



FixForm SaaS Agreement

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PARTIES

- (1) **FixForm BV**, with company number 0758.857.130 whose registered office is at Groot Overlaar 202, 3300 Oorbeek, Belgium, duly represented by the undersigned, hereinafter referred to as **FixForm**
- (2) **[FULL COMPANY NAME]**, with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]**, duly represented by the undersigned, hereinafter referred to as **Customer**

BACKGROUND

- (A) FixForm has developed a certain software application and platform which enables users to file reports and customers to receive and manage reports by users regarding problems concerning their infrastructure.
- (B) The Customer wishes to use FixForm's service in its business operations.
- (C) FixForm has agreed to provide and the Customer has agreed to accept and pay for FixForm's service subject to the terms and conditions of this Agreement.

AGREED TERMS

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: the terms and conditions of this Agreement, including all Schedules.

Confidential Information: information that is proprietary or confidential or is either clearly labelled as such or identified as such in Article 9.6.

Customer Data: the data inputted by the Customer, Users, or FixForm on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the documentation made available to the Customer by FixForm online via the Website or such other web address notified by FixForm to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the last date that this Agreement is executed either by FixForm or the Customer.

FixForm Platform: Fixform's Software application(s) and/or website(s) which enables the Customer and User to use the Services.

Initial Subscription Term: the initial term of this Agreement as set out in Customer's Subscription Plan.

Normal Business Hours: 8.00 am to 6.00 pm local Belgian time, each business day.

Renewal Period: the period described in Article 13.1.



Services: the subscription services provided by FixForm to the User and the Customer under this Agreement via the FixForm Platform or any other platform notified to the Customer by FixForm from time to time, pursuant to which Users can file reports and Customers can receive and manage reports by Users regarding problems concerning their infrastructure, as more particularly described in the Documentation.

Software: the software applications provided by FixForm as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to FixForm, as set out in **Schedule 1**.

Subscription Plan: Fixform's subscription plans as set out in **Schedule 1**.

Subscription Term: has the meaning given in Article 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Users: any user of the FixForm Platform and Documentation.

Website: Fixform's official website (www.fixform.com).

2. SERVICES

- 2.1 FixForm shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this Agreement.
- 2.2 FixForm shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - (a) planned maintenance carried out during the maintenance window which is notified by FixForm to the Customer in advance; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that FixForm has used reasonable endeavours to give the Customer reasonable notice in advance.

3. FIXFORM'S OBLIGATIONS

- 3.1 FixForm undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 3.2 The undertaking at Article 3.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to FixForm's instructions, or modification or alteration of the Services by any party other than FixForm or FixForm's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, FixForm will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Article 3.1. Notwithstanding the foregoing, FixForm:
 - (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 3.3 This Agreement shall not prevent FixForm from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or offensive; facilitates illegal activity; depicts sexually explicit images; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or is otherwise illegal or causes damage or injury to any person or property; and FixForm reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 4.2 The Customer shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or FixForm Platform in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software and/or Documentation; or
 - (b) access all or any part of the Services and/or Documentation in order to build a product or service which competes with the Services and/or Documentation; or
 - (c) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Users, or
 - (d) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Article.
- 4.3 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or Documentation and, in the event of any such unauthorised access or use, promptly notify FixForm.
- 4.4 The Customer shall:
- (a) provide FixForm with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by FixForm; in order to provide the Services;
 - (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, FixForm may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (d) ensure that the Users use the Services and/or Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any breach of this Agreement caused by Users;
 - (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for FixForm, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
 - (f) ensure that its network and systems comply with the relevant specifications provided by FixForm from time to time; and
 - (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to FixForm's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

5. CHARGES AND PAYMENT

- 5.1 The Customer shall pay the Subscription Fees to FixForm in accordance with this Article 5 and Customer's Subscription Plan.



5.2 The Customer shall on the Effective Date provide to FixForm approved purchase order information acceptable to FixForm and any other relevant valid, up-to-date and complete contact and billing details and FixForm shall invoice the Customer:

- (a) at the Kickoff meeting, but in any case no later than 30 days after the contract signature (Effective Date), for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (b) subject to Article 13.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

5.3 If FixForm has not received payment on the due date, and without prejudice to any other rights and remedies of FixForm:

- (a) FixForm may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and FixForm shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate of 10%, commencing on the due date and continuing until fully paid, whether before or after judgment.

5.4 Price Indexation

(a) The Subscription Fees shall be automatically indexed on each anniversary of the Effective Date in accordance with the Agoria wage index applicable to IT profiles, as published by Agoria.

(b) The adjustment shall be calculated as follows:

$$\text{New Price} = \text{Original Price} \times (\text{New Index} / \text{Initial Index})$$

Where:

- Original Price: the price specified in this Agreement at the Effective Date.
- New Index: the value of the Agoria IT index published for the month preceding the adjustment date.
- Initial Index: the value of the Agoria IT index published for the month preceding the Effective Date.

(c) The adjusted price will take effect on the anniversary date of the Effective Date each year. FixForm shall notify the Customer in writing at least thirty (30) calendar days before the adjustment becomes effective, providing calculation details.

(d) If the Agoria IT index ceases to exist, it shall be replaced by any similar index officially published in Belgium.

