

**FireScope, Inc. Terms of Service (Subscription)**

Last updated: August 16, 2022

**READ CAREFULLY:** FireScope Inc. (“FSI”, “we” or “us”) is a Delaware corporation with its principal place of business at 412 Olive Ave., Suite 603, Huntington Beach, CA 92648. These FSI Subscription Terms of Service (the “TOS”) exclusively govern your access and subscription to the software as a service products listed on the quote, invoice, order form or proposal that references these TOS (an “Order”) that is signed by a Client. These TOS cover Client’s access to the Website and use of the FSI Platform. These TOS do not apply to FSI’s downloadable licensed software, which are governed by FSI’s EULA.

## 1 DEFINITIONS

“Ancillary Program(s)” means the third-party software programs (e.g., MySQL, Apache) that are provided (through SaaS Services) to Client at no charge for use with the FireScope Software which programs are further described in FireScope’s Documentation.

“Authorized Use Limitation” means the maximum use permitted as specified in the Order.

“Client” means the person or entity listed on the Order that incorporates these TOS.

“Client Data” means information submitted by, or entered by you or a User or automatically uploaded through the use of the SaaS Services including, but not limited to, account information, network information, user ids, and usage details.

“Documentation” means the current on-line help, guides, SaaS Services description and manuals published by FireScope and made generally available by FireScope for the SaaS Services in hard copy or a machine-readable form supplied by FSI to Client that describes the functionality of the Appliance and/or the Software licensed hereunder.

“End-User” means your employees, contractors or representatives that you authorize to use the Software.

“Exclusions” means the following events, which events shall be excluded from the calculation of Uptime (i) a force majeure event; (ii) outages due to Scheduled Downtime; (iii) outages based on Client networks or domain name server issues; (iv) Client’s configuration, scripting, coding; (v) internet outages; (vi) Client outages requested by Client; and (vii) Client changes to its environment which hinder the SaaS Services.

“FireScope Endpoint CI” means a 'FireScope Endpoint CI' (Configuration Item) shall be each end user computing device used to collect, process or display digitalized information that, regardless of who owns the device, exists within the field of activity of the customer and for which an active administrative record exists in the software. It is irrelevant whether a computing device is operated in a virtualized environment. Examples of FireScope Endpoint CIs: desktop computers, notebooks, thin clients, tablets, smartphones, handheld devices, network printers, IP-Phones. Infrastructure devices (such as a server, network printer, router, bridge or hub), peripheral devices (such as a monitor, desktop printer or mobile storage device) and other IT objects (such as a SIM card or universal asset) shall not be considered as end user computing devices. If FireScope

discovers a device, via the device responding with its IP Address and FireScope monitors that device going forward, it is a counted FireScope CI. Networked based elements are counted as one FireScope CI for each IP address. In the event certain types of FireScope CI's are discovered, but Client chooses to not monitor them, by disabling them; e.g. IP Phones, they are not counted as FireScope CI's against the license.

"FireScope Infrastructure CI" means a 'FireScope Infrastructure CI' (Configuration Item) means any network-based component not used as end user device and that is monitored and/or managed to deliver an IT service; such as a virtual or host server, cloud devices, router, switch, storage device, clusters, etc. If FireScope discovers a CI via a responding IP Address and FireScope monitors that device going forward, it is a counted FireScope CI. In the event certain types of FireScope CI's are discovered, but Client chooses to not monitor them, by disabling them; e.g. IP Phones, they are not counted as FireScope CI's against the license. Networked based elements are counted as one FireScope CI for each IP address.

"Scheduled Downtime" means planned downtime of which FSI has notified Client at least 72 hours in advance.

"Intellectual Property" means a party's proprietary material, technology, or processes (excluding the SaaS Services and Documentation), including services, software tools, proprietary framework and methodology, hardware designs, algorithms, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned or licensed by a third party) and any derivatives, improvements, enhancements or extensions of such Intellectual Property conceived, reduced to practice, or developed.

"SaaS Services" means the access to the online, web-based version of the Software (including Documentation), provided by FSI or its third-party provider through the use of the System.

