

## THIS IS THE SOFTWARE LICENCE AGREEMENT BETWEEN

**FILESTREAM LIMITED** (the “Supplier” “us” “we” and “our”) Company Registration No. 05138759, VAT number 912 9286 14, registered office **3 KITSMEAD LANE LONGCROSS CHERTSEY SURREY KT16 0EF** and the **CUSTOMER** as specified in the Documentation (the “Customer” “you” and “your”).

### AGREED TERMS

Your use of this product is subject to our standard terms and conditions.

This agreement describes how you are allowed to use the Software. If you accept this agreement you can use the Software only as described in this agreement and the applicable Documentation. Please make sure you are happy with all the terms in this agreement before you install the Software.

You indicate that you agree to all the terms of this agreement from the earliest date you tick a box or click on a button (or something similar) to signify your acceptance, or you install, access or use any of the Software.

If you don't accept this Agreement, you should contact us or the supplier you purchased the Software from immediately and not install, access or use the Software in any way.

If you are not satisfied with the Software, or have any other problem with it, please contact us.

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this licence.

**Authorised Users:** the Customer's employees, agents, contractors and advisers that are permitted to access the Software and that the Customer assumes responsibility for;

**Affiliate:** any business entity from time to time controlling, controlled by, or under common control with, either party.

**Control:** as defined in section 1124 of the Corporation Tax Act 2010.

**Customer Data:** the data input by the Customer into the Software and all files and information saved or stored by the Customer utilising the Software (or for and on the Customer's behalf by its Authorised Users);

**“Documentation”:** the invoices, purchase order and other documentation and information made available to the Customer by the Supplier which shall specify (amongst other things):

- (a) the Fee;
- (b) the Licence Period;
- (c) the Authorised Users;
- (d) the Specification; and
- (e) the Site,

and include for example the associated help file for the Software and the information on the Supplier's Website) which describe the Software, fees, payment and user instructions but excluding marketing literature;

**Effective Date:** the date the Supplier (or its Partner) accepts your order for the Solution;

**Fee:** the licence fee payable by the Customer to the Supplier under *clause 5*.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**Maintenance Release:** release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

**Module:** optional packages (including apps) that the Customer may subscribe for and use alongside the Software subject to payment of an additional fee, or optional packages which may be made available to the Customer to use alongside the Software, in either event in accordance with these terms or specific terms that may apply to the relevant optional package;

**Monthly Subscription:** in respect of the Software and any Modules purchased by the Customer directly from the Supplier, the subscription term shall commence with effect from the Effective Date and shall continue for that calendar month and shall automatically renew without notice for each successive calendar month thereafter, unless and until terminated in accordance with the terms and conditions of this Agreement;

**New Version:** any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

**Open-Source Software:** open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

**Partner:** any accredited partner or Supplier approved reseller, distributor or dealer from whom the Customer may purchase the Solution;

**“personal data” “data processor” “data controller”** – have the meanings as set out in the Data Protection Laws;

**Privacy Policy:** the Supplier’s privacy policy accessible via the Supplier’s website;

**Product:** the Software including any Maintenance Release and any Modules issued by the Supplier during the term of this Agreement (but not including a New Version unless specifically agreed in writing by the Supplier);

**Site:** the premises from which the Customer carries out its business as stated above or as notified to the Supplier in writing from time to time and, as the context requires, the premises at which the Customer is permitted to use the Product.

**Software:** the computer programs specified in the Documentation and any Maintenance Release which is acquired by the Customer during the subsistence of this licence.

**Specification:** the document detailing the specification of the Software and forming part of the Documentation.

**Subscription Fees:** the subscription fees payable by the Customer to the Supplier at the agreed intervals for the Solution as set out in the Documentation;

**Solution:** the provision by the Supplier to the Customer of the Product and Support on a subscription basis as described in the Documentation;

**Support:** the level of product support package provided by the Supplier and selected by the Customer, as described in the Documentation;

**Third-Party Additional Terms:** any additional licence terms and conditions that apply to any Third-Party Software.

**Third-Party Software:** any third-party software that you may receive when you receive the Software.

1.2 **Holding company** and **subsidiary** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.

