

# AgentFile Ltd: licence agreement

## IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE USING THE SOFTWARE

This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and AgentFile Limited, registered number 5505070, registered address 131 Chingford Road, Walthamstow, London E17 4PN, United Kingdom (**Licensor**) for this AgentFile software product (**Software**, which includes computer software and any associated data and supplied media), and any printed materials and online or electronic user documentation (**Documentation**).

This Licence tells you how you may use the Software so please read it carefully and review it regularly because it may be updated from time to time. If you use any AgentFile software or services you agree to be legally bound by whichever version of this Licence is in force at such time.

This Licence comprises this Notice together with the Licence Terms and Conditions. All representations, warranties and other terms (including any put forward by you) are excluded, and use of the Software is only available on the terms of this Licence.

THIS SOFTWARE REQUIRES YOU TO BE RUNNING A LICENSOR-APPROVED VERSION OF FILEMAKER, WHICH THE LICENSOR INCLUDES AT NO EXTRA COST. THIS SOFTWARE ALSO REQUIRES AN INTEL MACINTOSH OR PC COMPUTER. MINIMUM SPECIFICATIONS ARE AVAILABLE ON REQUEST.

BY CLICKING ON THE "ACCEPT" BUTTON YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYEES. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE WILL NOT LICENSE THE SOFTWARE TO YOU AND YOU MUST DISCONTINUE USE OF THE SOFTWARE BY CLICKING ON THE "REJECT" BUTTON.

# AgentFile Licence Terms and Conditions

## 1. Grant and scope of licence

- 1.1 In consideration of the payment of the licence fee, the Licensor (AgentFile Limited, registered number 5505070, registered address 131 Chingford Road, Walthamstow, London, E17 4PN) hereby grants to you a non-exclusive, non-transferable licence to use the Software and the Documentation on the terms of this Licence.
- 1.2 You may:
  - (a) install and use the Software for your internal business purposes only, either (as agreed between the parties in writing):
    - (i) on one CPU if the Licence is a single-user licence or the Software is for single use; or
    - (ii) if the Licence is a multi-user or network licence, for the number of concurrent users agreed between you and us;
  - (b) transfer the Software from one computer to another provided it is used on only one computer at any one time;
  - (c) make up to two copies of the Software for back-up purposes only, provided that this is necessary for the activities permitted by condition 3.1;
  - (d) receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by the Licensor from time to time, which may include new versions of the Software at the Licensor's absolute discretion;
  - (e) use any Documentation in support of the use permitted under condition 1.1 and make up to five copies of the Documentation as are reasonably necessary for its lawful use.

## 2. Fees

### 2.1 Licence Fee

- (a) The Licensor supplies the Software to you on payment of an annual licence fee based on the number of users per site.
  - (b) You shall pay to the Licensor the annual licence fee in advance by credit transfer to the Licensor's bank account.
  - (c) Licences are renewed annually on 1 August. If payment has not been made within 21 days of the renewal date the Software will cease to function and the Licence will lapse. The starting date for the renewal of a lapsed Licence will be the same as the original renewal date.
- 2.2 The Licensor's normal rate (currently £70 per hour or part thereof as may be amended from time to time without notice) will be charged for all work carried out under this Licence. Invoices will be submitted to you by email and must be cleared into the Licensor's bank account within twenty-one (21) days of the invoice date.
- 2.3 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which you shall be liable.
- 2.4 If you fail to pay any amount payable by you when due under this Licence then without prejudice to any other rights it may have, the Licensor may:
- (a) exercise the statutory right to interest under the Late Payments of Commercial Debts (Interest) Act 1998. Under this arrangement, which has the force of law, late payment will attract an immediate and automatic penalty of a fixed fee plus interest on the entire amount due (payable by you immediately on demand) from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% per annum above the Bank of England base rate, such interest to accrue on a daily basis, which is not compounded and which will not be chargeable to VAT.
  - (b) terminate the Licence with immediate effect by giving you written notice.