"SaaS Service Credit" means in the event that FSI is unable to meet the stated level of Uptime in any month, Client must submit a request for credit, and FSI will provide to Client a credit against future service fees in the manner and to the extent described below.

"Software" means collectively the FireScope Software and any FSI Materials and Ancillary Programs.

"Subscription Fees" means the subscription fees set forth on an Order.

"Subscription Term" means the duration identified on an Order during which the SaaS Services will be provided and any subsequent renewals.

"System" includes the software and hardware used to provide the SaaS Services to Client over the Internet, including Software, Documentation, other software, web and/or other internet servers, any associated offline components, and all updates thereto.

"Uptime" means the time the SaaS Services are available for access and use through the System, but subject to the Exclusions described herein.

## 2 DEFINITIONS/LICENSE METRICS FOR MATRIX42 SAAS-SERVICES

An "Active Management Record" in the case of devices includes data for devices or mobile terminals that exist within the customer's domain and for which a data record exists in Matrix42. It shall be considered active if the customer cannot prove that the device has been stolen or scrapped, is defective or has otherwise left the customer's area of disposal. In the case of Users, an administration record includes all Users recorded in the Matrix42 database. The record shall be deemed active if the Customer cannot prove that a User is no longer working for the Customer in the area of use of the software.

"Concurrent User Licenses" are not personal and can be used by any number of Users, but only one User may work with a license at the same time. The license is only required for those Users who also work with the management consoles of the Matrix42 applications. End users who contact the Matrix42 applications via the portals, by e-mail or in any other way are not subject to licensing.

"Device" shall be each computing device used to collect, process or display digitalized information that, regardless of who owns the device, exists within the field of activity of the customer and for which an active administrative record exists in the Matrix42 software. It is irrelevant whether a computing device is operated in a virtualized environment. Examples of devices: server, desktop computers, notebooks, thin clients, tablets, smartphones, handheld devices. Infrastructure devices (such as a network printer, router, bridge or hub), peripheral devices (such as a monitor, desktop printer or mobile storage device) and other IT objects (such as a SIM card or universal asset) shall not be considered computing devices.

"Named User License" means the licensing to a specific User. By providing a "Named User License", the use of the respective Matrix42 applications and services is limited to a single named User. The legal relationship between the User and the customer is irrelevant. The license is only required for those Users who also work with the management consoles of the Matrix42 applications. End Users who contact the Matrix42 applications via the portals, by e-mail or in any other way are not subject to licensing.

"User" shall be every natural person, regardless of the legal relationship to the customer, for which an active administrative record exists in the Matrix42 software.

## 3 SAAS SERVICES

**3.1 Right to Use the SaaS Services.** Subject to the terms of these TOS and payment of applicable fees, during the Subscription Term, FSI grants to Client a non-exclusive, non-transferable right which Client cannot sub-license, for Client and its End-Users to access and use the SaaS Services for Client's internal business purposes up to the Authorized Use Limitation and in accordance with the Documentation. Client will use the SaaS Services in accordance with the Documentation and be responsible for the acts and omissions of its End-Users. FSI shall perform any updates and upgraded to the Software used at its own discretion. Client shall not be entitled to the latest Software version.

**3.2 Access and Use Restrictions.** Client shall not (directly or indirectly): (i) remove any notice of proprietary rights from the SaaS Services; (ii) attempt to modify or reverse engineer any

part of the SaaS Services; (iii) except to the limited extent applicable laws specifically prohibit such restriction, decompile, attempt to derive the source code or underlying ideas or algorithms of any part of the SaaS Services, attempt to recreate the SaaS Services or use the SaaS Services for any competitive purpose; (iv) copy, modify, translate or otherwise create derivative works of any part of the SaaS Services; (v) sell, resell, encumber, rent, lease, time-share, distribute, transfer or otherwise use or exploit or make available any of the SaaS Services to or for the benefit of any third party; and (vi) use the SaaS Services to infringe on the intellectual property rights, publicity rights, or privacy rights of any third party, or to store defamatory, trade libelous, or otherwise unlawful data. Client's authorized use of the SaaS Services is subject to the Authorized Use Limitation. Fees for the SaaS Products are based on use of the SaaS Products in a manner consistent with the Documentation. If Client's usage is in a manner outside of the Documentation, then Client will cooperate with FSI to address any applicable burden on the SaaS Services or pay an additional mutually agreed upon fee.