1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.4 Unless the context otherwise requires:

- (a) words in the singular shall include the plural and in the plural shall include the singular;
- (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (c) a reference to one gender shall include a reference to the other genders; and

- (d) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in the schedules or appendices, the provision in the body of this licence shall take precedence.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.7 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.8 Headings and bold sub-headings shall be given no meaning when construing this agreement and are for ease of reference only.

## 2. LICENCE

- 2.1 **(licence)** In consideration of the Fee paid by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive licence to use the Software in accordance with the Documentation and this agreement. You may not use the Software in any other way.
- 2.2 **(subscription option)** The Customer may subscribe for Software and/or Modules at any time directly with the Supplier on a Monthly Subscription basis subject to setting up a direct debit for the payment of the Subscription Fees.
- 2.3 **(scope of use)** In relation to scope of use:
  - (a) **(restriction)** for the purposes of *clause 2.1*, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).
  - (b) **(meaning of "use")** For the purposes of *clause 2.1*, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed.
  - (c) **(failure to comply)** the Customer may not use the Software other than as specified in *clause 2.1* and *clause 2.3(a)* without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.

- (d) **(back up copies permitted)** the Customer may make backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.
- (e) **(no decompiling etc.)** except as expressly stated in this *clause 2*, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information before undertaking any such reduction.
- (f) **(Third-Party Software: licence)** the Third-Party Software shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the Third-Party Software shall be subject to the Third-Party Additional Terms.
- (g) **(Third-Party Software: indemnity)** the Customer shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Additional Terms notified to the Customer howsoever arising.
- (h) **(Third-Party Software: breach)** the Supplier may treat the Customer's breach of any Third-Party Additional Terms as a breach of this licence.

2.4 **(similar mis-use is a breach)** The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under *clause 2.3(e)* to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

2.5 **(no dealing)** The Customer shall not:

- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

- 2.6 **(supplier may deal)** The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.
- 2.7 **(parties acting on own behalf)** Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 2.8 **(may disclose to an assignee)** Notwithstanding *clause 8*, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this *clause 2.8* shall be made until notice of the identity of the proposed assignee has been given to the other party.
- 2.9 The Customer shall:
- (a) **(observe user limit)** ensure that the number of persons using the Software does not exceed the Authorised Users;
  - (b) **(observe equipment limit)** ensure that the Software is installed on designated equipment only in accordance with the Documentation;
  - (c) **(keep user records)** keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
  - (d) **(notify user breach)** notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;
  - (e) **(pay for further users)** pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in *clause 7.3*, from such date to the date of payment; and
  - (f) **(follow instructions and backing up)** use the Software in accordance with the instructions and guidance given to the Customer, including without limitation, adhering to good practice and regularly saving and/or backing-up Customer Data (and personal data).
- 2.10 **(access to premises)** The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

- 2.11 **(use on a network)** If the Supplier has agreed in the Documentation, the Customer can load and use the Product on a computer network provided that the Customer does so in accordance with this Agreement. Doing this may affect the performance of the Product. If the Customer uses the Product on a network which is not a local area network (a network of computers linked by private connections) there is a risk that the Product will not perform as intended, the Supplier may not be able to provide Support to the Customer in those circumstances and, accordingly, the warranties the Supplier gives in this agreement will not apply.
- 2.12 **(no hosting)** If the Customer has purchased a licence from a Partner to access the Software using the Partner's (or other party's) hosting environment, then the Partner (or other party)(not us) is fully responsible for the Customer's access or inability to access the Software in this way and any related services that it provides.
- 2.13 **(apps)** If the Documentation permits the Customer to use the Software with a mobile device and the Supplier provides a further software application (commonly referred to as an "app") to do so, this may incur additional fees and the Customer must continue to adhere to this agreement and any additional terms and conditions accompanying the app. If no terms and conditions accompany the app, then this agreement will also apply to use of the app.
- 2.14 **(consent to user tracking)** The Product may include technology that enables the Supplier to:
- (a) ensure no more than the specified number of Authorised Users can use the Product at any one time;
  - (b) check specific information directly relevant to the Customer's use of the Product contained in the Customer's computer against the Supplier's records to make sure the Product is being used in accordance with this Agreement and to troubleshoot any problems;
  - (c) collect information about how you and your Authorised Users use the functions of the features of the Product;
  - (d) gather statistical information about the operating system and environment on which the Product is installed;

