



STANDARD FMX SOFTWARE SUBSCRIPTION AGREEMENT

The terms of this Standard FMX Software Subscription Agreement, including the Terms of Use referenced herein (collectively, the “**Software Subscription**”) are the only terms which govern the limited license to use the Products provided by Facilities Management eXpress, LLC (“**FMX**”) to the customer listed on the applicable Subscription Summary (“**Customer**”). The commercial terms relating to this Software Subscription are set forth in the accompanying order proposal or invoice, as applicable (the “**Quote**”), that links to or is otherwise attached to this Software Subscription (the “**Subscription Summary**” and this Software Subscription (collectively, this “**Agreement**”).

In consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Products

- 1.1. Access to Products. Subject to the terms and conditions of this Agreement, during the Term, FMX shall provide the solutions listed on the Subscription Summary (each a “**Product**” and collectively the “**Products**”) to Customer pursuant to the terms and conditions herein. The specific Products to be provided, the applicable Product Effective Date, the Initial Product Term, and the fees for such products shall be identified on the Subscription Summary, as may be amended by the parties from time to time, in writing. From time to time, in the sole discretion of FMX, following Digital Notice to Customer the Products may be modified and FMX may include additional conditions, features and modifications. FMX may via Digital Notice keep Customer informed of Product Updates, Scheduled Maintenance, new versions of the Products offered hereunder, and other developments which may affect Customer’s use of the Products.
- 1.2. Customer Requirements. Customer shall, at its sole expense, provide, configure and be responsible for the proper functioning of Internet connectivity at levels recommended by FMX, hardware, systems software, and other applications software during the Term for proper functioning of the Products.
- 1.3. Intellectual Property. FMX at all times is, and shall continue to be, the sole and exclusive owner of all Intellectual Property and other proprietary rights and interests in and to the Products, including all software code and other functional components thereof. This Agreement is not a royalty-bearing contract or sale and does not convey, and Customer acknowledges and agrees that Customer neither has nor at any time shall attempt to claim, any interest in or to any of the Products or any Intellectual Property related to any of the foregoing or the use thereof other than any limited rights of access and use as expressly granted in this Agreement. Customer shall have no right to access or review any code used or embedded in the Products. In the event that FMX is required to use or access Customer Intellectual Property for proper functioning of the Products, Customer hereby grants to FMX, and FMX hereby accepts, a royalty-free, fully paid, worldwide, and nonexclusive license to use such Intellectual Property as reasonably required to provide the Products. Customer shall not, and shall ensure that its affiliates and their respective employees, representatives and agents do not directly or indirectly in whole or in part copy, modify, sublicense, distribute, rent, lease, convey, translate, disassemble, reverse engineer or decompile any of FMX’s Intellectual Property including but not limited to any Intellectual Property included with, embedded in, or relating to the Products or any other software of FMX, or attempt to do the same.
- 1.4. Customer Materials. Except as otherwise expressly provided herein, nothing herein shall be construed to grant any right or license to FMX in or to any content, trademark, service mark or other material provided to FMX hereunder by Customer (“**Customer Materials**”), other than the right to use such material on behalf of Customer in connection with the Products. All of the Customer Materials shall remain the property of Customer.

2. Term and Termination

- 2.1. Term. The term of this Agreement shall commence on the Effective Date and shall continue thereafter until the termination or expiration, as applicable, of the Product Term for each Product listed on the Subscription Summary, as may be amended from time to time by the parties, in writing.
- 2.2. Initial Product Term. The period of the Initial Product Term for each Product is identified on the Subscription Summary. The Initial Product Term for a Product begins on the applicable Product Effective Date for such Product, as listed on the Subscription Summary.
- 2.3. Product Renewal Term. Following the Initial Product Term, the Product Term for each applicable Product shall continue for a period of time equal to the duration of the Initial Product Term (each such period, a “**Product Renewal Term**”) unless either party elects to terminate the Product Term by giving written notice to the other party of the election to terminate at least thirty (30) days prior to the expiration of the then-current Initial Product Term or Product Renewal Term (if terminated by Customer, such written notice shall be sent via e-mail to billing@gofmx.com). Commencing after the Initial Product Term, FMX may, upon ninety (90) days prior written notice to Customer, adjust the Subscription Fee and other fees or prices for such Product.
- 2.4. Product Term. The Product Term for a Product includes the Initial Product Term for such Product and any Product Renewal Term for such Product. For the avoidance of doubt, the “Product Term” is the period of time during which the Customer or an authorized End User shall be authorized to use the applicable Product pursuant to a limited license granted hereunder.
- 2.5. Termination. Notwithstanding Section 2.1 above and in addition to any other termination rights hereunder, this Agreement may be terminated by either party for cause, upon receipt of a written notice to the aggrieved party, in the event the other party: (i) materially breaches this Agreement; (ii) in its performance hereunder, recklessly or willfully violates applicable law; (iii) files a voluntary petition in bankruptcy, or has an involuntary petition in bankruptcy filed against it; or (iv) is declared insolvent,

