



## FMX End User License Agreement

This End-User License Agreement (the "EULA") is a legal agreement between the Customer (the "Licensee") and Facilities Management Express LLC ("FMX"), the author of FMX (the "Software"), which may include associated media, printed materials, and "online" or electronic documentation.

Licensee is an authorized user of the Software, which has been made available to Licensee's organization pursuant to a Standard FMX Software Subscription Agreement between FMX and Licensee's organization ("Subscription Agreement").

By accessing, or otherwise using the Software, Licensee agrees to be bound by the terms and conditions set forth in this EULA and the Subscription Agreement. If Licensee does not agree to the terms and conditions set forth in this EULA, then Licensee may not access or use the Software. Refer to the Standard Terms and Conditions for detailed guidance on how the FMX EULA is applied in practice.

### 1. Definitions

- 1.1. "FMX" shall refer to the licensor, Facilities Management Express LLC, located at 800 Yard Street, Ste. 115, Grandview Heights, Ohio 43212.
- 1.2. "Licensee" shall mean Customer, the individual or entity that accesses and uses the Software as permitted by the Subscription Agreement.
- 1.3. "Software" shall mean the FMX software and deliverables provided pursuant to this EULA.

### 2. Grant of License

- 2.1. Software Product License. Subject to the terms of this EULA, FMX hereby grants to Licensee a non-exclusive, limited license to possess and to use a copy of the Software pursuant to the Subscription Agreement. Software is being distributed by FMX. Licensee is not allowed to make a charge for distributing this Software, either for profit or merely to recover media and distribution costs. Licensee shall not make any use of the Software in any manner not expressly permitted by this EULA.

### 3. Description of Rights and Limitations

- 3.1. Limitations. Licensee agrees: (1) not to distribute, reproduce, sell, transfer, rent, lease, assign or sub-license the Software or documentation to any third party; (2) not to alter or modify the Software; (3) not to reverse engineer, disassemble, decompile or attempt to derive source code from the Software, or prepare derivative works therefrom; and (4) not to publish to a third party any results of benchmark tests run on the Software without FMX's prior, written consent.
- 3.2. Update and Maintenance. FMX shall provide updates and maintenance at its discretion. All updates shall remain the sole property of FMX and be subject to this EULA in all respects.

### 4. Intellectual Property

As between Licensee and FMX, FMX owns and shall retain any and all worldwide intellectual property rights, title, interest, copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the Software. The Software is protected by copyright laws in and to the Software, including but not limited to all images, photographs, animations, video, audio, music, text, data, computer code, algorithms, look-and-feel, databases, and information, are owned by FMX. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software are transferred to Licensee. Licensee agrees that nothing in this EULA or associated documents gives it any right, title or interest in the Software, except for the limited express rights granted in this EULA.

### 5. Confidentiality

Licensee acknowledges and agrees that the Software and documentation represent FMX's confidential and proprietary information. As an express condition to the license to access and use the Software and documentation hereunder, Licensee agrees not to disclose the Software or documentation (or any portion thereof) to any person or entity without FMX's prior written consent.

6. **Support**

FMX will provide phone and email support Monday through Friday 8:00 AM to 6:00 PM Eastern Standard Time.

7. **Termination**

This EULA is effective until:

- 7.1. This EULA and any license to use the Software is automatically terminated without notice, if Licensee fails to comply with any of the terms and conditions set forth in this EULA, unless such failure is capable of cure, in which case, Licensee shall have ten (10) days after written notice during which to cure such failure (and if cured during such period, this EULA shall not terminate).
- 7.2. This EULA and any license to use the Software is automatically terminated without notice upon any expiration or termination of the Subscription Agreement.
- 7.3. This EULA may be terminated by FMX immediately upon written notice, including e-mail, to Licensee, with or without cause.
- 7.4. Upon termination of this EULA for any reason, Licensee shall immediately discontinue any and all use of the Software and related documentation. The obligations of Licensee under the preceding sentence and all disclaimers of warranties and limitations of liability set forth in this EULA shall survive any termination.

8. **Licensee Obligations**

Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Software, including but not limited to providing training for its personnel, instituting appropriate security procedures applicable to its users' access and use of the Software and implementing reasonable procedures to examine and verify all output before use. Licensee shall safeguard all user names and passwords associated with the Software and shall be liable for any actions conducted using Licensee's user name, whether or not authorized by Licensee.

