Field Effect with sufficient detail supporting the basis of the dispute. If Field Effect determines that the basis for the dispute is correct, Field Effect will, at its option, either issue a corrected invoice or a credit memo for the incorrect amount.
- 4.4 If Customer accesses the Services through an Authorized Partner, any invoicing, pricing and/or payment terms specified in the relevant agreement between Customer and such Authorized Partner will apply in place of Section 4.

5. Support and Service Levels

- 5.1 Field Effect will use commercially reasonable efforts to: (i) ensure the Services perform substantially in accordance with this Agreement; and (ii) correct any material errors or deficiencies in the Services. The Support Services are included in the Fees, unless otherwise specified in the applicable Order Form. Field Effect shall provide the Support Services as specified at <https://support.fieldeffect.com/support/solutions/articles/16000148023>. Field Effect may change elements of the Support Services, including the methods of delivery, from time to time, in its sole discretion, provided such changes do not materially diminish the quality or level of Support Services provided. Any changes to the Support Services will be described at the above-noted hyperlink. Hardware support will be provided in accordance with Section 8.5.
- 5.2 Field Effect may make available to Customer certain Ancillary Services on an “as needed” basis, upon request by Customer, and such Ancillary Services may be set out in a statement of work, a new Order Form or in accordance with such other methods approved by Field Effect. Rates for such Ancillary Services requested by Customer will be charged at Field Effect’s then-current rates available on request by Customer. Ancillary Services may include:
1. Forensic Services – E.g., disk image analysis, network traffic capture analysis, log analysis
 2. Custom Services – E.g., tailored sensor alert configuration.

6. Proprietary Rights, Access and Privacy

- 6.1 **Ownership of the Services.** As between the parties, Field Effect owns and retains all right, title and interest, and all Intellectual Property Rights in and to the Services, including all improvements, enhancements, modifications and derivative works thereto or thereof. This includes any Derivative Data, Security Intelligence (as defined below) and other information (other than Customer Data) that Field Effect collects and analyzes in connection with the Services, any reports generated by Field Effect, including any AROs but excluding Customer Data contained within an ARO, and any suggestions, comments or ideas contributed or provided to Field Effect with respect to the Services, which will be treated as non-confidential. Customer’s rights to use the Services are limited to those expressly granted in this Agreement. No other rights with respect to the Services (which includes any Licensed Software and any Hardware) or any related Intellectual Property Rights are granted or implied.

- 6.2 **Data Ownership.** As between the parties, Customer retains all right, title and interest in and to any Customer Data and all Intellectual Property Rights in such Customer Data. Field Effect's rights to access and use Customer Data are limited to those necessary to deliver the Services. In delivering the Services, Field Effect may collect, anonymize and aggregate Customer Data, including System Logs (but excluding Personal Information) with other data and information that relates to potential threats to Customer's network(s) ("**Security Intelligence**"). Field Effect may, subject to Section 6.3, use such Security Intelligence to protect the networks of other Field Effect customers and to develop and improve Field Effect's products and services. Field Effect will retain all right, title and interest in and to any such Security Intelligence and all Intellectual Property Rights therein provided that Field Effect shall not disclose any Confidential Information of Customer, except as required by law.
- 6.3 Field Effect may collect, use, process, transfer, store and disclose Customer Data, including Personal Information, as required to provide the Services, and in accordance with applicable privacy laws, Section 9.1 and Field Effect's privacy policy, found at: <https://fieldeffect.com/terms-privacy/> ("**Privacy Policy**"). Customer warrants and represents that it has obtained all required consents and/or provided all required notifications, including from Users, to allow Field Effect to collect, use, process, transfer and disclose Customer Data, including Personal Information, as contemplated by and under this Agreement, Field Effect's Privacy Policy, and the terms set out in the DPA (applicable to Customers established in the European Economic Area or the United Kingdom).
- 6.4 Customer is responsible for: (i) ensuring that the scope and security model of the Services are appropriate for Customer's security requirements and intended use; (ii) maintaining the minimum requirements set out at <https://support.fieldeffect.com/support/solutions/articles/16000148027> ("**Minimum Deployment Requirements**"); and (iii) the storage, hosting and processing of any Customer Data. Customer is solely responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity and security of all Customer Data from unauthorized access, use, loss or destruction. Those steps include, but are not limited, to: (i) implementing any Field Effect guidance on deployment conditions, including the Minimum Deployment Requirements; (ii) controlling the access provided to Users; (iii) configuring the Services appropriately; (iv) ensuring the security of Customer Data while it is in transit to and from the Services; (v) using encryption technology to protect Customer Data; and (vi) backing up Customer Data. Customer is responsible for providing any necessary notices to Users and obtaining any legally required authorizations or consents from Users regarding their use of the Services.