6. CUSTOMER DATA

6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2 The Customer shall ensure that Users do not upload unlawful data to the FixForm Platform.

6.3 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for FixForm to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by FixForm. FixForm shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by FixForm to perform services related to Customer Data maintenance and back-up).

6.4 The Customer shall grant to FixForm a non-exclusive, royalty-free, worldwide, sublicensable and transferable license to use, copy, store, modify, transmit and display Customer Data as necessary to improve, supplement and update the Services and/or the FixForm Platform and for the purpose of FixForm's commercial needs, including marketing. Such use shall be in accordance with all relevant and applicable data



protection regulations and agreements.

7. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. FixForm makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not FixForm.

8. PROPRIETARY RIGHTS

- 8.1 The Customer acknowledges and agrees that FixForm and/or its licensors own all intellectual property rights in the Services, Documentation, Software and FixForm Platform. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks, or any other rights or licences in respect of the Services.
- 8.2 FixForm confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

9. CONFIDENTIALITY

- 9.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:
 - (a) is or becomes publicly known other than through any act or omission of the receiving Party;
 - (b) was in the other Party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 9.2 Subject to Article 9.1, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 9.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 9.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Article 9.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 9.5 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, unless this results from that Party's breach of any terms of this Agreement.
- 9.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute FixForm's Confidential Information.
- 9.7 The above provisions of this Article 9 shall survive termination of this Agreement, however arising.

10. INDEMNITY

10.1 The Customer shall defend, indemnify and hold harmless FixForm against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's and Users' use of the Services and/or Documentation and/or for Customer Data, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) FixForm provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

10.2 In the defence or settlement of any claim, FixForm may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 business days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

10.3 In no event shall FixForm, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than FixForm; or
- (b) the Customer's or Users' use of the Services or Documentation in a manner contrary to the instructions given to the Customer by FixForm; or
- (c) the Customer's or Users' use of the Services or Documentation after notice of the alleged or actual infringement from FixForm or any appropriate authority.

11. LIMITATION OF LIABILITY

11.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer and/or Users, and for conclusions drawn from such use. FixForm shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to FixForm by the Customer and/or Users in connection with the Services, or any actions taken by FixForm at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

11.2 Nothing in this Agreement excludes the liability of FixForm:

- (a) for death or personal injury caused by FixForm's negligence; or
- (b) for fraud or fraudulent misrepresentation or gross negligence.

11.3 Subject to Article 11.1. and Article 11.2:

- (a) FixForm shall not be liable whether in tort (including for negligence or breach of statutory duty), contract or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) FixForm's total aggregate liability in contract, tort (including negligence or breach of statutory duty) or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid during the 12 months immediately preceding the date on which the claim arose.

12. Subscription Plans

- 12.1 FixForm offers different Subscription Plans, as set out in Schedule 1 of this Agreement. A Subscription Plan consists of an Initial Subscription Term and Subscription Fees and of the rooms and QR-codes included as part of the Subscription Plan. Customer's Subscription Plan for the Services is specified in Customer's account on the FixForm Platform or any other platform notified to the Customer by FixForm from time to time.
- 12.2 Customer may not reduce Customer's commitment under the subscription plan specified in the Sales Order during the Subscription Term. Customer is not entitled to any refund of fees paid or relief from fees due if the number of ordered rooms or ordered QR-codes in the Subscription Plan Customer actually uses is less than the volume Customer ordered, and Customer may not carry over any of the unused volume of rooms or QR-codes to Customer's next Subscription Term.
- 12.3** FixForm may change the features and prices of its Subscription Plans, as set out in Schedule 1, with at least thirty (30) days prior written notice to the Customer. The most recent version of its Subscription Plans shall be communicated on FixForm's Platform, FixForm's website or on any other communication channel notified to the Customer by FixForm from time to time.

13. TERM AND TERMINATION

- 13.1 This Agreement shall, unless otherwise terminated as provided in this Article 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of equal length to the Initial Subscription Term (each a **Renewal Period**), unless:

- (a) either Party notifies the other Party of termination, in writing, within a reasonable time period before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

- 13.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

- (a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other Party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
- (d) the other Party ceases to trade, or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or extraordinary arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or is unable to pay its debts as they fall due.

- 13.3 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;



- (b) each Party shall return and make no further use of any equipment, property, documentation (including Documentation) and other items (and all copies of them) belonging to the other Party;
- (c) FixForm may destroy or otherwise dispose of any of the Customer Data in its possession unless FixForm receives, no later than thirty (30) days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. FixForm shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by FixForm in returning or disposing of Customer Data. The processing and retention of any personal data shall remain subject to FixForm's Privacy Policy, as amended from time to time.

14. FORCE MAJEURE

A Party shall have no liability to the other Party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of FixForms or sub-contractors, provided that the other Party is notified of such an event and its expected duration.

15. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

16. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18. SEVERANCE

- 18.1 If any provision (or part of a provision) of this Agreement is found by any court of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20. ASSIGNMENT



20.1 The Customer shall not, without the prior written consent of FixForm, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

20.2 FixForm may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

21. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Belgium.

23. JURISDICTION

Each Party irrevocably agrees that the courts of Brussels shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 – SUBSCRIPTION PLANS

"All Subscription Fees are subject to annual indexation in accordance with Article 5.4 (Price Indexation)."