makes an assignment for the benefit of creditors, appoints a receiver, conservator, or trustee to operate its business, or liquidates all or substantially all of its business assets, or the equivalent of any of the foregoing in this Section 2.5(iv).

3. Fees and Payment

- 3.1. **Fees.** Customer agrees to pay FMX the fees for Products as listed in the Subscription Summary. All fees and costs shall be exclusive of any taxes, however designated, levied or based upon the Products or other products and services. In the event that a Product is added to or removed from the Products provided to Customer by mutual agreement of the parties, or the parties otherwise agree to add or remove products or services, the Subscription Summary shall be modified by FMX to reflect the then current terms. In the event the Subscription Summary is modified, the applicable fees for the then current invoice period shall be calculated by FMX in accordance with its then current practices.
- 3.2. **Payment Terms.** Unless otherwise specified in the Subscription Summary, FMX will invoice Customer periodically. The Customer will pay any undisputed invoice within thirty (30) days of the applicable invoice date. If Customer has a good faith dispute as to any amounts invoiced, Customer shall promptly notify FMX of the grounds for such dispute, pay the undisputed portion of such invoice when due, and engage with FMX in good faith efforts to resolve such dispute promptly. Customer will pay FMX simple interest on all overdue payments at a rate of 10% per year or the maximum rate allowable by law, if lesser. If any amount is past due, FMX may without notice, immediately suspend further work, and terminate Customer's and any related End User's access to any or all Products or other products purchased or otherwise licensed from or through FMX until the account is brought current. Customer shall be responsible for all expenses incurred by FMX in the collection of any unpaid invoice, including attorney's fees and costs.
- 3.3. **Fees Exclusive of Taxes.** The fees for Products as listed in the Quote do not include applicable federal, state or local taxes of any kind. Customer is wholly responsible and solely liable for any and all taxes and/or regulatory fees that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise access, bypass, franchise or other taxes, fees, duties, charges or surcharges, regulatory fees, however designated (except only for taxes on FMX's net income), imposed on, incident to, or based upon the provision, sale or use of the Products (the "Taxes"). Customer agrees to file all applicable tax returns in respect of Taxes and remit in a timely manner all Taxes to the appropriate governmental authority in the respective jurisdiction. In the event FMX is required to remit any Taxes that may arise in any jurisdiction, FMX reserves the right to seek reimbursement of Taxes paid from the Customer, and Customer agrees to indemnify and hold FMX harmless from any and all liability associated with such reimbursement.

4. Certain Definitions

- 4.1. **"Digital Notice"** means providing notice to the Customer or its representative by electronic mail or other digital means and shall be deemed effective when provided.
- 4.2. **"Effective Date"** means the date the initial Product is first made available to Customer or any End User.
- 4.3. **"End User"** means each actual user of the Product who use the Product solely on behalf of Customer. Customer shall be responsible for the acts and omissions of its End Users, and Customer (and each of its End Users) shall be bound by the Terms of Use.
- 4.4. **"Intellectual Property"** means all rights and interests in all (a) patents, utility models, patent applications, and continuing (continuation, divisional, or continuation-in-part) applications, re-issues, extensions, renewals, and re-examinations thereof and patents issued thereon; (b) registered and unregistered trademarks, service marks, trade names, domain names, and all of the associated goodwill; (c) registered and unregistered copyrights and all other literary and author's rights; (d) trade secrets, know-how, show-how, concepts, ideas, methods, processes, designs, code, discoveries, improvements, and inventions, whether patentable or unpatentable; (e) all other intellectual, industrial, and proprietary rights now or hereafter coming into existence throughout the world; (f) applications for and registrations, renewals, and extensions of any of the foregoing; and (g) exclusive and non-exclusive license rights to any of the foregoing.
- 4.5. **"Scheduled Maintenance"** means the scheduled period of time when access to the Products is not available to End Users.
- 4.6. **"Product Effective Date"** means the date the Initial Product Term begins for each applicable Product, as listed on the Subscription Summary for each applicable Product.
- 4.7. **"Product Term"** means the Initial Product Term and any Product Renewal Term for such Product, which is the period of time during which Customer has a limited license to use such applicable Product according to the terms and conditions of this Agreement and the terms of the applicable Terms of Use.
- 4.8. **"Product Updates"** means new features and functionalities included, from time to time, in the Products.
- 4.9. **"Subscription Fee"** means the base fees for the Products as set forth the Subscription Summary, or such other invoice as FMX may later provide.
- 4.10. **"Term"** means the period beginning with the Product Effective Date for the first Product licensed by Customer and continuing until the expiration or termination of all applicable Product Term(s).