7. Licensed Software

- 7.1 Depending on the configuration and implementation of the Services that Customer has purchased, as specified on the applicable Order Form, Customer may have Licensed Software installed in Customer's on-premises network environment or be granted access to Licensed Software in order to use and access the Services.
- 7.2 Subject to the terms and conditions of this Agreement, Field Effect grants to Customer, during the Term, a non-exclusive, non-transferable, non-assignable, revocable and royalty-free license to install, access, display and use the Licensed Software solely for Customer's internal, business purposes and in connection with the Services. Such license grant will be subject to any restrictions or limits on the number of Users, or other usage limits set out in an Order Form. Customer shall not, except with prior written approval of Field Effect, use the Licensed Software for the benefit of, or disclose the Licensed Software to, any other agency, department, person, company or other entity. Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights in the Licensed Software.

- 7.3 The Licensed Software is licensed, not sold. Field Effect and its licensors own and shall retain all right, title and interest (including without limitation all Intellectual Property Rights) in and to the Licensed Software and any corrections, bug fixes, enhancements, modifications or new versions thereof, all of which shall be deemed part of the Licensed Software and subject to all of the provisions of this Agreement. As between Field Effect and Customer, Field Effect owns all Intellectual Property Rights in the Licensed Software.
- 7.4 Field Effect may update and otherwise modify the Licensed Software at its sole discretion, provided such changes do not materially diminish the quality or level of Services provided.
- 7.5 Customer must not: (i) use the Licensed Software for any purpose or in any manner other than as strictly required for Customer's internal business purposes in connection with the Services; (ii) permit any third party to use the Licensed Software (except as may be permitted pursuant to Section 7.2); (iii) unless and to the extent expressly permitted by applicable law, decompile, disassemble or otherwise reverse engineer the Licensed Software or permit any third party to do so; (iv) circumvent any user limits or other license timing or use restrictions that are set forth herein or in the applicable Order Form or built into the Licensed Software; (v) remove any trademarks, copyright notices, restricted rights legends, proprietary markings on the copy of the Licensed Software originally provided to Customer; or (vi) use the Licensed Software for High Risk Activities.

8. Hardware

- 8.1 This Section 8 shall only apply if Customer's use of the Services includes Hardware.
- 8.2 If Customer orders any Hardware as part of the Services, Field Effect will ship, at its cost, the Hardware to the specified Customer or Authorized Partner site, as applicable. Customer will be responsible for ensuring the Hardware is properly installed, powered on and, if applicable, connected to Customer's network. Ownership of the Hardware remains with Field Effect at all times. In the event Customer requests assistance from Field Effect to install and configure the Hardware, Customer agrees that the correct installation and configuration remains the sole responsibility of Customer.
- 8.3 Unless otherwise indicated on an Order Form, all Hardware is to be returned to Field Effect in working order and at Customer's cost upon termination or expiry of this Agreement.
- 8.4 Where Customer uses non-Field Effect hardware (i.e., Third Party Materials), Field Effect will not be responsible for providing support related to such hardware, operating system configuration, hardware and system performance, or installation dependencies (including required hardware or software packages).
- 8.5 Hardware support will be provided by the Hardware manufacturer. In case of Hardware failure, Customer shall contact Field Effect through the Field Effect customer portal or by email at support@fieldeffect.com. Field Effect will notify the Hardware manufacturer and the Hardware manufacturer will deal with Customer directly to address the issue. Customer agrees to cooperate with the Hardware manufacturer for Hardware support activities, which may include a third party visiting Customer's premises or the shipment of the Hardware back to Field Effect or a third party (at no additional cost).

9. Confidential Information

- 9.1 Each party will: (i) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information (but in no event less than a reasonable standard of care); and (ii) not disclose Confidential Information, except to its employees, contractors and

agents, who are bound by confidentiality obligations, on a need-to-know basis. Each party (and any employees, contractors and agents to whom a party has disclosed Confidential Information) may use such Confidential Information only to exercise its rights and fulfill obligations under this Agreement. Each party is responsible for any actions of its employees, contractors and agents in violation of this Section 9.1. Subject to Section 6.3, upon termination of this Agreement, the parties will promptly either return or destroy all Confidential Information, and, upon request, provide written certification of compliance with this Section 9.1.

