

FILEstream SOFTWARE SUPPORT TERMS & CONDITIONS

This Agreement sets out the terms and conditions on which we, FILEstream Ltd, will supply you with Software Support.

1. Definitions used in this Agreement

"Commencement Date" means the date detailed on the invoice when the FILEstream Software was installed;

"Hire Agreement" means any hire or finance agreement of any kind you have made with a third party in respect of the Software;

"Priority Acceptance Form" means the order form received from you on first applying for support;

"Priority Renewal Form" means the renewal form signed by you on renewal of support;

"Support" means the Software support services as set out in clause 2 as well as the benefits contained in all up to date literature at the Commencement Date concerning Support;

"Software" means the software product ordered by you from us either direct or via an authorised reseller and in relation to which you have subscribed for support;

"Subscription Fee" means the annual fee payable by you to us for Support;

"Updates" means a permanent fix or solution to known problems in the Software as released by us at times deemed appropriate by us;

"Working Day" means any day that is not a Saturday, Sunday or public holiday in England;

The term **"you"**, **"your"** and **"yours"** shall mean the company or partnership or sole trader which contracts under this Agreement and the term **"we"**, **"us"** and **"our"** shall mean, as the context permits, either FILEstream Limited, or alternatively it may mean reference to both you and FILEstream Limited together.

2. Our commitment to you

2.1 We will provide you with Support for a period of one year commencing on the Commencement Date. On expiry and subject to clause 4, this Agreement will continue automatically for successive periods of one year provided that you pay the prevailing Subscription Fee within 30 days of our invoice.

2.2 We will provide Support in accordance with this clause 2 with all due care and skill.

2.3 We will provide technical support which will be given by telephone, fax, e-mail, on-line and postal mail at your option as to use of the Software and to the diagnosis and rectification of faults in the Software, but not in respect of malfunctions in computer hardware, operating systems, printers or third party software. This support shall be available between the hours of 9am and 5pm on each Working Day through our HELPDESK and where possible, we shall use all reasonable endeavours to respond to you within 4 working hours of placing the call.

2.4 We do not warrant or guarantee you uninterrupted or error free service of any technical support as set out in clause 2.3 above in circumstances where any fault arises out of the improper use, operation or neglect of the Software or any equipment, modification or merger of the Software (other than as permitted in writing by us), your failure to implement recommendations or solutions to faults notified to you by us, any repair adjustment or alteration made by any person (including FILEstream authorised resellers) other than us without our previous consent, or any failure to install promptly and use any Update.

2.5 For the avoidance of doubt Support shall not apply to third party software included in the Software.

3. Your obligations to us

You shall:

3.1 Ensure the Software is used only on the computer hardware for which the Software has been licensed and approved;

3.2 Maintain and operate the Software in a proper and prudent manner in accordance with such advice and instruction as we may issue from time to time, and allow its use only by competent and authorised personnel;

3.3 Keep a minimum of one separate back-up of your current data (for use in rotation) of a standard and frequency to allow you to recover information without undue loss of staff time;

3.4 Not permit any alterations in the Software, the operating instructions or the manual, save by written consent from us or any FILEstream authorised reseller expressly approved by us in writing;

3.5 Make available to us without charge, any information or facilities to enable us to discharge our obligations under this Agreement including, but not limited to, computer print-outs, photocopies of documents, provided always that we shall hold as confidential any such information provided by you;

3.6 Notify us of any defect or alleged defect within five days of the date it becomes apparent; and

3.7 Be responsible for ensuring that the Software is suitable for the purpose intended.

4. How can this Agreement be terminated?

4.1 We may terminate this Agreement by giving you seven days written notice at any time and if we do, we shall refund to you such pro rata amount of the Subscription Fee as is appropriate to the un-expired period of the term of this Agreement.

4.2 You agree that we shall be entitled to terminate this Agreement immediately if:

4.2.1 You commit a material or persistent breach of your obligations under this Agreement and in circumstances where such a breach is capable of rectification, the same is not rectified within fourteen days following written notification of the breach by us; or

4.2.2 You fail to pay any amount you owe us within seven days of the due date whether under this Agreement or any other contract with us; or

4.2.3 We are notified that your Hire Agreement has ended for any reason or where you are in default of any payment obligations under the terms of your Hire Agreement; or

4.2.4 You are unable to pay your debts (within the meaning of section 123 of the Insolvency Act 1986) or you become insolvent or an order is made or a resolution passed for your liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction)

or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of your assets or you enter into or propose any composition or arrangement with your creditors generally or papers are filed at court seeking a moratorium in respect of you under Schedule All of the Insolvency Act 2000; or

4.2.5 You are a partnership, a petition is presented, or an order is made, for the bankruptcy of any of your partners or if any of them enter into a deed of arrangement or compounds with their creditors or has a receiving order made against them or anything similar to the above occurs in any applicable jurisdiction.