### **3. Licensee's undertakings**

- 3.1 Except as expressly set out in this Licence or as required to be permitted by any local law, you undertake:
- (a) not to copy the Software or Documentation except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;
  - (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documentation;
  - (c) not to make alterations to, or modifications of, the whole or any part of the Software or Documentation nor permit the Software or Documentation or any part of it to be combined with, or become incorporated in, any other programs;
  - (d) not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
    - (i) is used only for the purpose of achieving inter-operability of the Software with another software program;
    - (ii) is not disclosed or communicated without the Licensor's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
    - (iii) is not used to create any software which is substantially similar to the Software;
  - (e) to keep all copies of the Software and Documentation secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software and Documentation;
  - (f) to supervise and control use of the Software and Documentation and ensure that the Software and Documentation is used by your employees and representatives in accordance with the terms of this Licence;
  - (g) to replace the current version of the Software with any updated or upgraded version or new release provided by the Licensor under the terms of this Licence immediately on receipt of such version or release;
  - (h) to include the copyright notice of the Licensor on all entire and partial copies of the Software and Documentation in any form;
  - (i) not to provide, or otherwise make available, the Software or Documentation in any form, in whole or in part (including, but not limited to, program listings, object code and source code) to any person other than your employees without prior written consent from the Licensor;
  - (j) not to use the Software and Documentation other than as expressly permitted by this Licence;
  - (k) to take adequate security measures in respect of, and to take all responsibility for all use of the Software made with, any passwords, user identifications, or other such items provided to you by the Licensor.
- 3.2 References in this Licence to Software do not include source code, and no licence is granted in respect of source code.
- 3.3 The Software contains features that are protected by certain passwords. You will not enter, remove or change such passwords. Only the Licensor may enter, remove or change such passwords.
- 3.4 You must permit the Licensor and its representatives, at all reasonable times and on reasonable advance notice, to inspect and have access to any premises, and to the computer equipment located there, at which the Software or the Documentation is being kept or used, and any records kept pursuant to this Licence, for the purpose of ensuring that you are complying with the terms of this Licence.

### **4. Support**

#### **4.1 Definitions**

- (a) Licensor Consultant: an authorised representative employed or engaged by the Licensor to liaise with you and provide support;

- (b) Support Request: when you ask the Licensor for guidance involving use of the Software or to fix a perceived defect in the Software. The Licensor is not responsible for data entered into the Software nor for any hardware or non-Licensor software employed by you to enable use of the Software;
  - (c) Development Request: when you ask the Licensor to add or make modifications to the functionality of the Software. The Licensor will consider carefully all development requests that are made in writing by authorised personnel. You agree that any final decision regarding development will be made entirely at the Licensor's discretion.
  - (d) Superusers: At least one Software user will be designated by you as a 'Superuser' whose function is to attain a good working knowledge of the Software.
- 4.2 Support is for the Licensor's Software only. Any other IT support and facilities, for whatever reason, are your responsibility and should be provided by competent IT personnel who are able to maintain your hardware, connectivity, and additional software requirements in a manner that does not compromise the operation of the Software. IT personnel should check compatibility with the Licensor at least 2 working days before making changes to hardware or software.
- 4.3 Business hours are 10am-5.30pm, Monday-Friday excluding public holidays. The response time following a support call will be eight (8) business hours or less. The response time begins when a request for support is logged by your Superuser (or replacement in the event of the Superuser's unavailability) with a Licensor Consultant and ends when a Licensor Consultant responds to the request.
- 4.4 Phone calls should be made to the Licensor's support number as notified to you from time to time (currently 07050 683662) and email messages requesting support should be sent to the Licensor's support address as notified to you from time to time (currently [admin@agentfile.com](mailto:admin@agentfile.com)). Only Superusers or their replacement should contact the Licensor's support resources with a Support or Development Request. Requests that do not follow the above guidelines may not receive a response.
- 4.5 If, unusually, the Licensor is unable to respond to a support call within eight (8) business hours, support will be provided at the earliest opportunity. If the support request can be satisfactorily resolved via telephone and/or remote access to your server computer, that resolution will be deemed acceptable.
- 4.6 The following support services are provided by the Licensor, as agreed with you in writing from time to time:
- (a) After-hours support  
After-hours support will be provided at the Licensor's discretion and at double the Licensor's normal hourly rate (clause 2.2 above).
  - (b) Standard support  
Standard support is provided during business hours at the Licensor's normal hourly rate as stated on its website from time to time.
  - (c) Training  
Onsite training will be provided at your request during business hours and charged at the Licensor's normal hourly rate. Occasional seminars may be organised by the Licensor to provide offsite training at a lower cost.
  - (d) Accessory support  
The Licensor Consultants will be available at reasonable notice to assist your staff, Superusers or IT service providers. Accessory support includes conducting site surveys and proposing devices or deployment strategies.
  - (e) Upgrades  
Upgrades of the Software and of FileMaker software required to use the Software will generally become available at intervals not coinciding with payment of the annual licence fee. You should not install FileMaker upgrades without explicit direction to do so by the Licensor. Upgrade installation carried out by the Licensor, including any transfer of data, will be charged at normal hourly rates and scheduled with you to reduce downtime. The Licensor's first priority when recommending an upgrade or upgrade delay will be your technical requirements. The Licensor will not be bound by the service agreements in this document if you do not act on the recommendation given in good faith by the Licensor.

