

# **Volume License Agreement**

The software program(s) listed along with the related documentation on the software download page ("Software") are licensed, not sold, to the Licensee listed on the software download page by FileMaker, Inc. and/or FileMaker International (collectively referred to as "FMI") for use only under the terms and conditions of this Volume License Agreement ("Agreement"). By installing, copying, downloading, accessing or otherwise using the Software, Licensee agrees to be bound by the terms of this Agreement. If Licensee does not agree to the terms of this Agreement, Licensee must not install, copy, download, access or use the Software, and Licensee must promptly notify FMI in writing.

#### 1. License.

- (a) **General License.** Upon payment of all applicable fees and subject to the terms of this Agreement, FMI grants to Licensee a non-exclusive, perpetual (unless terminated under Section 7), non-transferable license to make exact object code copies of the Software in the quantity indicated on this Agreement, and use and install each such copy of the Software on a single computer owned or leased by Licensee.
- (b) **End User License Agreement.** The terms and conditions stated in the end user license agreement ("EULA") provided with the Software will govern the use of each respective copy of the Software used under this Agreement, except that the EULA does not constitute the granting of any additional license to the Software.
- (c) **Upgrades & Updates.** If the Software is licensed as an upgrade or update, then Licensee may only use the Software to replace a validly licensed version of the same software. Licensee agrees that the upgrade or update does not constitute the granting of a second license to the Software (i.e., Licensee may not use the upgrade or update in addition to the software it is replacing, nor may Licensee transfer the software which is being replaced to a third party).
- (d) **Education.** If the Software is licensed at an education discount, then the Software may only be used by enrolled students, faculty, teachers and administrators at an accredited K-12 educational institution (or equivalent) or higher education institution organized and operated exclusively for the purpose of teaching its students.
- (e) **FileMaker WebDirect and FileMaker Go.** If Licensee has licensed FileMaker WebDirect and FileMaker Go clients for use with FileMaker Server, then Licensee may use these clients on a concurrent basis up to the number of licenses that Licensee has paid for.
- **2. Restrictions.** In addition to the restrictions stated in the respective EULA, the following restrictions apply.
- (a) Other Limitations. LICENSEE MAY NOT REVERSE ENGINEER, DECOMPILE OR DISASSEMBLE THE SOFTWARE, EXCEPT AND ONLY TO THE EXTENT EXPRESSLY PERMITTED BY APPLICABLE LAW. LICENSEE MAY NOT MODIFY, ADAPT, TRANSLATE, RENT, LEASE, LOAN OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE OR ANY PART THEREOF.

- (b) **Restricted Uses.** THE SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, LIFE SUPPORT MACHINES OR OTHER EQUIPMENT IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.
- (c) **Transfer Restriction.** LICENSEE MAY NOT TRANSFER OR ASSIGN ITS RIGHTS UNDER THIS AGREEMENT TO ANOTHER PARTY WITHOUT FMI'S PRIOR WRITTEN CONSENT.

### 3. Maintenance Software

## (a) **Definitions**.

- (i) "Maintenance Software" includes both Upgrades and Updates.
- (ii) "Upgrade" means an improvement to an existing product through added functionality and/or enhanced performance. Upgrades are identified by a change in the number to the left or right of the decimal point in the product version number (*e.g.*, an upgrade from FileMaker Pro 7.0 to 8.0, or an upgrade from version 5.0 to 5.5).
- (iii) "Update" means bug fix updates containing fixes, compatibility updates to maintain compliance with specifications, and standards compatibility updates to interoperate with specific standards. Updates are identified by a change in the number to the right of the "v" (e.g., FileMaker Pro 8.0v2). Updates are generally made available only through electronic download.
- (b) **Maintenance License**. As part of this Agreement, Licensee's rights to use the Software will extend to the Maintenance Software that is commercially released during the period between the License Date and the Expiration Date set forth on the software download page ("Maintenance Period"). FMI will provide or make available to Licensee a master copy of such Maintenance Software commercially released during this period.
- (c) Restrictions and Disclaimers. Licensee's rights to Maintenance Software does not grant Licensee the right to acquire products bearing different names or special versions of the Maintenance Software created for certain customers or market segments, even though they may contain similar features or perform similar functions. From time to time products will be offered in the retail or other channels in different configurations as special promotions, which will not be made available as Maintenance Software, except in FMI's sole discretion. MAINTENANCE SOFTWARE WILL BE DEVELOPED AND RELEASED BY FMI AND ITS LICENSORS IN THEIR SOLE DISCRETION. FMI AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT THEY WILL DEVELOP OR RELEASE ANY MAINTENANCE SOFTWARE DURING THE TERM OF THESE MAINTENANCE TERMS. FMI AND ITS LICENSORS DO NOT WARRANT THAT THE MAINTENANCE SOFTWARE WILL BE PROVIDED TO LICENSEE OR MADE AVAILABLE WITHIN ANY SPECIFIED TIME PERIOD FOLLOWING THE COMMERCIAL RELEASE OF SUCH MAINTENANCE SOFTWARE.
- **4. Ownership.** Licensee owns the media on which the Software is recorded or fixed, but Licensee acknowledges that FMI and its licensors retain ownership of the Software itself. FMI

reserves any rights not expressly granted to Licensee. The rights granted are limited to FMI's and its licensors' intellectual property rights in the Software and do not include any other patents or intellectual property rights.

5. Limited Warranty. FMI warrants for a period of ninety (90) days from the effective date of this Agreement that the Software as provided by FMI will perform substantially in accordance with the accompanying documentation. FMI's entire liability and Licensee's sole and exclusive remedy for any breach of the foregoing limited warranty will be, at FMI's option, replacement of the Software, refund of the purchase price or repair or replacement of the Software which is returned to FMI or an FMI authorized representative with a copy of the receipt.

THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY FMI AND FMI AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS OR OTHER TERMS, EITHER EXPRESS OR IMPLIED (WHETHER COLLATERALLY, BY STATUTE OR OTHERWISE), INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES, CONDITIONS OR OTHER TERMS OF MERCHANTABILITY, SATISFACTORY OUALITY AND/OR FITNESS FOR A **PURPOSE REGARD** TO **PARTICULAR** WITH THE **SOFTWARE** ACCOMPANYING WRITTEN MATERIALS. FURTHERMORE, THERE IS NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE SOFTWARE OR AGAINST INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS BY THE SOFTWARE. FMI DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FMI OR AN FMI AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. **BECAUSE** JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, CONDITIONS OR OTHER TERMS THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE. THE TERMS OF THIS DISCLAIMER AND THE LIMITED WARRANTY UNDER THIS SECTION 5 DO NOT AFFECT OR PREJUDICE THE STATUTORY RIGHTS OF A CONSUMER ACQUIRING THE SOFTWARE OTHERWISE THAN IN THE COURSE OF A BUSINESS, NEITHER DO THEY LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY FMI'S NEGLIGENCE.

## 6. Exclusion and Limitation of Remedies and Damages.

(a) Exclusion. IN NO EVENT WILL FMI, ITS PARENT, SUBSIDIARIES, OR ANY OF ITS LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES THE FOREGOING BE LIABLE TO **LICENSEE** OF ANY OF FOR ANY CONSEQUENTIAL, INCIDENTAL, **INDIRECT** OR **SPECIAL DAMAGES** WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF **BUSINESS** PROFITS, **BUSINESS** INTERRUPTION, LOSS **OF BUSINESS** INFORMATION AND THE LIKE) OR DIRECT LOSS OF BUSINESS, BUSINESS PROFITS OR REVENUE, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR ACCOMPANYING WRITTEN MATERIALS, REGARDLESS OF THE BASIS OF THE CLAIM (WHETHER UNDER CONTRACT, NEGLIGENCE OR OTHER TORT OR UNDER STATUTE OR OTHERWISE HOWSOEVER ARISING) AND EVEN IF FMI OR A FMI REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

- (b) Limitation. FMI'S TOTAL LIABILITY TO LICENSEE FOR DAMAGES FOR ANY CAUSE WHATSOEVER NOT EXCLUDED BY SECTION 6(a) ABOVE HOWSOEVER CAUSED (WHETHER IN CONTRACT, NEGLIGENCE OR OTHER TORT, UNDER STATUTE OR OTHERWISE HOWSOEVER ARISING) WILL BE LIMITED TO THE MONEY PAID FOR THE SOFTWARE THAT CAUSED THE DAMAGES. THE PARTIES AGREE THAT THIS LIMITATION OF REMEDIES AND DAMAGES PROVISION SHALL BE ENFORCED INDEPENDENTLY OF AND SURVIVE THE FAILURE OF ESSENTIAL PURPOSE OF ANY WARRANTY THIS LIMITATION WILL NOT APPLY IN CASE OF DEATH OR PERSONAL INJURY CAUSED BY FMI'S NEGLIGENCE ONLY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY CONSEQUENTIAL OR **INCIDENTAL FOR** DAMAGES, LIMITATION OF LIABILITY IN THIS SECTION 6 MAY NOT APPLY TO LICENSEE. NOTHING IN THIS AGREEMENT AFFECTS OR PREJUDICES THE STATUTORY RIGHTS OF A CONSUMER ACQUIRING THE SOFTWARE OTHERWISE THAN IN THE COURSE OF A BUSINESS.
- 7. **Termination.** If any breach of this Agreement by Licensee continues for more than thirty (30) days after receipt of written notice of such breach by FMI, FMI may terminate this Agreement by written notice to Licensee, whereupon this Agreement and all rights granted to Licensee herein shall immediately cease. Licensee may terminate this Agreement at any time by providing written notice to FMI. In the event of any termination of this Agreement, Licensee shall promptly return to FMI all copies of the Software or verify in writing that all copies of the Software have been destroyed. Sections 2, 4, 5, 6, 7 and 8 shall survive termination or cancellation of this Agreement.
- 8. Export Control. You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.
- **9. General Terms.** If there is a local subsidiary of FMI in the country in which this agreement was purchased, then the local law in which the subsidiary sits shall govern this

Agreement. Otherwise, this agreement shall be governed by the laws of the United States and the State of California. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980), as amended, is specifically excluded from application to this Agreement. This agreement constitutes the entire agreement between the parties with respect to the Software licensed under these terms, and it supersedes all prior or contemporaneous agreement, arrangement and understanding regarding such subject matter. This agreement prevails over any other terms or conditions contained in or referred to in Licensee's purchase order or elsewhere or implied by trade custom or course of dealing, unless those other terms or conditions are specifically agreed to in writing by a duly authorized representative of FMI. Any purported provisions to the contrary are hereby excluded or extinguished. Licensee acknowledges and agrees that it has not relied on any representations made by FMI, however, nothing in this agreement shall limit or exclude liability for any representation made fraudulently. No amendment to or modification of this agreement will be binding unless in writing and signed by FMI. If any provision of this agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this agreement will remain in full force and effect. No failure or delay by FMI in exercising its rights or remedies shall operate as a waiver unless made by specific written notice. No single or partial exercise of any right or remedy of FMI shall operate as a waiver or preclude any other or further exercise of that or any other right or remedy. All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described in this Agreement. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with RESTRICTED RIGHTS as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252-227-7013 (OCT 1988), as applicable.

WWE VLA 062414