5. General

- 5.1. **Relationship of the Parties.** The parties are independent contractors, and neither shall at any time be considered, or represent itself to be, an agent, employee, associate, or joint venture party of the other. Neither party shall have the authority nor hold itself out as able to bind the other party to any contract or commitment, nor shall either party be responsible for the acts or omissions of the other vis-a-vis third parties.
- 5.2. **Notices.** Except as otherwise set forth in this Agreement any and all notices, demands, or other communications required or desired to be given hereunder by any party may be delivered by Digital Notice and shall be effective when provided. Notices to

Customer shall be sent via Digital Notice to the e-mail address specified in the Quote, or such other address as Customer may hereafter deliver to FMX by Digital Notice.

- 5.3. Assignment. Neither party to this Agreement may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, FMX may assign or otherwise transfer any or all of its rights or obligations under this Agreement in the case of a sale or other transfer of all or substantially all of its assets or equity (whether by sale of assets or stock or by merger or other reorganization), without the prior consent of or notice to Customer.
- 5.4. Successors. All of the provisions hereof shall be binding upon and inure to the benefit of the successors, permitted assigns and any other transferees of the parties hereto.
- 5.5. Entire Agreement. This Agreement, is the entire understanding and agreement of the parties relating to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings, negotiations, representations, warranties, and communications whether written or oral. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend this Agreement, and all of such terms and conditions (including the terms of any Customer purchase order) are hereby expressly rejected. In the event of a conflict between the terms contained in this Software Subscription and the terms of the applicable Subscription Summary, the terms of this Software Subscription shall control unless the conflicting terms of the applicable Subscription Summary expressly reference this Section 5.5. The terms set forth in the applicable Terms of Use (Exhibit A) are incorporated herein, and as the same may be modified from time to time by FMX providing at least thirty (30) days notice to Customer thereof (which may be accomplished by Digital Notice or by posting to the applicable Product site). FMX MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH IN THE TERMS OF USE. FMX HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON INFRINGEMENT OF THIRD PARTY RIGHTS.
- 5.6. Headings. The headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.
- 5.7. Counterparts. This Agreement may be executed in any number of counterparts, and delivered through electronic means, a facsimile machine, as a .pdf attached to email, or such other method or manner as may be designated by FMX and each counterpart so executed and delivered shall be deemed an original, all of which together shall constitute one instrument.
- 5.8. Applicable Law and Dispute Resolution. This Agreement shall be construed and interpreted in accordance with and shall be governed by the laws of the State of Ohio, without regard to principles of conflict of law and irrespective of the fact that one or more parties hereto is now or may hereafter be a resident of a different state, jurisdiction or country. The state and federal courts situated in Franklin County, Ohio shall have exclusive jurisdiction for resolving any dispute arising under or relating to this Agreement. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply. The parties further expressly exclude the application of the Uniform Computer Information Transactions Act.
- 5.9. Force Majeure. All other terms of this Agreement notwithstanding, FMX shall not be liable for failure to perform any obligation under this Agreement or the failure of Products if such failure is caused by the occurrence of any contingency beyond the reasonable control of FMX (a “**Force Majeure Event**”), including but not limited to, fire, flood, strike, power outage, Internet outage, industrial disturbance, disruption, termination, or availability or reduction of services or products provided by third parties, denial of service attack, war, riot, insurrection, acts of God, acts of civil or military authority, or changes in third party platforms or APIs with which the Products interface or otherwise operate. In the event of such a Force Majeure Event, time for delivery or other performance under this Agreement shall be as soon as practicable following such Force Majeure Event.
- 5.10. Severability. In the event that any provisions of this Agreement, or any portions thereof, are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions of this Agreement shall not be affected thereby.
- 5.11. Survival. The provisions of Sections 1.3 and 1.4 and of this Article 5, the provisions of Section 3, 6, 7 and 9 of the Terms, as well as any accrued payment obligations, shall survive the termination of this Agreement for the periods contemplated thereby (or, if no period is contemplated, indefinitely).
- 5.12. Parties in Interest. The provisions of the Agreement are for the benefit of the parties hereto and not for any End User or other third party. No person other than a party to this Agreement may rely upon or enforce any provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, and in consideration of the agreements contained herein, do hereby execute this Agreement effective as of the Effective Date.