- 9.2 If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, the receiving party shall provide the disclosing party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure.
- 9.3 If the receiving party discloses or uses (or threatens to disclose or use) any Confidential Information of the disclosing party in breach of this Section 9, the disclosing party will have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.
- 9.4 Neither party will issue any press release, public announcement, or public statement regarding the existence or content of this Agreement without the other party's prior written approval. Field Effect may include Customer's name and logo online or in promotional materials. Customer may revoke Field Effect's right to use Customer's name and logo under this Section 9.4 with written notice to Field Effect and a reasonable period to stop such use.

10. Suspension

- 10.1 Field Effect may suspend Customer's and any User's use of the Services if: (i) Field Effect has not received payment for all undisputed amounts due hereunder within thirty (30) days after the date on which such payments are due; (ii) Customer is in breach of the Agreement; (iii) Customer's use of the Services poses a security risk to the Services or to other users of the Services; or (iv) suspension is required pursuant to a court order or other legal requirement. Field Effect will give Customer notice before suspending Customer's use of the Services if permitted by applicable law or unless Field Effect determines that providing notice presents a risk of harm to the Services, to other users of the Services, or to any person or property, in which case Field Effect will notify Customer as soon as feasible or permitted. Customer will remain responsible for all Fees incurred before or during any suspension.

11. Term and Termination

- 11.1 **Term.** This Agreement commences on the Effective Date and, unless terminated earlier as provided herein, will continue for the "Contract Term" specified in an Order Form (the "**Initial Term**").
- 11.2 **Renewal.** Unless otherwise stated in an Order Form, this Agreement will automatically renew at the end of the Initial Term for successive twelve-month terms, unless either party gives written notice of non-renewal at least thirty (30) days before the expiry of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). In the case of month-to-month subscriptions, one calendar month's notice is required for termination. Subject to Section 11.3, pricing for any Renewal Term will be calculated based on the then-current standard rates for the Services, minus applicable discounts, if any. Field Effect will provide Customer with at least sixty (60) days advance notice of any increase to the Fees for a Renewal Term before the end of the then current Initial Term or Renewal Term, as applicable. For clarity, pricing for monthly subscriptions

may be increased at any time upon the provision of sixty (60) days' advance notice to Customer. All other terms and conditions in this Agreement will remain in effect for the Renewal Term(s).

- 11.3 **Price Adjustment.** Where the Initial Term is a multi-year term, the parties acknowledge and agree that the monthly recurring Fees set out in an Order Form are fixed for the first twelve (12) months of the Initial Term. Thereafter, Field Effect may, if expressly stated in an Order Form, once in each subsequent twelve (12) month period calculated from the Effective Date, increase the monthly recurring Fees for the Services by no more than the percentage set out in an Order Form to cover increased operating costs and inflation, provided that Field Effect will provide Customer with thirty (30) days prior written notice of any such increase. Customer will be responsible to pay the new monthly recurring Fees for the remainder of the Initial Term or Renewal Term, as the case may be, or until a subsequent price adjustment takes effect.
- 11.4 **Services Beyond Term.** If Customer has sent a notice of non-renewal but continues, for any reason, to access and use any of the Services after the expiry of the then-current Term, this Agreement shall continue to apply for so long as Customer accesses and uses the Services, except that the Fees shall be the then-current rates in effect for the Services.
- 11.5 **Termination for Cause.** This Agreement may be terminated at any time by:
- (a) either party, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach is: (i) incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after receiving written notice of the breach;
 - (b) either party, effective immediately, if the other party enters into a compulsory or voluntary liquidation, or convenes a meeting of its creditors or has a receiver appointed over any part of its assets or takes or suffers any similar action in consequence of a debt, or ceases for any reason to carry on business;
 - (c) Field Effect, if Customer does not resolve the underlying cause resulting in a suspension pursuant to Section 10 within ten (10) days after such suspension of Services to Customer;
 - (d) Field Effect, if Customer is established in the European Economic Area or the United Kingdom and fails to comply with a binding decision of a competent court regarding its obligations pursuant to the DPA (where applicable);
 - (e) Field Effect, if Customer is established in the European Economic Area or the United Kingdom and after Field Effect has informed Customer that its instructions infringe applicable legal requirements in accordance with clause 7.1 (b) of the DPA (where applicable), Customer insists on compliance with such instructions;
 - (f) Field Effect, effective on written notice to the Customer, if Customer fails to pay any undisputed Fees, taxes or other amounts when due under this Agreement; and
 - (g) Customer, if the processing of Personal Information by Field Effect has been suspended by Customer pursuant to clause 10 (a) of the DPA (where applicable) and if compliance with the DPA is not restored within one month following suspension.
- 11.6 **Termination for Convenience.** Subject to any early termination fees specified in an Order Form, either party may terminate this Agreement for any reason by providing the other party with at least sixty (60) days' advance written notice.