**3.3 Login Access to the SaaS Products.** Client is solely responsible for: (i) authorizing End-Users with access to the SaaS Services, (ii) ensuring that End-Users have been trained in proper use of the SaaS Services, and (iii) proper usage of passwords, tokens and access procedures with respect to logging into the SaaS Services. FSI reserves the right to refuse registration of, or to cancel, login IDs that it reasonably believes to violate the terms and conditions set forth in these TOS, in which case FSI will promptly inform Client in writing of such refusal or cancellation.

**3.4 Trial Services.** If Client is using a free trial, a proof of concept version of the SaaS Services, a beta version of the SaaS Services, or using the SaaS Services on any other free-of-charge basis as specified in an Order including any related support services to the extent provided by FSI in its sole discretion (collectively, "**Trial Services**"), FSI makes such Trial Services available to Client until the earlier of (i) the end of the free trial or proof of concept period or beta testing period as communicated by FSI or specified in an Order, (ii) the start date of any purchased version of such SaaS Services, or (iii) written notice of termination from FSI ("**Trial Services Period**"). FSI grants Client, during the Trial Services Period, a non-exclusive, non-transferable right to access and use the Trial Services for Client's internal evaluation purposes in accordance with the Documentation and subject to the access and use restrictions set forth in these TOS. Client is authorized to use Trial Services only for evaluation and not for any business or productive purposes, unless otherwise authorized by FSI in writing. Any data Client enters into the Trial Services and any configurations made to the Trial Services by or for Client during the Subscription Term of such Trial Services will be permanently lost unless Client (a) has purchased a subscription to the same SaaS Services as covered by the Trial Services or (b) exports such data or configurations before the end of such free period. There is no guarantee that features or functions of the Trial Services will be available, or if available will be the same, in the general release version of the SaaS Services, and Client should review the SaaS Services features and functions before making a purchase. FSI will be under no obligation to provide Client any maintenance or support services with respect to the Trial Services. Notwithstanding anything to the contrary, FSI provides the Trial Services "as is" and "as available" without any warranties or representations of any kind. To the extent permitted by law, FSI disclaims all implied warranties and representations, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose and non-infringement. Client assumes all risks and all costs associated with its use of the Trial Services. Client's sole and exclusive remedy in case of any dissatisfaction or FSI's breach of these TOS with respect to such Trial Services is termination of the Trial Services. Any obligations on behalf of FSI to indemnify, defend, or hold harmless under these TOS are not applicable to Clients using Trial Services.

**3.5 Third Party Materials and Ancillary Programs.** The SaaS Services include open source

software programs that are made available by third parties under their respective open source licenses as indicated in the Documentation (“**Third Party Materials**” and “**OSS Licenses**”, respectively). FSI warrants that such Third Party Materials will not diminish the rights provided to Client herein, or limit Client’s ability to use the SaaS Products in accordance with the Documentation, or create any obligation on the part of Client to license Client’s software or products under any open source or similar license. Nothing herein shall derogate from mandatory rights Client may have under any OSS Licenses, if any. FSI represents and warrants that it has the full right and license to use the Ancillary Programs included with the SaaS Services. If any special warranty or other license terms apply to an Ancillary Program (“Ancillary Program License”), such terms will be set forth in the Documentation or in any additional terms of use. Client acknowledges that these TOS do not in any way supplement or detract from the Ancillary Program License.

**3.6 Additional terms for BitDefender.** If EgoSecure Software is part of the subject of contract, the “Additional Terms and Conditions for EgoSecure Endpoint Antivirus from BitDefender” (Annex B) shall also apply. These additional terms and conditions can be found at: <https://www.matrix42.com/en/terms-and-conditions/>.

**3.7 Support.** As part of its provision of the SaaS Services, FSI shall make available technical support to Client in accordance with FSI’s then applicable Software Maintenance and Support Services Policy. Upon notification from FSI, Client shall promptly update any locally-installed software agents on Client systems that interact with the SaaS Services. Client acknowledges and agrees that its failure to timely install such an update may result in disruptions to or failures of the SaaS Services, or suspension of Client’s access to the SaaS Services, without any liability on the part of FSI to Client.