Facilities Management eXpress, LLC

Customer

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____



EXHIBIT A TO STANDARD FMX SOFTWARE SUBSCRIPTION AGREEMENT

TERMS OF USE (“TERMS”)

Facilities Management eXpress, LLC (“**FMX**”) provides this product (“**Product**”) along with any associated documentation (“**Documentation**”) or portion thereof to the “**Customer**” (as such term is defined in the Commercial Terms) (“**You**” or “**Your**”), including Your authorized end users (“**End Users**”) of this Product, on a non-exclusive basis for Your use and for Your sole benefit in accordance with the Commercial Terms, if any, and as such use and benefit may be limited by FMX. Before using the Product, you should carefully read the terms and conditions set forth in these Terms of Use (“**Terms**”). Your or Your End Users’ use of the Product, or your written or electronic signature, or any other manifestation of your assent to these terms shall indicate your acceptance of the terms and conditions set forth in these Terms.

1. **Commercial Terms.** If applicable, the commercial terms, including payment terms, payment schedule and usage rights and restrictions for the Product are set forth in the Standard FMX Software Subscription Agreement (the “**Commercial Terms**”). Capitalized terms used but not defined in these Terms have the meanings set forth in the Commercial Terms.
2. **Limited License.** Subject to Your compliance with the terms and conditions set forth in these Terms, the full payment of all applicable fees, Your and Your End Users’ strict compliance with the Commercial Terms, and Your and Your End Users’ compliance with any additional terms set forth in the Commercial Terms, You are granted a limited, non-exclusive, revocable limited license under these Terms that permit You to use the Product solely for your internal business purposes and in accordance with these Terms and the Commercial Terms, and the applicable Product user manuals and documentation, during the applicable period provided in the Commercial Terms, as may be amended.
3. **Confidentiality.** The Parties acknowledge that each of them may receive from the other confidential information, including any and all information and know-how related directly or indirectly to the disclosing party, its business, or its products (or the business and products of such party’s licensors, suppliers, and customers) that is conspicuously marked “CONFIDENTIAL”, “PROPRIETARY”, or with other words of similar import, or that the receiving party knows, or should reasonably know, is not publicly available. The receiving party shall not use or disclose the confidential information except in connection with, and as contemplated by, this Agreement. The receiving party shall use at least the same degree of care to avoid disclosure or unauthorized use of confidential information as it employs with respect to its own most confidential and proprietary information, but at all times shall use at least reasonable care. The receiving party shall not have any obligation of confidentiality with respect to any information that (i) is already known to the receiving party at the time the information is received from the disclosing party, as proven by prior documents or records of the receiving party; (ii) is or becomes publicly known through no wrongful act of the receiving party; or (iii) is rightfully received by the receiving party from a third party without restriction. The obligations of confidentiality and limitation of use shall survive the termination of this Agreement. If the parties have, as of the date of this Agreement, entered into, or if the parties do enter into subsequent to the date of this Agreement, any other agreement addressing the treatment of confidential information as between the parties, this Agreement shall in no event be deemed to narrow the scope or extent of protection otherwise provided to the disclosing party in respect of its confidential information.
4. **Data and Data Security.**
 - a. **Data Security.** Without limiting the obligations of confidentiality set forth in Section 3 of these Terms or otherwise, FMX shall not use, disclose or access Your data except as authorized by You, required to support the Products or to comply with law or as permitted by these Terms or the Commercial Terms. FMX shall implement commercially reasonable controls and procedures to limit access or use by its employees and contractors to Your data except as permitted by the preceding sentence. FMX, however, makes no representations or warranties with regard to Your or any third party’s compliance with standards or use of other data security controls.
 - b. **Ownership of Data.** The parties acknowledge and agree that, at all times, You shall and FMX shall not be the rightful owner of Your data, and FMX shall not use Your data, except as expressly permitted by these Terms or the Commercial Terms, required by law, required to provide the Products, or as otherwise authorized by You.
 - c. **Customer’s Data Security.** You represent that You have all required rights and permissions to transmit the data through the Products and that Your use of Your data complies with all applicable laws and governmental and industry regulations. FMX does not review data stored or transmitted through the Products, and FMX shall not be responsible for the legality of any such data or transmissions.
5. **Warranties and Representations.**
 - a. **By FMX.** FMX will make commercially reasonable efforts to make the Products available in a professional manner consistent with the level of care, skill, practice and judgment exercised by other professionals in developing and providing Products of a similar nature under similar circumstances.
 - b. **By Customer.** You warrant and represent that all materials and data provided by You do not infringe any United States patent, copyright, trademark, service mark or other Intellectual Property right of any third party in the United States. You warrant and represent that You are now in compliance with and during the Term of the Agreement shall continue to remain in compliance with all applicable U.S. and foreign laws and regulations including but not limited to (i) the International Emergency Economic Powers Act (50 U.S.C. § 1701) and all other laws administered by OFAC or any other governmental authority imposing economic sanctions and trade embargoes, (ii) U.S. export control Laws, including the Export Administration Regulations promulgated under the Export Administration Act of 1979 and the International Traffic in Arms Regulations administered by the U.S. Department of State, and (iii) the Foreign Corrupt Practices Act of 1977, as amended. Throughout the Term of the Agreement, You shall continue to comply with all such laws, and shall not export, re-export, divert, transship or otherwise deliver any products or other items purchased or subscribed to under the Agreement (including any Product or any portion of such Products). As a condition precedent to any right or license granted herein, You represent and warrant that each of Your End