(f) Software relocation

The Licensor must be notified in advance of any planned relocation of the Software. Failure to do so will result in the termination of this Licence.

- 4.7 The Software is a universal package and is generally identical as installed at every licensee. The Licensor reserves the right to alter the current version for the purposes of modifying and adding features and maintaining compatibility with hardware, operating systems and other software developments.

## 5. Intellectual property rights

- 5.1 You acknowledge that all intellectual property rights (including but not limited to copyright, database rights and trade or service marks or names) in the Software and the Documentation throughout the world belong to the Licensor, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of this Licence.
- 5.2 You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.
- 5.3 The integrity of this Software is protected by technical protection measures (**TPM**) so that the intellectual property rights in the Software of the Licensor are not misappropriated. You must not attempt in any way to remove or circumvent any such TPM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or expose for sale or hire, nor have in your possession for private or commercial purposes, any means whose intended purpose is to facilitate the unauthorised removal or circumvention of such TPM.

## 6. Warranties

- 6.1 The Licensor warrants that:
- (a) for the duration of this Licence, the Software will, when properly used, perform substantially in accordance with the functions described in the Documentation (provided that the Software is properly used on the computer and with the operating system for which it was designed as referred to in the accompanying documentation), and the Documentation correctly describes the operation of the Software in all material respects;
  - (b) use of the Software in accordance with this Licence will not violate any third party's intellectual property rights in the UK.
- 6.2 The above warranties shall not apply to any defect or liability caused by any of the following:
- (a) your failure to follow any user instructions relating to the Software;
  - (b) use of the Software by any person without the requisite skills, training and understanding;
  - (c) use of the Software in conjunction with any third party items not supplied or approved by the Licensor;
  - (d) your use of the Software other than for its intended purpose; and/or
  - (e) any changes or alterations to the Software not carried out or specifically approved in writing by the licensor;

and the Licensor shall be entitled to charge you for any work or additional work required as a result of the foregoing at its normal rates.

## 7. Confidentiality

- 7.1 Each party shall, during the term of this Licence and thereafter, keep confidential, not use for any purpose (other than the implementation of this licence) and not disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority), any information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or

subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

- 7.2 At your written request the Licensor will return or destroy (at your discretion) all your confidential information received in written or electronic form, including copies or reproductions or other media within ten (10) working days of such request.

## **8. Disclaimer of Warranties**

- 8.1 You acknowledge that the Software has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements.
- 8.2 You acknowledge that the Software may not be free of bugs or errors and you agree that the existence of any minor errors shall not constitute a breach of this Licence.