## 4 FEES

**4.1 Fees.** Client shall pay FSI the SaaS Hosting Fees Client set forth in each applicable Order. Unless otherwise specified in an Order, Client shall pay invoices within 30 days of the date of the invoice, without any deduction or set-off, and payment should be sent to the address specified by FSI. Any amounts arising in relation to these TOS not paid when due will be subject to a late charge of 1.5 % per month on the unpaid balance or the maximum rate allowed by law, whichever is less. Without prejudice to Client’s rights set out elsewhere in these TOS, all SaaS Services fees are non-refundable and payable in advance. FSI may invoice for purchases of SaaS Services upon availability to Client.

**4.2 Non-Payment.** If any SaaS Hosting Fees or any other fees owing by Client under these TOS (or any other amount that is owing by you under any other agreement for FSI or Matrix42 services) are 10 or more days overdue, we may, without limiting our other rights and remedies under this Agreement, suspend your access to the SaaS Service until such amounts are paid in full.

**4.3 Overage.** If Client exceeds the Authorized Use Limitation at any time during a month, its monthly report shall constitute an order for such excess use, which shall be billed at the List Price set forth in the Order and remain in effect through the end of the then-current Subscription Term. FSI shall issue an invoice to Client unless Client otherwise provides notice as part of its monthly report that its use of the SaaS Services was reduced to the Authorized Use Limitation within that month.

**4.4 Taxes.** The fees and charges covered by these TOS are exclusive of any excise, sales, use, gross-turnover, value added, goods and services tax or other similar types of indirect taxes, duties or tariffs (however designated, levied or based and whether foreign or domestic) (“**Indirect Taxes**”) imposed or levied, currently or in the future based on applicable legislation, on the SaaS Services provided under these TOS. Unless otherwise agreed between the parties, Client will be liable for compliance with and payment of such Indirect Taxes. FSI shall include the Indirect Taxes on its invoice to Client and remit such Indirect Taxes to the relevant authority if required by applicable law. For the avoidance of doubt, FSI will be responsible for direct taxes imposed on FSI’s net income or gross receipts.

## 5 RIGHTS IN INTELLECTUAL PROPERTY

**5.1 Intellectual Property.** Except for the rights granted in these TOS, all rights, title, and interest in and to the SaaS Services, Documentation, and FSI Intellectual Property are hereby reserved by FSI, its Affiliates or licensors. Except as provided for herein, all rights, title, and interest in and to Client Intellectual Property are hereby reserved by Client, its Affiliates or licensors. Nothing in these TOS shall (a) transfer ownership of any Intellectual Property rights from one party to the other, or (b) provide either party a right to use the other party’s trade names, logos, or trademarks.

**5.2 Client Data.** Client owns all right, title and interest in all Client Data. Nothing in these TOS shall be construed to grant FSI any rights in Client Data beyond those expressly provided herein. Client grants FSI and its Affiliates the limited, non-exclusive right to view and use the Client Data solely for the purpose of providing and improving the SaaS Services.

**5.3 Usage Data and Suggestions.** FSI shall be permitted to collect and use the Usage Data internally and for Client’s benefit. If FSI wishes to disclose the Usage Data or any part thereof to third parties (either during the Subscription Term or thereafter), such data shall be anonymized and presented in the aggregate so that it will not identify Client or its End-Users. The foregoing shall not limit in any way FSI’s confidentiality obligations pursuant to Section 6 below. To the extent that Client provides FSI with suggestions, such suggestions shall be free from any confidentiality restrictions that might otherwise be imposed upon FSI pursuant to these TOS, and may be implemented by FSI in its sole discretion. Client acknowledges that any FSI products or materials incorporating any such suggestions shall be the sole and exclusive property of FSI.

