Choose Your License Type:

FileMaker Cloud Software License

FileMaker Cloud Software License (BYOL Program)



FILEMAKER CLOUD SOFTWARE LICENSE

IMPORTANT -- READ CAREFULLY: BY INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT INSTALL, ACCESS OR USE THE SOFTWARE, AND PROMPTLY RETURN IT (IF APPLICABLE) TO YOUR PLACE OF PURCHASE FOR A FULL REFUND.

The software and documentation accompanying this License ("Software") are licensed, not sold, to you by FileMaker, Inc. and/or FileMaker International (collectively referred to as "FMI") for use only under the terms of this License, and FMI reserves any rights not expressly granted to you. 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. You own the media on which the Software is recorded or fixed, but FMI and its licensors retain ownership of the Software itself.

The trial version of the Software provides you a trial period of 15 days for you to evaluate the Software. Section 1(b) below is modified to allow you to use the number of user connections you selected when signing up for the trial during the trial period, and Section 5 below is modified so that the trial version of the Software is provided "AS IS" and without warranty of any kind. The other terms below apply to both the trial and full versions of the Software. At the end of the trial period you must cancel your subscription and cease all use of the Software or you will incur licensing fees for a full version of the Software.

1. License.

(a) General License. The Software includes the following components: database server, web publishing engine, web server module, script engine, and ODBC/JDBC connectivity APIs. You may install or have installed on your behalf and use all the Software components on a single computer.

(b) User Access. The Software includes the rights to access data stored in the database server using the FileMaker WebDirect web browser client, the FileMaker Pro (for User Connections) client, and the FileMaker Go client (collectively "Client(s)"). You are required to purchase appropriate access for all users that will access the Software. If you are purchasing access to the Software under the User Connections model, you must purchase separate access for each individual user that will access the Software. Each user may connect to the Software using only one Client at a time. In the case of FileMaker WebDirect each web browser tab open and connected to the Software counts as a separate Client. If one user accesses multiple instances of the Software using a single Client, a user connection is required for each instance of the Software accessed by that user. The foregoing notwithstanding, each full version of FileMaker Pro

("Computer License") purchased allows access to the Software for the computer on which a Computer License is installed and such access does not count against any other user access model you may have purchased.

(c) Upgrades & Updates. If the Software is licensed as a version or feature upgrade or update, then you may only use the Software to replace a validly licensed version of the same software. You agree that the upgrade or update does not constitute the granting of a second license to the Software (i.e., you may not use the upgrade or update in addition to the software it is replacing, nor may you transfer the software which is being replaced to a third party).

2. Restrictions.

(a) Other Limitations. YOU MAY NOT REVERSE ENGINEER, DECOMPILE OR DISASSEMBLE THE SOFTWARE, EXCEPT AND ONLY TO THE EXTENT EXPRESSLY PERMITTED BY APPLICABLE LAW. YOU 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. YOU MAY NOT TRANSFER OR ASSIGN YOUR RIGHTS UNDER THIS LICENSE TO ANOTHER PARTY WITHOUT FMI'S PRIOR WRITTEN CONSENT.

(d) Third Party Acknowledgements. Certain components of the Software, and third party open source programs included with the Software, have been or may be made available by FMI on its web site (http://www.filemaker.com/support/downloads/). Acknowledgements, licensing terms and disclaimers for such material are contained in the "online" electronic documentation for the Software, or may otherwise accompany such material, and your use of such material is governed by their respective terms.

(e) Commercial Hosting Restrictions. If you provide commercial hosting, you may only allow one customer to access each Software license. You must obtain at least one FileMaker Cloud Software license for each customer that you provide hosting services. You may not use the Software to provide any commercial hosting if you license the Software under FMI's Site License Agreement or Annual Site License Agreement.

3. Term & Termination.

(a) Annual. If you purchased under the annual license model, your license term will start on the initial purchase date and end on the one year anniversary of the initial purchase date.

(b) Hourly. If you purchased under the hourly license model, your license term will start on the initial purchase date and end on the date that you terminate the license.

(c) Termination. This License is effective until terminated. This License will terminate automatically without notice from FMI or judicial resolution if you fail to comply with any provision of this License. If you license the Software under an annual license or hourly license, then your licenses will immediately terminate and you must cease all use of the Software upon the expiration of your applicable license term, unless you have paid to renew the license prior to its expiration. Upon such termination you must destroy the Software, all accompanying written materials and all copies thereof, and Sections 5, 6, 7, and 8 will survive any termination or cancellation of this License.

4. Export Law Assurances. 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's Denied Person's List or Entity List. By using the Software you represent and warrant that you are not located in, under control of, or a national or resident of 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 nuclear, chemical or biological weapons.

5. Limited Warranty. FMI warrants for a period of ninety (90) days from your date of purchase that the Software as provided by FMI will perform substantially in accordance with the published specifications for the Software available from FMI. FMI's entire liability and your 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 of the Software.