## **9. Licensor's liability**

- 9.1 Nothing in this Licence shall limit or exclude the liability of either party for death or personal injury resulting from negligence, or for fraud, fraudulent misrepresentation, or any other matter liability for which cannot be excluded as a requirement of applicable law.
- 9.2 Subject to condition 9.1, the Licensor's liability for losses suffered by you arising out of or in connection with this Licence (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, even if such losses result from the Licensor's deliberate personal repudiatory breach of this Licence, shall be excluded in respect of the following:
- (a) loss of income;
  - (b) loss of business profits or contracts;
  - (c) business interruption;
  - (d) loss of the use of money or anticipated savings;
  - (e) loss of information;
  - (f) loss of opportunity, goodwill or reputation;
  - (g) loss of, damage to or corruption of data; or
  - (h) any indirect or consequential loss or damage of any kind.
- 9.3 Subject to condition 9.1 and condition 9.2, the Licensor's maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall be limited to the amount paid by you to the Licensor in the twelve months preceding the date in which such liability arose.
- 9.4 Subject to condition 9.1 and condition 9.2, the Licensor's liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in the UK but shall not be subject to the limitation set out in clause 9.3.
- 9.5 The Licensor shall not be liable to any person other than you in respect of this Licence or any matter connected with it, the Software or the Documentation.
- 9.6 This Licence sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Software and Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Licence. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

## 10. Termination

- 10.1 This Licence will terminate immediately without notice on the anniversary of the date of its commencement or renewal unless renewed by payment of the relevant licence fee in accordance with clause 2.1.
- 10.2 Either party may terminate this Licence immediately by written notice to the other if:
- (a) the other party commits a material or persistent breach of this Licence which it fails to remedy (if remediable) within 14 days after the service on it of written notice requiring it to do so; or
  - (b) the other party becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of debt.
- 10.3 Upon termination for any reason:
- (a) all rights granted to you under this Licence shall cease;
  - (b) you must cease all activities authorised by this Licence;
  - (c) you must immediately pay to the Licensor any sums due to the Licensor under this Licence; and
  - (d) you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to the Licensor that you have done so.

## 11. Transfer of rights and obligations

- 11.1 This Licence is binding on you and us and on our respective successors and assigns.
- 11.2 You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without the Licensor's prior written consent.
- 11.3 The Licensor may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of its rights or obligations arising under it, at any time during the term of the Licence.

## 12. Notices

All notices must be given to the appropriate party by personal delivery, email or by certified postal mail. The Licensor may give notice to you at either the e-mail or postal address you provided to when purchasing the Software. Notice will be deemed received and properly served 24 hours after an e-mail is sent, or three days after the date of posting of any certified postal mail. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and sent by certified postal mail and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

## 13. Events outside the Licensor's control

- 13.1 The Licensor will not be liable or responsible for any failure to perform, or delay in performance of, any of his obligations under this Licence that is caused by an event outside his reasonable control (**Force Majeure Event**).
- 13.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond the Licensor's reasonable control and includes in particular (without limitation) the following:
- (a) strikes, lock-outs or other industrial action;
  - (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
  - (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
  - (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

- (e) impossibility of the use of public or private telecommunications networks;
- (f) the acts, decrees, legislation, regulations or restrictions of any government.

13.3 The Licensor's performance under this Licence is deemed to be suspended for the period that the Force Majeure Event continues, and it will have an extension of time for performance for the duration of that period. The Licensor will use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under this Licence may be performed despite the Force Majeure Event.

#### **14. Waiver**

14.1 If the Licensor fails, at any time during the term of this Licence, to insist on strict performance of any of your obligations under this Licence, or if the Licensor fails to exercise any of the rights or remedies to which he is entitled under this Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

14.2 A waiver by the Licensor of any default shall not constitute a waiver of any subsequent default.

14.3 No waiver by the Licensor of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

#### **15. Severability**

If any of the terms of this Licence are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

#### **16. Entire agreement**

16.1 This Licence and any document expressly referred to in it represents the entire agreement between us in relation to the licensing of the Software and Documentation and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing.

16.2 The parties each acknowledge that, in entering into this Licence, neither of them has relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between them before entering into this Licence except as expressly stated in this Licence.

16.3 Neither party shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date we entered into this Licence (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in this Licence.

#### **17. Variation**

The terms of this Licence may be updated or amended by the Licensor from time to time. No variation of this Licence shall be valid unless a revised version of these Licence Terms and Conditions is placed on the Licensor's website. You agree to be legally bound by whichever version of these Licence Terms and Conditions is in force at such time.

#### **18. Law and jurisdiction**

This Licence, its subject matter and its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the non-exclusive jurisdiction of the English courts.