Users shall agree to be bound by and comply with these Terms. FMX reserves the right but not the obligation, in its sole discretion to approve or prohibit access of any End User to the Products.

- c. Customer Acknowledgment. You acknowledge that the proper functioning and availability of the Products is dependent on interface and data exchange with various Customer and third party platforms and APIs. In the event that changes or updates are made to such Customer or third party platforms or APIs, changes or updates may be required to FMX's infrastructure or codebase in order to maintain the functionality of the Products. FMX reserves the right to charge additional fees or increase the Subscription Fee to be payable by You in order to accommodate such changes or updates. You further acknowledge that FMX makes no representations or warranties with respect to or regarding any software, products or other materials provided by third parties, including but not limited to the quality, availability, interoperability, or functionality of any third party platforms or APIs ("**Third Party Materials**"). All use of Third Party Materials is subject to compliance with terms and conditions of use required by such third parties.

6. DISCLAIMER; LIMITATION OF LIABILITY. EXCEPT AS SPECIFICALLY PROVIDED ELSEWHERE IN THESE TERMS, FMX HEREBY DISCLAIMS ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING AND WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON INFRINGEMENT OF THIRD PARTY RIGHTS. FMX DOES NOT WARRANT THAT ACCESS TO OR USE OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. IN THE EVENT OF ANY INTERRUPTION, FMX'S SOLE OBLIGATION SHALL BE TO RESTORE ACCESS AS SOON AS REASONABLY POSSIBLE. YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE NOT ENTERED INTO THE AGREEMENT ON THE BASIS OF ANY REPRESENTATIONS OR PROMISES NOT EXPRESSLY CONTAINED HEREIN. FMX'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES INCURRED BY YOU, AND IN NO EVENT SHALL FMX'S AGGREGATE LIABILITY RELATED TO THIS AGREEMENT EXCEED THE SUM TOTAL OF THE PRO RATA PORTION OF THE SUBSCRIPTION FEE PAID BY YOU TO FMX FOR THE PRODUCTS LICENSED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE INITIAL CLAIM. IN NO EVENT SHALL FMX BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE, OR THIRD PARTY AND/OR END USER DAMAGES OR CLAIMS, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, LOST PRODUCTIVITY, LOSS OF DATA, AND LOSS FROM INTERRUPTION OF BUSINESS, EVEN IF PREVIOUSLY ADVISED OF THEIR POSSIBILITY AND REGARDLESS OF WHETHER THE FORM OF ACTION IS IN CONTRACT, TORT, OR OTHERWISE IN CONNECTION WITH FMX'S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER.

7. Ownership. FMX retains ownership of all rights in the Product and of all proprietary technology embodied therein. All rights in and to the Product, including, but not limited to, any copyrights, patent, trade secret rights and other Intellectual Property rights, belong exclusively to FMX. You acknowledge that the unauthorized copying, disclosure, distribution, use or modification of the Product or Documentation received from FMX will cause material damage to FMX.