## 6 CONFIDENTIAL INFORMATION

**6.1 Confidential Information.** The parties acknowledge that each may disclose certain valuable confidential and proprietary information to the other. “Confidential Information” means all information provided by the disclosing party to the receiving party concerning the disclosing party or its Affiliates’ business, products or services that is not generally known to the public, including information relating to customers, vendors, trade secrets, prices, products, services, computer programs and other Intellectual Property, and any other information which a party should reasonably understand to be considered Confidential Information whether or not such information is marked “Confidential” or contains such similar legend by the disclosing party at the time of disclosure. The receiving party may only use the disclosing party’s Confidential Information to fulfil the purposes of these TOS. The receiving party will protect the disclosing party’s Confidential Information by using at least the same degree of care as the receiving party uses to protect its own Confidential Information of a like nature (but no less than a reasonable degree of care) to prevent the unauthorized use, dissemination, disclosure or publication of such Confidential

Information. Notwithstanding the foregoing, the receiving party may disclose Confidential Information to its (and its Affiliates) employees, advisors, consultants, and agents on a need-to-know basis and provided that such party is bound by obligations of confidentiality substantially similar to those contained herein. This Section 6 supersedes any and all prior or contemporaneous understandings and agreements, whether written or oral, between the parties with respect to Confidential Information and is a complete and exclusive statement thereof.

**6.2 Exceptions.** Information will not be deemed Confidential Information if it (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party, (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source that does not have an obligation of confidentiality to the disclosing party with respect to such information, (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of these TOS by the receiving party, or (iv) is independently developed by the receiving party without use of or reliance upon the disclosing party's Confidential Information, and the receiving party can provide documentary evidence to that effect. The receiving party may disclose Confidential Information pursuant to the requirements of a court, governmental agency or by operation of law but shall (to the extent permissible by law) limit such disclosure to only the information requested and give the disclosing party prior written notice sufficient to permit the disclosing party to contest such disclosure.

## 7 CUSTOMER DATA/SECURITY

**7.1 Client Data.** Client Data shall be deemed Confidential Information under these TOS. As between FSI and Client, Client is solely responsible for (i) the content, quality and accuracy of Client Data as made available by Client and by End-Users, (ii) providing notice to End-Users with regards to how Client Data will be collected and used for the purpose of the SaaS Services, (iii) ensuring Client has a valid legal basis for processing Client Data and for sharing Client Data with FSI (to the extent applicable), and (iv) ensuring that the Client Data as made available by Client complies with applicable laws and regulations including (where applicable) the EU General Data Protection Regulation (2016/679) ("GDPR"), any applicable laws of EU member states implementing the GDPR (including the UK Data Protection Act 2018), and the California Consumer Privacy Act, in each case as amended, consolidated, re-enacted or replaced from time to time and only if and insofar as they apply (collectively, "Applicable Data Protection Laws").

**7.2 Data Protection Laws.** The parties shall comply with their respective obligations under the Applicable Data Protection Laws. In particular, if Client is established in the European Economic Area ("EEA"), in the United Kingdom ("UK") or in California, or will, in connection with the SaaS Services, provide FSI with personal data relating to an individual located within the EEA, the UK or California, the parties shall comply with the Data Processing Addendum found at [INSERT LOCATION OF DPA] which in such case is hereby incorporated into these TOS.

**7.3 Security of Client Data.** FSI shall (i) ensure that it has in place appropriate administrative, physical and technical measures designed to protect the security and confidentiality of Client Data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties; (ii) have measures in place designed to protect the security and confidentiality of Client Data; and (iii) access and use the Client Data solely to perform its obligations in accordance with these TOS, and as otherwise expressly permitted in these TOS. FSI shall not materially diminish its security controls with respect to Client Data during the Subscription Term.

**7.4 Backup.** FSI uses commercially reasonable practices designed to enable the backup of the Client Data consistent with FSI's storage policies and procedures, applicable to each 24 hour period.

**7.5 Restoration of Data.** FSI will not be responsible for any unauthorized access to or alteration, theft or destruction of the Client Data through accident, fraudulent means or devices, unless such access, alteration, theft or destruction is caused as a direct result of FSI's negligence or intentional misconduct, in which case FSI's commercially reasonable efforts to restore the Client Data shall be limited to the most recent back- up of the Client Data.