9. **Integration**

Both parties agree that this EULA (together with the Subscription Agreement) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this EULA.

10. **Governing Law; Jurisdiction**

This EULA shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of Ohio, without regard to conflicts of laws provisions thereof. The application of the Uniform Computer Information Transactions Act (UCITA) or the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Each party agrees that it will not export or re-export, directly or indirectly, the Software to destinations prohibited by the U.S. Department of Commerce in accordance with the U.S. Export Administration Regulations. Any legal action or proceeding relating to this EULA shall be brought exclusively in courts located in Columbus, Franklin County, Ohio, and each party consents to the jurisdiction thereof. The prevailing party in any action to enforce this EULA shall be entitled to recover costs and expenses including, without limitation, attorneys' fees. This EULA is made within the exclusive jurisdiction of the United States, and its jurisdiction shall supersede any other jurisdiction of either party's election.

11. **Non-Transferable**

This EULA is not assignable or transferable by Licensee without the prior written consent of FMX; any attempt to do so shall be void.

12. **Severability**

No failure to exercise, and no delay in exercising, on the part of either party, any privilege, any power or any rights hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. If any provision of this EULA shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this EULA shall otherwise remain in full force and effect and enforceable.

13. **Warranty Disclaimer**

FMX, as author of Software, hereby expressly disclaims any warranty whatsoever regarding the Software. Software and any related documentation is provided "as is" without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Licensee accepts any and all risk arising out of use or performance of Software.

14. **Limited Liability**

NOTWITHSTANDING ANY DAMAGES THAT LICENSEE MIGHT INCUR FOR ANY REASON WHATSOEVER, THE ENTIRE LIABILITY OF FMX UNDER ANY PROVISION OF THIS AGREEMENT OR FOR ANY CAUSE WHATSOEVER RELATING TO THE SOFTWARE OR DOCUMENTATION (WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY) AND THE LICENSEE'S EXCLUSIVE REMEDY THEREFOR SHALL BE LIMITED TO THE LESSER OF THE ACTUAL, DIRECT DAMAGES INCURRED OR THE AMOUNT ACTUALLY PAID OR PAYABLE BY LICENSEE UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE INITIAL CLAIM. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL FMX BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR DATA OR FOR BUSINESS INTERRUPTION,) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, OR BREACH OF CONTRACT, AND EVEN IF THE LESSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS PARAGRAPH AND THAT FMX WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH HEREIN

## 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 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](mailto:billing@gofmx.com)). Commencing after the Initial Product Term, FMX may, upon thirty (30) 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. **Licensed Users**

- 3.1. Adding Licensed Users. The quantity of licensed users purchased by the Customer will be listed in the Subscription Summary.
- 3.2. Licensed User Compliance. Software will allow the Customer to add more licensed users than the quantity listed in the Subscription Summary. The Customer is responsible for maintaining compliance with the licensed users listed in the Subscription Summary.
- 3.3. Licensed User Overages. FMX will review the licensed user compliance on a regular basis. Upon notification from FMX, the Customer will have 30 days to bring their account back into compliance with the licensed user quantity from the Subscription Summary. FMX will work with the Customer to reduce Customer's licensed users by identifying users that are inactive or improperly classified so that it achieves compliance. In the event that the Customer is unable to achieve compliance, the Customer agrees to pay for excess usage in accordance with the Fees and Payments section below.

### 4. **Fees and Payment**

- 4.1. 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.
- 4.2. 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.
- 4.3. 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.

### 5. **Certain Definitions**

- 5.1. "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.
- 5.2. "Effective Date" means the date the initial Product is first made available to Customer or any End User.
- 5.3. "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.
- 5.4. "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.

- 5.5. "Scheduled Maintenance" means the scheduled period of time when access to the Products is not available to End Users.
- 5.6. "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.
- 5.7. "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.
- 5.8. "Product Updates" means new features and functionalities included, from time to time, in the Products.
- 5.9. "Subscription Fee" means the base fees for the Products as set forth the Subscription Summary, or such other invoice as FMX may later provide.
- 5.10. "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).

## 6. General

- 6.1. 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.
- 6.2. 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.
- 6.3. 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.
- 6.4. 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.
- 6.5. 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.
- 6.6. Headings. The headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.
- 6.7. 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.
- 6.8. 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.

- 6.9. 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.
- 6.10. 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.
- 6.11. 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).
- 6.12. 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: \_\_\_\_\_

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

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

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

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

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

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

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.

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