8. Transferability of License. You may not transfer or sublicense the Product or the rights contained herein to use such Product to another party without the prior written consent of FMX. If You transfer or sublicense possession or the use of any copy, modification or merged portion of the Product or Documentation to another party or physical location without FMX's prior written consent, Your license and rights hereunder will automatically terminate, in addition to any other remedies available to FMX.

9. Reverse Engineering. You agree (a) not to disassemble, reverse engineer, or decompile any portion of the Product, and (b) not to disclose or disseminate any software code or other proprietary elements of the Product or any portion thereof. Any attempt to disassemble the object code of the Product is unauthorized and will result in immediate termination of the Agreement, in addition to any other remedies available to FMX. You shall have no access, or right, to any source code relating to the Product.

10. Compliance. You may not commit any act which would, directly or indirectly, violate any law, regulation, treaty, or other agreement, including, without limitation, any laws relating to the export or re-export or diversion of the Product or other items to which the U.S. adheres or with which the U.S. complies. You represent and warrant that: (a) You are not located in, under the control of, or a resident of a jurisdiction where the use of the Product or the transaction contemplated in the Commercial Terms is prohibited; and (b) You shall not, in any manner whatsoever, either remove, convey, export, import, divert or transmit the Product from or to Your jurisdiction, or any other jurisdiction, in violation of applicable laws and regulations. You further agree, in connection with Your use of the Product, not to (i) introduce a virus, worm, Trojan horse or other harmful software code or similar files that may damage the operation of FMX's or a third party's computer or property or information; (ii) use the Product in any manner that could damage, disable, overburden, or impair any FMX server, or the network(s) connected to any FMX server or third party server or interfere with any other party's use and enjoyment of the Product; (iii) attempt to gain unauthorized access to services, materials, other accounts, computer systems or networks connected to any FMX server or third party server or to the Product, through hacking, password mining, or any other means; (iv) disclose, harvest, or otherwise collect information, including e-mail addresses, or other private information about any third party without that party's express consent; (v) sell, lease, or rent access to or use of the Product, or otherwise transfer or sublicense any rights to use the Product under these Terms; (vi) defraud, defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (including but not limited to the rights of privacy and publicity) of others; (vii) upload, store, or otherwise make available any Protected Health Information or any files or other data that may contain Protected Health Information as such term is defined in the Health Insurance Portability and Accountability Act of 1996, as amended ("**HIPAA**") and the regulations promulgated pursuant to HIPAA; (viii) upload, or otherwise make available, files that contain images, photographs, software, or other material protected by Intellectual Property laws, including, for example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless You own or control the rights thereto or have received all necessary written consent to do the same, (ix) send "spam" or other unsolicited communications to any party; (x) create a "mail drop" for such communications, or engage or permit e-mail relay services; (xi) "spoof" or otherwise impersonate any other party, or falsely state or otherwise misrepresent your identity or affiliation, or (xii) use any Products in connection with life support systems, human implantation, medical devices, nuclear facilities, nuclear systems or weapons, aviation, mass transit or any applications where failure or malfunction could lead to possible loss of life or catastrophic property damages. You shall indemnify and defend FMX from and against any and all liabilities, costs and expenses, including reasonable attorneys' fees, related to or arising from Your use of the Product.

11. Term. The limited license provided for under these Terms shall commence on the date the Product is first made available to You and shall continue for the applicable period of time that You are authorized to continue using the Product pursuant to the Commercial Terms, unless earlier terminated by FMX in its sole discretion. All provisions of these Terms relating to disclaimers of warranties, limitation of liability, remedies or



damages, and FMX's proprietary rights shall survive termination. You agree upon termination to return or destroy the Product together with all copies, modifications and merged portions, in any form, upon FMX's request.

12. Fees Exclusive of Taxes. The fees for Products as listed in the Quote do not include applicable federal, state or local taxes of any kind. You are wholly responsible and solely liable for any and all taxes and/or regulatory fees that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise access, bypass, franchise or other taxes, fees, duties, charges or surcharges, regulatory fees, however designated (except only for taxes on FMX's net income), imposed on, incident to, or based upon the provision, sale or use of the Products (the "Taxes"). You agree to file all applicable tax returns in respect of Taxes and remit in a timely manner all Taxes to the appropriate governmental authority in the respective jurisdiction. In the event FMX is required to remit any Taxes that may arise in any jurisdiction, FMX reserves the right to seek reimbursement of Taxes paid from You, and You agree to indemnify and hold FMX harmless from any and all liability associated with such reimbursement.