## 8 AVAILABILITY; WARRANTIES; DISCLAIMER

**8.1 Availability and Remedies for Defaults.** FSI uses commercially reasonable efforts to maintain the availability of the SaaS Services and System 24 hours per day, seven days per week, less Scheduled Downtime, in accordance with FSI's policies. FSI commits to achieve 99.5% Uptime on a monthly basis, less the Exclusions. If Uptime falls below 99%, it shall be considered a minor default; and if Uptime falls below 98%, it shall be considered a major default. In the event of a minor default, Client is entitled to 2 days credit of Subscription Fees, based on the portion of the Subscription Fees paid for such month. In the event of a major default, Client is entitled to 5 days credit of Subscription Fees, based on the portion of the Subscription Fees paid for such month. Except to the extent provided in Section 8.2, the credits issued under this Section will be the Client's sole and exclusive remedy for the default event giving rise to the credit.

**8.2 Termination for Major Defaults.** If there are three major defaults within a three month period of time, upon 30 days written notice to FSI (which notice shall be received by FSI within ten business days of the third unexcused major default), Client may terminate the Subscription Term without incurring any additional charges or termination fees. In the event of such termination, the Client shall be entitled to a refund of Subscription Fees which have not yet been applied towards the SaaS Services as of the effective date of termination and FSI shall relieve Client of its obligation to pay for any unused fees applicable in the then-current Subscription Term. Except for the provisions of Section 8.1 above, the refund herein shall be Client's sole and exclusive remedy under these TOS and any Order(s) arising hereunder, and FSI shall have no further liability arising out of these TOS and any Order(s) arising hereunder.

**8.3 Downtime.** Scheduled Downtime and unscheduled interruptions may occur, and FSI does not warrant uninterrupted availability of the System. Normal software or hardware upgrades are scheduled for nights and weekends, Central Standard Time, and intended to cause a minimum amount of interruption to SaaS Services and System availability. In the event that an unscheduled interruption occurs, FSI will use commercially reasonable efforts to resolve the problem and return the System to availability as soon as practical. During such Scheduled Downtime and unscheduled interruptions, Client may be unable to transmit and receive data through the SaaS Services. Client agrees to cooperate with FSI during the Scheduled Downtime and unscheduled interruptions if assistance from Client is necessary in order to restore the System to working order.

**8.4 Changes.** In addition to Scheduled Downtime, FSI may also temporarily restrict Client's access to parts of the SaaS Services for necessary, unplanned maintenance or system administration purposes without notice or liability.

**8.5 Intellectual Property Warranty.** FSI warrants that (i) all intellectual property rights in the Software belong to it and (ii) it has full right and license to provide the SaaS Services as described in these TOS (iii) it has the right to enter into these TOS and to grant Client the rights contemplated

by these TOS and the Order.

**8.6 Warranty.** FSI warrants that (i) SaaS Services shall perform substantially in accordance with the applicable Documentation and (ii) that SaaS will be available online according to the performance levels described in the Documentation. In the event of a breach of the foregoing Warranty by FSI, as Client's sole remedy FSI shall in consultation with Client (i) use reasonable efforts consistent with industry standards to cure the defect as defined in the applicable support process outlined in these TOS or (ii) Client may exercise its rights as defined in the Documentation under the applicable SLA.

**8.7 DISCLAIMER.** EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION OF THIS AGREEMENT, THE SAAS SERVICES AND DOCUMENTATION PROVIDED BY FSI ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND FSI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY. FSI does not warrant that the SaaS Services or any other information or materials provided under these TOS will meet Client's requirements or that the operation thereof will be uninterrupted or error-free, or that all errors will be corrected.