11.7 **Effect of Termination.**

- (a) Upon the expiry or termination of this Agreement for any reason, all rights granted to Customer under this Agreement, including Customer's right to use the Services, including any Licensed Software, will immediately terminate and Customer must: (i) stop all use of the Services (including any Licensed Software); (ii) return or, if Field Effect requests, destroy any documentation and Field Effect Confidential Information; (iii) delete and destroy all Licensed Software within Customer's possession or control within thirty (30) days; (iv) return any Hardware owned by Field Effect; and (v) pay all Fees owing as of the termination date, including any early termination fees specified in an Order Form.
- (b) As between Customer and Field Effect, Customer is responsible for ensuring that Customer has necessary copies of all Customer Data prior to the date of expiry or termination, except for System Logs which, upon written request from the Customer within fourteen (14) days following the effective termination date, Field Effect will provide to Customer in a commercially standard and readable format. Following delivery of the System Logs requested by Customer within such fourteen (14) day period or the expiry of the fourteen (14) day period without receiving such a request, Field Effect may delete all of Customer Data, including System Logs, in accordance with its standard schedule and procedures.
- (c) Except to the extent permitted under Section 2.6, Sections 11.5(a) in the case of a breach by Field Effect, 11.5 (g), or Section 13.3 due to a breach by Field Effect, termination of this Agreement will not entitle Customer to any refunds, credits or exchanges.

11.8 **Survival.** Any provision that, by its nature and context is intended to survive termination or expiration of this Agreement, including Sections 1, 4, 6.1, 6.2, 9, 11.4, 11.7, 11.8, 12, 13 and 14 will survive.

12. **Warranty and Disclaimer**

12.1 FIELD EFFECT DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES, INCLUDING ANY LICENSED SOFTWARE OR HARDWARE, WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICES (INCLUDING ANY ON-SITE INSTALLATION ASSISTANCE PROVIDED BY FIELD EFFECT) WILL MEET (OR ARE DESIGNED TO MEET) CUSTOMER'S BUSINESS REQUIREMENTS. SUBJECT TO SECTION 14.3, FIELD EFFECT IS NOT RESPONSIBLE OR LIABLE FOR THE DELETION OF OR FAILURE TO STORE ANY CUSTOMER DATA OR THE DISABLING OF OTHER COMMUNICATIONS MAINTAINED OR TRANSMITTED THROUGH CUSTOMER'S USE OF THE SERVICES, EXCEPT FOR SYSTEM LOGS WHICH ARE STORED FOR THE DURATION SELECTED BY CUSTOMER ON AN ORDER FORM. CUSTOMER IS SOLELY RESPONSIBLE FOR SECURING AND BACKING UP CUSTOMER DATA, INCLUDING SYSTEM LOGS, AT ALL TIMES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FIELD EFFECT DOES NOT MAKE ANY WARRANTIES OR CONDITIONS OF ANY KIND RELATED TO THE SERVICES, INCLUDING ANY LICENSED SOFTWARE OR HARDWARE, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR RELIABILITY. FIELD EFFECT DOES NOT WARRANT THAT ITS STORAGE OF SYSTEM LOGS WILL MEET CUSTOMER'S COMPLIANCE OBLIGATIONS UNDER ANY APPLICABLE LAWS. NOTWITHSTANDING THE FOREGOING, FIELD EFFECT WARRANTS THAT THE SYSTEM LOGS WILL BE STORED BY FIELD EFFECT, SUBJECT TO THE STANDARD STORAGE AND RETENTION TERMS OF THE CLOUD SERVICES PLATFORM USED BY FIELD EFFECT, FOR THE TIME PERIOD SELECTED IN AN ORDER FORM.

