



ANNUAL VOLUME LICENSE AGREEMENT

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Licensee may only use the Software during the term of this Agreement, and all use of the Software must cease on the Expiry Date stated in FMI’s contract system, unless the Software is subsequently purchased or the agreement is renewed in accordance with Section 4(a)(3) or Section 4(b).

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(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 term of this Agreement. FMI will provide or make available to Licensee a master copy of such Maintenance Software commercially released during the term of this Agreement.

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(a) Initial Term. This Agreement will commence on the Contract Date and will terminate on the Expiry Date stated in FMI’s contract system (“Initial Term”), unless the Agreement is renewed or terminated under the provisions of this Section 4. Following the Initial Term, Licensee can:

- (1) Renew the Agreement under Section 4(b);
- (2) Terminate the Agreement under Section 4(d) and cease all use of the Software; or
- (3) Relicense the software under one of FMI’s other license programs under FMI’s then-current terms.

(b) Renewal Term(s). Following the Initial Term, the Agreement may be renewed for additional one or two (1 or 2) year periods as follows. Licensee must confirm its License Count on or before each annual anniversary date to FMI in writing and pay FMI’s then current license renewal fees in order to renew the Agreement. FMI will confirm such renewal by issuing a license certificate that states the new Expiry Date and updating FMI’s contract system.

(c) Breach. If any breach of this Agreement by Licensee continues for more than ten (10) 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. Breach of this Agreement includes, but is not limited to, Licensee’s failure to pay any license fees when due.

(d) Effect of Termination. Upon expiry or termination of this Agreement for any reason, all licenses under this Agreement are immediately terminated, and Licensee will cease all use, installation and copying of the Software. Within thirty (30) days following expiry or termination, Licensee must submit the required notice in FMI’s contract system, confirming that Licensee has ceased all use of the Software and confirming that copies of the Software have been deleted or destroyed. If FMI does not receive Licensee’s notice within thirty (30) days, then

FMI may (i) invoice Licensee and Licensee is required to continue paying the license fees; and/or (ii) take steps to deactivate the Software so that Licensee may not continue to use it. Any fees paid to FMI under this Agreement are non-refundable upon expiry or termination of this Agreement.

(e) Survival. Sections 1(b), 2, 4, 5, 6, 7 and 11 shall survive expiry or termination of this Agreement.

5. Limited Warranty. FMI warrants for a period of ninety (90) days from the initial Contract Date stated in FMI’s contract system that the Software as provided by FMI will substantially conform to the published specifications for the Software available from FMI. 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 media, refund of the purchase price, or repair or replacement of the Software. THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY FMI AND FMI AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. 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 FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET LICENSEE’S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, FMI DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FMI, OR AN AUTHORIZED REPRESENTATIVE OF FMI SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE.

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7. Audit. No more than once per year and during ordinary business hours (after giving reasonable advance notice) FMI, or at either party’s option, an independent third party reasonably

acceptable to both parties, may audit Licensee and its records relating to its payment obligations under this Agreement for the purpose of confirming Licensee's compliance with this Agreement. At FMI's request, Licensee will provide a knowledgeable employee to assist in such audit. If such audit reveals that Licensee has underpaid amounts owing to FMI under this Agreement, Licensee will promptly pay FMI such past due amounts. If the amount which Licensee has underpaid in any period exceeds ten percent (10%) or more of the amounts actually owed to FMI for such period, Licensee will promptly reimburse FMI for the direct out-of-pocket expenses incurred in conducting such audit.

8. Support. FMI is not obligated to provide Licensee any technical support services for Licensee's use of the Software under this Agreement. Licensee may order additional support services currently offered by FMI during the term of this Agreement.

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11. 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 License. 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 License. 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.