**8.8 LIMITATION OF LIABILITY.** IN NO EVENT WILL FSI'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THESE TOS EXCEED THE AMOUNT OF FEES CUSTOMER PAID TO FSI FOR THE SAAS SERVICES THAT GIVES RISE TO SUCH LIABILITY. UNLESS OTHERWISE EXPRESSLY STATED HEREUNDER, UNDER NO CIRCUMSTANCES SHALL FSI OR ANY OF ITS SUPPLIERS BE LIABLE FOR ANY OF THE FOLLOWING: LOSS OR DAMAGE TO ANY SYSTEMS, RECORDS OR DATA; OR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES (INCLUDING LOST PROFITS), IN EACH CASE EVEN IF FSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8.9 Intellectual Property Infringement.** If a third party makes a claim against Client that the Software or SaaS Services infringe any patent, copyright, trade secret, trademark or other intellectual property rights ("IP Claim"); FSI will defend, indemnify and hold Client harmless against the IP Claim and pay all costs, damages, and expenses (including reasonable legal fees) incurred by or awarded against Client arising out of or in connection with any such IP Claim; provided that: (i) Client notify FSI as soon as reasonably practicable in writing of a potential claim of which Client has notice; (ii) FSI shall at its own expense assume sole control of the defense of such claim and all related settlement negotiations; and (iii) Client provides FSI, at FSI's reasonable request and expense, with reasonable assistance, information, and authority necessary to perform FSI's obligations under this Section. Notwithstanding the foregoing, FSI shall have no liability for any claim of infringement based on the use of the SaaS Services other than in accordance with the Documentation and these TOS. If, due to an IP Claim or the threat of an IP Claim, (i) the Software or SaaS Services are held, or in FSI's reasonable judgment may be held to infringe, or (ii) Client is enjoined from using the SaaS Services, or in FSI's reasonable judgment Client may receive such an order, FSI shall at its expense, (a) replace or modify the affected SaaS Services to be non-infringing; (b) obtain for Client a license on comparable terms as those reflected in these TOS to continue using the affected SaaS Services; or (c) if FSI cannot reasonably obtain the remedies in (a) or (b), terminate the Subscription and refund all Subscription Fees paid by Client under for the SaaS Services. This Section states FSI's entire liability and Client's exclusive remedy for any claim of infringement.

## 9 RESTRICTED RIGHTS AND EXPORT CONTROL

**9.1 Commercial Computer Software.** If Client is an agency or contractor of the United States Government, Client acknowledges and agrees that (i) the SaaS Services (including any software forming a part thereof) were developed entirely at private expense, (ii) the SaaS Products (including any software forming a part thereof) in all respects constitute proprietary data belonging solely to FSI, (iii) the SaaS Services (including the Software) are not in the public domain, and (iv) the software forming a part of the SaaS Services is “Commercial Computer Software” as defined in sub-paragraph (a)(1) of DFAR Section 252.227-7014 or FAR Part 12.212.

**9.2 Export Control.** The exportation of the SaaS Services and Documentation, and all related technology and information thereof are subject to U.S. laws and regulations pertaining to export controls and trade and economic sanctions, including the U.S. Export Administration Act, Export Administration Regulations, the Export Control Reform Act, and the Office of Foreign Assets Control's sanctions programs, the laws of the State of Israel, and the laws of any country or organization of nations within whose jurisdiction Client (or its End-Users who may use or otherwise receive the SaaS Services as expressly authorized by these TOS) operates or does business, as amended, and the rules and regulations promulgated from time to time thereunder. Specifically, Client hereby undertakes not to export, re-export or grant access to the SaaS Services and all related technology, information, materials and any upgrades thereto to: (a) anyone on the U.S. Commerce Department's Denied Persons, Entity, or Unverified Lists or the U.S. Treasury Department's list of Specially Designated Nationals and Consolidated Sanctions list (collectively, “Prohibited Persons”); (b) any country to which such export, re-export or grant of access is restricted or prohibited per the foregoing applicable laws; or (c) otherwise in violation of any applicable export or import restrictions, laws or regulations. Client also certifies that it is not a Prohibited Person nor owned, controlled by, or acting on behalf of a Prohibited Person.

## 10 PROFESSIONAL SERVICES

Client may separately purchase from FSI professional services in relation to the SaaS Products as may be generally available by FSI to its customers, pursuant to FSI's then applicable professional services terms.

## 11 TERM AND TERMINATION

**11.1 Term.** This Agreement will be effective upon the Effective Date (as set forth in the Order) and shall remain in force during the applicable Subscription Term of the SaaS Services or unless or until terminated by either party pursuant to this Section. Prior to the end of the Subscription Term, Client may contact FSI to extend the term of their Subscription Term for the period stated in any such agreed upon renewal Order.

