

SUBSCRIPTION SERVICES AGREEMENT

This Agreement governs User access and use of our FacilityConneX cloud hosted Solution. If you have entered into a trial or pilot for OUR FacilityConneX solution (whether free or paid), this Agreement will also govern that trial or pilot.

By logging on to the FacilityConneX hosted solution, you are accepting this Agreement and are bound by the terms of this Agreement. Do not login or use the FacilityConneX cloud hosted Solution if you do not agree with any of the terms and conditions of this Agreement.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is effective between You and FacilityConneX, LLC. (“Our”) as of the date of You accepting this Agreement by logging into the FacilityConneX solution.

Definitions

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| “Agreement” | means this Subscription Services Agreement. |
| “Content” | means information obtained by Us from Our Customers or publicly available sources and provided to You by means of FacilityConneX. |
| “Documentation” | means Our online or printed reports, user guides, documentation, and help and training materials, as updated from time to time |
| “Malicious Code” | means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses. |
| “User” | means an individual who is authorized to use FacilityConneX, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, Yourself, Your employees, consultants, contractors and agents, and third parties with which You transact business. |
| "We," "Us" or "Our" | means FacilityConneX, the company that built and owns the cloud hosted monitoring solution. |
| "You" or "Your" | means You, or the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity. |
| “Your Data” | means electronic data and information submitted by You or for You and stored to the FacilityConneX Cloud for purposes of Storage, Processing, Viewing, and/or, Analysis. |
| “FCX” | is an acronym for FacilityConneX; which may be used to describe the name of the cloud hosted monitoring solution or used to describe the company that built and owns the cloud hosted monitoring solution. |
| “Solution” | is another name for the FacilityConneX hosted cloud monitoring solution. |

Our Responsibilities

Access: We will (a) make the FacilityConneX Content available to You pursuant to this Agreement and an applicable Purchase Order, (b) provide Our standard support to You at no additional charge, and (c) use commercially reasonable efforts to make the online FacilityConneX cloud available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give at least 8 hours electronic notice and which We shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 7:00 a.m. Monday Eastern time) or weekday hours (of between 6:00 p.m. and 7:00 a.m.), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Customer Data Source issues originating at Your site, or a hacking or denial of service attack.

Our Personnel: We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

Privacy

Confidential Information: We, and Our subcontractors agree to use all reasonable efforts to keep Your Data in confidence and to prevent the disclosure to third parties. We, and Our subcontractors further agree to use Your Data and Your Content only in connection with rendering the Equipment and Energy Optimization Services covered by these terms and conditions, and will not use or disclose such Information for any other purpose. Our duty to protect Your Data and Your Content shall not exceed the customary degree of care that We exercise in protecting Our own confidential information of similar character, but in no case shall We exercise a level of care below reasonable care, and in no event shall We or Our subcontractors be liable for inadvertent disclosure if such care is used.

Your Responsibilities

Your Responsibilities: You will (a) be responsible for compliance with this Agreement, (b) use commercially reasonable efforts to prevent unauthorized access to or use of FacilityConneX Solution and Content, and notify Us promptly of any such unauthorized access or use, and (c) use the FacilityConneX Solution and Content only in accordance with the use as specified in the Quote, Purchase Order, and this Agreement.

Your Password: If you have been given a Password in order to gain access to certain information on this Site, or any other affiliates' website, then you agree, as a condition of receiving said Password, that you shall keep the Password confidential. You shall only disclose the Password to your employees or agents who have a need to know. You are solely responsible for all activities that occur using your Password. If you become aware of any unauthorized use of your Password, you agree to notify FCX personnel immediately. FCX reserves the right to suspend your access at any time if We become aware of its use involving unauthorized access or security concerns; FCX personnel will notify You immediately upon detection and work with You to resolve.

Usage Restrictions: You will not (a) make any Data or Content available to, or use Our Solution or Content for the benefit of, anyone other than You or Your Users, (b) sell, resell, license, sublicense, distribute, rent or lease any part of the FacilityConneX Solution or Content to anyone other than You or Your Users, (c) use Our Solution to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material that is not Your Data or Your Content, (d) use Our Solution to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or data contained therein, (f) attempt to gain unauthorized access to any of Our Services or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in a Quote or Purchase Order, (j) access Our Solution or Content in order to build a competitive product or service, or (k) reverse engineer Our Solution.

Third Party Connection Fees: You are responsible for all equipment and fees charged by third parties to access the Site data (e.g., charges by ISPs or mobile carriers).

Limitations of Liability

Results, Findings, and Corrective Actions: While FacilityConneX provides data and advisory information regarding equipment condition, it is virtually impossible to guaranty that each and every failure or condition can be foreseen or detected. THEREFORE, ON BEHALF OF ITSELF AND ITS SUPPLIERS, We EXPRESSLY DISCLAIM ANY WARRANTY THAT FACILITYCONNEX WILL DETECT ANY PARTICULAR FAILURE OR PROVIDE ANY PARTICULAR AMOUNT OF ADVANCE WARNING OF AN IMPENDING FAILURE OR CONDITION OF THE MONITORED EQUIPMENT. You assume sole responsibility for results obtained from the use of the FacilityConneX Solution, Services and the Documentation, and for conclusions and corrective actions drawn from such use. We have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to You in connection with the Solution, Services, or any actions taken by You at Your direction.

Communications: We do NOT warrant that Your use of the Services will be uninterrupted or error-free; nor that the Solution, Services, Documentation and/or the information obtained by You through the FacilityConneX solution will meet Your requirements; We are not responsible for any delays, delivery failures, loss of data, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the Solution, Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

Trial Service

Termination of Trial Service: Your right to use the Solution on a trial basis shall terminate immediately upon expiration of the limited time period granted at the time You subscribed to the Service on a trial basis. Your rights to access Content submitted to Your account and processed by the Solution shall terminate immediately upon termination of Your right to use the Solution.