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 QUALITY AND/OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SOFTWARE AND **ACCOMPANYING WRITTEN MATERIALS. FURTHERMORE, THERE IS NO** WARRANTY AGAINST INTERFERENCE WITH YOUR 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 SOME** JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, CONDITIONS OR OTHER TERMS THE ABOVE

LIMITATION MAY NOT APPLY TO YOU. 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 OF ANY OF THE FOREGOING BE LIABLE TO YOU 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 YOU 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 **GREATER OF U.S.\$5.00 OR 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 REMEDY. 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 FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE LIMITATION OF LIABILITY IN THIS SECTION 6 MAY NOT APPLY TO YOU. NOTHING IN THIS LICENSE AFFECTS OR PREJUDICES THE STATUTORY **RIGHTS OF A CONSUMER ACQUIRING THE SOFTWARE OTHERWISE THAN IN** THE COURSE OF A BUSINESS.

7. Consent to Use of Data. You agree that FMI and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical and related information, including but not limited to information about your computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other

services to you (if any) related to the FMI Software and to verify compliance with the terms of this License. FMI may also use aggregate information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

At all times information will be treated in accordance with FileMaker's Privacy Policy, which is incorporated by reference into this License and can be viewed at: http://www.filemaker.com/legal/.

8. Comodo SSL Certificate. Your use of the Comodo SSL trial certificate included with the Software is subject to and conditioned upon your compliance with the terms of the Comodo Certificate Subscriber Agreement available at:

https://www.comodo.com/repository/docs/ssl_certificate_subscriber_agreement.pdf

9. General. If there is a local subsidiary of FMI in the country in which this License was purchased, then the local law in which the subsidiary sits shall govern this License. Otherwise, this License 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 License. This License 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 License prevails over any other terms or conditions contained in or referred to in your 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. You acknowledge and agree that you have not relied on any representations made by FMI, however, nothing in this License shall limit or exclude liability for any representation made fraudulently. No amendment to or modification of this License will be binding unless in writing and signed by FMI. If any provision of this License 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 License 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 License. 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.



FILEMAKER CLOUD SOFTWARE LICENSE (BYOL PROGRAM)

IMPORTANT -- READ CAREFULLY: BY INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT INSTALL, ACCESS OR USE THE SOFTWARE, AND PROMPTLY RETURN IT (IF APPLICABLE) TO YOUR PLACE OF PURCHASE FOR A FULL REFUND.

The software and documentation accompanying this License ("Software") are licensed, not sold, to you by FileMaker, Inc. and/or FileMaker International (collectively referred to as "FMI") for use only under the terms of this License, and FMI reserves any rights not expressly granted to you. 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. You own the media on which the Software is recorded or fixed, but FMI and its licensors retain ownership of the Software itself.

1. License.

(a) General License. The Software includes the following components: database server, web publishing engine, web server module, script engine, and ODBC/JDBC connectivity APIs. You may install or have installed on your behalf and use all the Software components on a single computer.

(b) User Access. The Software includes the rights to access data stored in the database server using the FileMaker WebDirect web browser client, the FileMaker Pro (for User Connections) client, and the FileMaker Go client (collectively "Client(s)"). You are required to purchase appropriate access for all users that will access the Software. If you are purchasing access to the Software under the User Connections model, you must purchase separate access for each individual user that will access the Software. If you are purchasing access to the Software under the User Connections model, you must purchase separate access for each individual user that will access the Software. If you are purchasing access to the Software under the Concurrently access the Software at any given time. Each user may connect to the Software using only one Client at a time. In the case of FileMaker WebDirect each web browser tab open and connected to the Software counts as a separate Client. If one user accesses multiple instances of the Software using a single Client, a user connection is required for each instance of the Software accessed by that user. The foregoing notwithstanding, each full version of FileMaker Pro ("Computer License") purchased allows access to the Software for the computer on which a Computer License is installed and such access does not count against any other user access model you may have purchased.

(c) Upgrades & Updates. If the Software is licensed as a version or feature upgrade or update, then you may only use the Software to replace a validly licensed version of the same

software. You agree that the upgrade or update does not constitute the granting of a second license to the Software (i.e., you may not use the upgrade or update in addition to the software it is replacing, nor may you transfer the software which is being replaced to a third party).

(d) **BYOL Conversion.** If you converted your existing FileMaker Server license through the BYOL program to this FileMaker Cloud license, the FileMaker Server license is hereby terminated and replaced with the FileMaker Cloud license. You may continue to use the FileMaker Server software for a 30-day grace period from the date that you converted the FileMaker Server software ("Grace Period") after which you must cease all use of the FileMaker Server software. FileMaker may, in its sole discretion, take steps to deactivate the FileMaker Server software upon expiration of the Grace Period.

(e) Annual Site License Program. If you have a current Annual Site License Agreement and have requested to use this Software through the BYOL program, you may continue to use your existing FileMaker Server software as well as this Software for the term of your Annual Site License Agreement.

(f) 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 exclusively for educational purposes.