12.2 CUSTOMER ACKNOWLEDGES AND AGREES THAT THE NATURE OF THE SERVICES MAY: (I) REQUIRE THAT SPECIFIC WEBSITES BE RENDERED UNREACHABLE OR UNAVAILABLE BY THE

SERVICES OR FIELD EFFECT FROM TIME TO TIME IN ORDER TO MITIGATE ANY SUSPECTED, POTENTIAL OR ACTUAL THREAT; (II) RESULT IN THE DISRUPTION OF ANY NETWORK CONNECTION(S) (INCLUDING INTERNAL AND EXTERNAL NETWORK CONNECTIONS) TO THE CUSTOMER'S NETWORK OR THE MANAGED SERVICE NETWORK; (III) PREVENT EXTERNAL DEVICES (SUCH AS USB KEYS) FROM FUNCTIONING IN A COMPUTER; (IV) RESTRICT CHANGES TO COMPUTER OR NETWORK SETTINGS; (V) PREVENT CERTAIN NETWORK OR COMPUTER PROCESSES; AND (VI) RESULT IN FIELD EFFECT BLOCKING CERTAIN ACTIVITIES OR MATERIALS DUE TO SUSPECTED OR CONFIRMED THREATS. FIELD EFFECT IS NOT RESPONSIBLE OR LIABLE WHATSOEVER FOR ANY CLAIMS, FINES, LOSSES, DAMAGES, OR OTHER COSTS OR EXPENSES INCURRED BY CUSTOMER ARISING OUT OF OR OTHERWISE RELATING TO SUCH ACTIONS.

13. Indemnification

- 13.1 **Indemnification by Customer.** If Field Effect or any FES Parties are subject to any third party claim or demand concerning: (i) any Customer Data; (ii) any infringement or misappropriation of any Intellectual Property Rights by Customer or any Users in connection with the use of the Services; (iii) any violation of law by Customer or any Users in connection with the use of Services; (iv) Customer's or Users' use of the Services in violation of this Agreement; (v) unauthorized disclosure of Customer Data to Field Effect or any FES Parties; or (vi) Customer's or Users' use of any Third Party Materials (collectively, "**Claims**"), Customer will defend, indemnify and hold Field Effect and the FES Parties harmless from and against any such Claims and any and all fines, penalties, losses, damages or other costs arising out of or otherwise relating to the Claims, including reasonable legal fees, disbursements and charges and costs of enforcing any right to indemnification hereunder, or agreed to in settlement of the Claims. Field Effect will: (i) notify Customer as soon as possible, in writing, of any Claim; (ii) give Customer control over the defence regarding any Claim; and (iii) reasonably cooperate in response to Customer's requests for assistance. Subject to the foregoing, Field Effect may participate in the defence or settlement of the Claim, at its own expense. Customer will not settle any Claims, without Field Effect's prior written consent, not to be unreasonably withheld.
- 13.2 **Indemnification by Field Effect.** Field Effect agrees to defend, indemnify and hold Customer harmless against any third-party claims alleging that the Services or use of the Services for purposes authorized in this Agreement infringes any Intellectual Property Right or other proprietary right of such third party or constitutes misuse or misappropriation of a trade secret of a third party (an "**Infringement Claim**"). Customer will: (i) notify Field Effect as soon as possible in writing of any Infringement Claim; (ii) give Field Effect control over the defence regarding the Infringement Claim; and (iii) reasonably cooperate in response to Field Effect's requests for assistance. Field Effect will pay all damages finally awarded against and reasonable legal expenses incurred by Customer.
- 13.3 If the Services become or in Field Effect's opinion are likely to become the subject of an Infringement Claim, Field Effect will, at Field Effect's option and expense: (i) procure the rights necessary for Customer to keep using the Services; (ii) modify or replace the affected Services to make them non-infringing; or (iii) terminate the Agreement and refund any prepaid Fees for the remaining portion of the Term.
- 13.4 Field Effect will have no obligation under Section 13.2 or otherwise with respect to any Infringement Claim based on: (i) Third Party Materials; (ii) any combination of Field Effect products and services with products or services not provided by Field Effect, including any Third Party Materials; (iii) use of the Services for a purpose or in a manner not permitted under this Agreement; (iv) any modification to the Services made without Field Effect's express written consent; or (v) any aspect of the Services that are provided on a no-charge, trial, beta or evaluation basis.