**11.2 Termination for Convenience.** Either party may terminate these TOS, upon 60 days prior written notice, for any reason, provided however that: (i) if FSI terminates the Subscription, it will refund the fees paid to it for the unused Subscription Term to Client, pro-rated, and (ii) if Client terminates these TOS, it shall not be entitled to any refund.

**11.3 Termination for Cause.** Either party may terminate the Subscription Term immediately upon notice to the other party if the other party: (i) materially breaches these TOS and fails to remedy such breach within 30 days after receiving written notice of the breach from the other party, or (ii) commences bankruptcy or dissolution proceedings, has a receiver appointed for a

substantial part of its assets, or ceases to operate in the ordinary course of business. In addition, a party may terminate these TOS, in whole or in part, or cease provision of SaaS Services if required to comply with applicable law or regulation, and such termination will not constitute a breach of these TOS by the terminating party.

**11.4 Effects of Termination/Expiration.** Termination of these TOS or the access rights granted hereunder shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Client of Client's obligation to pay all fees that have accrued or are otherwise owed by Client. In event of a termination of these TOS, Client must return any Hardware provided by FSI.

## 12 MISCELLANEOUS

**12.1 Legal Compliance.** Each party shall be responsible for, and agrees to comply with, all applicable laws, statutes, ordinances, and regulations.

**12.2 Governing Law.** These TOS shall be governed in all respects by the laws of the State of California, USA, without regard to choice-of-law rules or principles. Any dispute that may arise in connection with the interpretation or implementation of these TOS shall be submitted to a court of competent jurisdiction located as provided below. Client expressly agrees with FSI that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to these TOS.

**12.3 Jurisdiction.** Any dispute that may arise in connection with the interpretation or implementation of these TOS or any dispute otherwise related to the relationship between Client and FSI shall be submitted to a court of competent jurisdiction located in Orange County, California. In the case of any such proceedings, Client and FSI hereby irrevocably consent to the personal and exclusive jurisdiction and venue of the federal and state courts located in Orange County, California. The prevailing party in any dispute arising from or related to these TOS or otherwise related to the relationship between Client and FSI shall be entitled to an award of its reasonable attorneys' fees and costs from the non-prevailing party.

**12.4 Notices.** Any notices shall be personally delivered or sent by certified or registered mail, return receipt requested, or by overnight express courier, to the address specified herein or such other address as the party may specify in writing. Such notices will be effective upon receipt, which may be shown by confirmation of delivery.

**12.5 Data Rights.** FSI may collect and track information about Client including but not limited to Client's IP address, the type of hardware Client uses and the type of browser Client employs. FSI reserves the right to use and analyze such information within the scope of FSI's internal activities. FSI may use such data for the purposes of responding to Client requests for information and for contacting Client. FSI may identify Client as a user of the SaaS Services, including using Client's name and logo

**12.6 Assignment.** Client may not assign or otherwise transfer these TOS without FSI's prior written consent. Notwithstanding the foregoing, either party may assign these TOS without the consent of the other party if such assignment is in connection with a sale of all or substantially of such party's business to which these TOS relates, whether by merger, sale of stock, sale of assets or otherwise. These TOS shall be binding upon and inure to the benefit of the parties' successors and permitted assigns.

**12.7 General.** These TOS, together with the Order into which these TOS is incorporated,

constitutes the parties' complete agreement regarding its subject matter, superseding any prior oral or written communications. Under no circumstances will the terms of any purchase order issued by Client control or otherwise negate or modify the terms set forth in these TOS. No amendments or changes to these TOS shall be effective unless they are (a) expressly indicated to be an amendment, (b) in writing and (c) signed by authorized representatives of both parties . The exchange of a fully executed Order (in counterparts or otherwise) by fax or email in a PDF format shall be sufficient to bind the parties to the terms and conditions of such agreement. If any provision of these TOS is held to be unenforceable, that shall not affect the enforceability of the remaining provisions. The parties are independent contractors for all purposes under these TOS.

Company Name \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Signature \_\_\_\_\_