2. Restrictions.

(a) Other Limitations. YOU MAY NOT REVERSE ENGINEER, DECOMPILE OR DISASSEMBLE THE SOFTWARE, EXCEPT AND ONLY TO THE EXTENT EXPRESSLY PERMITTED BY APPLICABLE LAW. YOU 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. YOU MAY NOT TRANSFER OR ASSIGN YOUR RIGHTS UNDER THIS LICENSE TO ANOTHER PARTY WITHOUT FMI'S PRIOR WRITTEN CONSENT.

(d) Third Party Acknowledgements. Certain components of the Software, and third party open source programs included with the Software, have been or may be made available by FMI on its web site (http://www.filemaker.com/support/downloads/). Acknowledgements, licensing terms and disclaimers for such material are contained in the "online" electronic documentation for the Software, or may otherwise accompany such material, and your use of

such material is governed by their respective terms.

(e) Commercial Hosting Restrictions. If you provide commercial hosting, you may only allow one customer to access each Software license. You must obtain at least one FileMaker Cloud Software license for each customer that you provide hosting services. You may not use the Software to provide any commercial hosting if you license the Software under FMI's Site License Agreement or Annual Site License Agreement.

3. Term & Termination. This License is effective until terminated. This License will terminate automatically without notice from FMI or judicial resolution if you fail to comply with any provision of this License.

(a) **Initial Term.** The initial term of this License will commence on the conversion date of the converted FileMaker Server software and will end at the end of the term of the original FileMaker Server software ("Initial Term").

(b) Renewal Term(s). Following the Initial Term, or a Renewal Term, you may renew this License for additional one or two (1 or 2) year terms (each a "Renewal Term"). In order to renew the License, you must pay the applicable current license renewal fees. FMI will confirm each such renewal by issuing a license certificate that specifies the end of the new Renewal Term and updating FMI's contract system.

(c) Effect of Termination. This License is effective until terminated. This License will terminate automatically without notice from FMI or judicial resolution if you fail to comply with any provision of this License. Upon expiry or termination of this License for any reason, the License is immediately terminated, and you will cease all use, installation and copying of the Software. Within thirty (30) days following expiry or termination, you must submit the required notice in FMI's contract system, confirming that you have ceased all use of the Software and confirming that copies of the Software have been deleted or destroyed. If FMI does not receive your notice within thirty (30) days, then FMI may (i) invoice you and you are required to continue paying the license fees; and/or (ii) take steps to deactivate the Software so that you may not continue to use it. Any fees paid to FMI under this License are non-refundable upon expiry or termination of this License. Upon such termination you must destroy the Software, all accompanying written materials and all copies thereof, and Sections 5, 6, 7, and 8 will survive any termination or cancellation of this License.

4. Export Law Assurances. 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's Denied Person's List or Entity List. By using the Software you represent and warrant that you are not located in, under control of, or a national or resident of 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

nuclear, chemical or biological weapons.

5. Limited Warranty. FMI warrants for a period of ninety (90) days from your date of purchase that the Software as provided by FMI will perform substantially in accordance with the published specifications for the Software available from FMI. FMI's entire liability and your 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 of the Software.

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 QUALITY AND /OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SOFTWARE AND **ACCOMPANYING WRITTEN MATERIALS. FURTHERMORE, THERE IS NO** WARRANTY AGAINST INTERFERENCE WITH YOUR 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 SOME** JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, CONDITIONS OR OTHER TERMS THE ABOVE LIMITATION MAY NOT APPLY TO YOU. 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 OF ANY OF THE FOREGOING BE LIABLE TO YOU 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 YOU 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 **GREATER OF U.S.\$5.00 OR 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 REMEDY. 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 FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE LIMITATION OF LIABILITY IN THIS SECTION 6 MAY NOT APPLY TO YOU. NOTHING IN THIS LICENSE AFFECTS OR PREJUDICES THE STATUTORY **RIGHTS OF A CONSUMER ACQUIRING THE SOFTWARE OTHERWISE THAN IN** THE COURSE OF A BUSINESS.

7. Consent to Use of Data. You agree that FMI and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical and related information, including but not limited to information about your computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the FMI Software and to verify compliance with the terms of this License. FMI may also use aggregate information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

At all times information will be treated in accordance with FileMaker's Privacy Policy, which is incorporated by reference into this License and can be viewed at: http://www.filemaker.com/legal/.

8. Comodo SSL Certificate. Your use of the Comodo SSL trial certificate included with the Software is subject to and conditioned upon your compliance with the terms of the Comodo Certificate Subscriber Agreement available at:

https://www.comodo.com/repository/docs/ssl_certificate_subscriber_agreement.pdf

9. General. If there is a local subsidiary of FMI in the country in which this License was purchased, then the local law in which the subsidiary sits shall govern this License. Otherwise, this License 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 License. This License 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 License prevails over any other terms or conditions contained in or referenced to in your purchase order or elsewhere or specifically agreed to in writing by a duly authorized representative of FMI. Any purported provisions to the contrary are hereby excluded or extinguished. You acknowledge and agree that you have not relied on any representations made by FMI, however, nothing in this License shall limit or exclude liability for any representation made fraudulently. No amendment to or modification of this License will be binding unless in writing and signed by FMI. If any provision of this License 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 License 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 License. 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.