- 13.5 This Section 13 sets out Customer's sole remedies and Field Effect's sole liability and obligation for any actual, threatened, or alleged claims that the Services infringe, misappropriate, or otherwise violate any Intellectual Property Rights of any third party.

14. Limitation of Liability

- 14.1 **LIABILITY FOR DAMAGES.** THE TOTAL, CUMULATIVE, AGGREGATE LIABILITY OF FIELD EFFECT AND THE FES PARTIES TO CUSTOMER FOR DAMAGES, EXPENSES, COSTS, LIABILITY, CLAIMS OR LOSSES (COLLECTIVELY "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER, WHETHER ARISING IN NEGLIGENCE, TORT, STATUTE, EQUITY, CONTRACT, COMMON LAW, OR ANY OTHER CAUSE OF ACTION OR LEGAL THEORY EVEN IF FIELD EFFECT OR THE FES PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES, IS LIMITED TO DIRECT, ACTUAL, PROVABLE DAMAGES AND WILL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE TOTAL AGGREGATE MONTHLY FEES PAID BY CUSTOMER FOR THE SERVICES DURING THE TWELVE-MONTH PERIOD BEFORE THE EVENT GIVING RISE TO THE DAMAGES. THE LIMITATIONS SET OUT IN THIS SECTION 14 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- 14.2 **NO LIABILITY FOR CERTAIN DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST BUSINESS REVENUE, LOSS OF PROFITS, OR FAILURE TO REALIZE EXPECTED PROFITS OR SAVINGS OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE LOSSES OR DAMAGES REGARDLESS OF THE FORM IN WHICH ANY ACTION IS BROUGHT, WHETHER ARISING IN NEGLIGENCE, TORT, STATUTE, EQUITY, CONTRACT, COMMON LAW, OR ANY OTHER CAUSE OF ACTION OR LEGAL THEORY EVEN IF SUCH PARTY HAS BEEN ADVISED OF OR HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE OTHERWISE FORESEEABLE. FIELD EFFECT AND THE FES PARTIES WILL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER FOR DAMAGE TO CUSTOMER NETWORKS OR THE NETWORK OF ANY THIRD PARTY AS A RESULT OF THE DELIVERY OF THE SERVICES, INCLUDING ACCESS TO CUSTOMER NETWORKS AND CUSTOMER DATA.
- 14.3 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, INCLUDING THIS SECTION 14, IF ANY CUSTOMER DATA IS LOST, DAMAGED, OR CORRUPTED AS A RESULT OF FIELD EFFECT'S OR THE FES PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FIELD EFFECT'S AND THE FES PARTIES' ONLY LIABILITY IS, AT FIELD EFFECT'S EXPENSE, TO RESTORE CUSTOMER DATA USING THE MOST RECENT BACK-UP KEPT BY CUSTOMER, OR IN THE CASE OF CLOUD-BASED STORAGE OF SYSTEM LOGS, TO RESTORE BASED ON THE APPLICABLE PLATFORM'S LOCALLY REDUNDANT STORAGE CAPABILITY. CUSTOMER IS RESPONSIBLE FOR MAINTAINING AT ALL TIMES AN ADEQUATE BACK-UP OF CUSTOMER DATA.
- 14.4 Nothing in this Agreement is intended to exclude or limit in any way the liability of either party for death or personal injury resulting from such party's negligence or its own fraud or fraudulent misrepresentation. The limitations set out in Section 14.1 and Section 14.2 shall not apply to any indemnification obligations of either Field Effect or Customer under this Agreement.

15. GENERAL

- 15.1 **Assignment.** Customer may not assign this Agreement, in whole or in part, without the prior written consent of Field Effect. Field Effect may, without the consent of Customer, assign any of its rights or delegate any of its duties under this Agreement if such assignment or delegation, or both, is to: (a) a FES Party. (b) a successor of Field Effect, by amalgamation or operation of law. (c) a purchaser of all or substantially all of Field Effect's assets. Or (d) a lender to Field Effect as collateral security. Upon the completion of a permitted assignment of rights and/or delegation of duties,

obligations or liabilities by Field Effect under this Agreement, the assignee is deemed to be substituted for Field Effect as a party to this Agreement and Field Effect is released from all of its obligations and duties to perform under this Agreement. This Agreement shall bind and enure to the benefit of the parties and their respective successors and permitted assigns.