4.3 Termination shall be without prejudice to any rights or claims we may have against you at the time of, or subject to, such termination and other than pursuant to clause 4.1 no refund of the Subscription Fee in full or in part shall be made to you.

5. Our liability to you under this Agreement

5.1 Except as provided in clause 2 above, or as expressed by statute to be incapable of exclusion or limitation, no other representations, warranties, conditions or guarantees, express or implied, including but not limited to implied warranties of fitness for purpose and satisfactory quality are made in respect of this Agreement.

5.2 We shall not be liable for any indirect, consequential, incidental or special damage or loss of any kind (including but not limited to business interruption or loss of data, use, business, savings or profits) suffered or arising in any manner whatsoever out of or in connection with this Agreement or the use of the Software and whether arising under contract, tort, including negligence, statute or otherwise.

5.3 If any exclusion, disclaimer or other provision contained in this Agreement is held to be invalid for any reason by a court of competent jurisdiction and as a result we become liable for loss or damage that could otherwise be limited, such liability whether in contract, tort or otherwise, will not exceed the Subscription Fee actually paid by you.

5.4 Nothing in this Agreement shall exclude or limit our liability for: (a) fraud; (b) death or personal injury arising out of our negligence; or (c) any warranty as to title or quiet possession implied by statute.

6. Updates

6.1 We reserve the right to issue Updates on computer disks, compact disks and electronically via web page downloads or email.

6.2 You may install the Update on a single personal computer (or single network, where you have purchased this version), install a single set of data, whether for a company, partnership or group, person or otherwise (unless, and to the extent that, you have purchased the relevant licence for multiple users and/or multiple sets of data from us) and make one copy of the Update in any computer readable format for back-up purposes.

6.3 The copyright, design right and any other intellectual property rights in the source and object codes of the Update vest exclusively with us.

6.4 The Update may not be copied without our express consent in writing under such terms as we shall determine. In particular, the Update shall not be installed onto any additional network (where you have purchased such version) or onto any additional personal computer including any laptop or portable computer without an additional user licence, which you must purchase separately from us or via a FILEstream authorised reseller.

7. General

7.1 This Agreement is personal to you and may not be assigned, sub-contracted, licensed, charged or otherwise dealt with or disposed of (whether in whole or in part) by you without our prior written consent.

7.2 This Agreement, the Priority Acceptance Form or Priority Renewal Form and all up to date literature at the Commencement Date concerning support constitute the entire agreement between us relating to support and supersede all other agreements and all other literature concerning support whether written, oral, express or implied.

7.3 The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the remaining provisions, which shall remain in full force and effect.

7.4 Any reseller, distributor or dealer (including any FILEstream authorised reseller) from whom you purchased the Software is not appointed or authorised by us as our servant or agent. Such persons have no authority (either express or implied) to enter into contract or grant any licence or provide any representation, warranty, condition or guarantee with or to you on behalf of us, or thereby bind us. We are not responsible for any modifications or mergers made to the Software by any such persons or any other third parties.

7.5 Any notice to be given under this Agreement shall be deemed given if delivered personally or if sent by registered first class post (or the nearest equivalent if not available) three Working Days after posting to the address of the party to be notified.

7.6 We shall not be liable to you for any failure to perform or for any delay in performance under this Agreement to the extent such non-performance or delay is caused by any circumstances beyond our reasonable control including, but not limited to, fire, war, civil commotion, any act of central or local government, any industrial disputes, lockouts and strikes of any third party, provided that if any period of default continues for more than 60 days you shall be entitled to terminate this Agreement by notice to us in writing.

7.7 Any failure by us to enforce any of the terms and conditions of this Agreement shall not be construed as a waiver of our rights and remedies under this Agreement which are cumulative and are not exclusive of any rights and remedies provided by law.

7.8 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement. This clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

7.9 This Agreement shall be governed by and construed in accordance with English law and both parties submit to the exclusive jurisdiction of the English courts.

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