- 15.2 **Notices.** All notices and consents provided to Customer shall be given in writing and will be: (i) sent to the email address associated with Customer's Account or as may be updated from time to time by Customer; or (ii) posted on <https://my.fieldeffect.net>. All legal notices or other correspondence to Field Effect must be sent to legal@feldeffect.com.
- 15.3 **No waiver.** No waiver of any provision of this Agreement shall bind a party unless consented to in writing by that party. No waiver of any provision of this Agreement shall be a waiver of any other provision, nor shall any waiver be a continuing waiver, unless otherwise expressly provided in the waiver.
- 15.4 **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, the other provisions of this Agreement shall not be affected or impaired, and the offending provision shall automatically be modified to the least extent necessary in order to be valid, legal and enforceable.
- 15.5 **Force Majeure.** Field Effect will not be liable for any delay or failure to perform its obligations under this Agreement to the extent that the failure is caused by an Event of Force Majeure, provided that Field Effect provides notice to Customer and keeps Customer informed in such circumstances and uses reasonable endeavours to rectify the situation. "**Event of Force Majeure**" means any event beyond the reasonable control of Field Effect, including: acts of God; labour issues (including disputes, walkouts and strikes); war (including civil war); acts of any state or government including promulgation of economic sanctions; acts of terrorism; fire; explosions; the elements; epidemics, pandemics, outbreak of disease or quarantine; blackout; embargo; or any delay or interruption in third party telecommunications services.
- 15.6 **Entire Agreement.** This Agreement (including the Privacy Policy) is the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior or contemporaneous discussions, negotiations, representations, agreements and understandings between the parties, whether written or oral, relating to the subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on any statement, representation or warranty, express or implied (including through course of dealing), except those expressly set out in this Agreement. The terms and conditions of any agreements (including purchase orders) supplied by Customer shall be void and not applicable.
- 15.7 **Interpretation.** The headings are for convenience of reference only and will not affect its construction or interpretation. The words "include" or "including" means "include without limitation" and "including without limitation", respectively. In the event of any conflict or inconsistency between these Terms of Service and an Order Form, these Terms of Service will govern unless otherwise expressly provided in writing in an Order Form.
- 15.8 **No Partnership and Third-Party Beneficiaries.** This Agreement shall not be construed to and does not create a relationship of agency, partnership, employment or joint venture. Nothing in this Agreement, express or implied, shall or is intended to confer on any other person, firm or enterprise, any rights, benefits, remedies, obligations or liabilities of this Agreement, other than the parties, their respective successors or permitted assigns.

15.9 Governing Law.

- (a) Except as otherwise provided under Section 15.9(b), the contracting entity is Field Effect Software Inc., and this Agreement is governed by the laws of the Province of Ontario, Canada and the laws of Canada applicable therein, and the parties agree to submit exclusively to the jurisdiction of the courts in Ottawa, Ontario, Canada in respect of all matters arising out of or in connection with this Agreement.
- (b) If Customer is located in:
 - (i) the United Kingdom or the European Economic Area, then the contracting entity is Field Effect Security Ltd, an English-law private limited company having its registered office at One Fleet Place, London, England, EC4M 7W3, registered in England and Wales under company number 12552142, and this Agreement is governed by the laws of England and Wales, and the courts of England and Wales will have exclusive jurisdiction over all matters arising out of or in connection with this Agreement;
 - (ii) the United States, then the contracting entity is Field Effect Security, Inc., and this Agreement is governed by the laws of Delaware, and the courts of the State of Delaware will have exclusive jurisdiction over all matters arising out of or in connection with this Agreement; or
 - (iii) Australia, then the contracting entity is Field Effect Security Pty Ltd. (ACN 646018653), and this Agreement is governed by the laws in force in the State of NSW, Australia, and the courts of that State will have exclusive jurisdiction over all matters arising hereunder; and the parties will submit to the exclusive jurisdiction of the courts in that State in respect of all matters arising out of or in connection with this Agreement.
- (c) The applicable governing law shall be determined as noted in this Section 15.9 without regard to any conflicts of law rules that might apply laws of any other jurisdiction.

15.10 Language. The parties have requested that this Agreement and all correspondence and all documentation relating to this Agreement be written in the English language. Les parties aux présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.

Date : June 3, 2024 (v. 2.3)