and by accepting this Agreement the Customer is giving the Supplier informed consent to use this information for the Supplier's own business purposes and in accordance with the Supplier's Privacy Policy.

### 3. MAINTENANCE AND ONGOING CUSTOMER OBLIGATIONS

- 3.1 **(software updates)** Subject to Clause 3.2, the Supplier will provide the Customer with all Maintenance Releases generally made available to its customers. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

3.2 **(ceasing updates)** The Supplier is under no obligation to continue providing Maintenance Releases perpetually in respect of all Software and may, in its absolute discretion, cease providing Maintenance Releases at any time in relation to particular Software.

3.3 **(Customer's responsibility to set-up and back-up)** The Customer agrees to:

- (a) follow the Supplier's guidance and recommendations contained in the Documentation;
- (b) use an operating system equal or better than the operating systems recommended by the Supplier;
- (c) make a copy of Customer Data prior to installation of the Software;
- (d) back-up Customer Data at all times;
- (e) use the Software and accompanying hardware in accordance with instructions provided by the Supplier;
- (f) scan and save Customer Data;
- (g) assume all liability for any loss of Customer Data caused by a failure to save or back-up; and
- (h) not allow any modification of the Software by anyone other than the Supplier,

and the Customer is fully responsible and liable for any loss resulting from any failure to comply with or carry out any of the above obligations.

#### 4. **SUPPORT SERVICES**

4.1 **(support)** If the Supplier has agreed to provide Support the Supplier will provide the Support in accordance with the Documentation. Support will be accessible during the hours set out in the Documentation and may be given at the Supplier's discretion by way of telephone, email, web chat, remote assistance and self-help online support or other method. Unless the Supplier agrees otherwise, Support does not include support or other assistance for any hardware, third party software or other equipment used with the Product.

4.2 **(support for "Simplicity")** Unless specified in the Documentation, the "Simplicity" Software provided to a single Authorised User is not supported and whilst the Supplier may respond to emails to its Website requesting assistance, it shall not be obliged to do so. In relation to "Simplicity" Software provided to multiple Authorised Users the Supplier shall provide the Support specified in the Documentation and shall only be obliged to provide telephone Support if specified in the Documentation.

4.3 **(Filestream not responsible for support from a Partner)** The Supplier is not liable or responsible for any maintenance or support that a Partner agrees to provide to the Customer and the Customer acknowledges that any such arrangements made with a

Partner are a separate contractual arrangement between the Partner and the Customer.

- 4.4 **(supplier Website)** The Supplier will do everything reasonably within its control to ensure that the sections of its Website accessible to the Customer as part of the provision of Support are both free from viruses and available; however, the Supplier cannot guarantee either of these things.

## 5. PARTNERS

- 5.1 **(Partners are independent of the Supplier)** Partners are independent of the Supplier and not appointed or authorised by the Supplier as its employee, agent or subcontractor.

- 5.2 **(Partners not authorised to bind the Supplier)** Partners have no authority (either explicit or implied) to enter into contract or grant any licence or provide any representation, warranty, condition or guarantee with or to the Customer on behalf of the Supplier, or otherwise commit the Supplier to any obligations.

- 5.3 **(Supplier not responsible for Partners)** The Supplier is not responsible for:
- (a) any services or support undertaken to be provided by a Partner (save for Maintenance Releases under Clause 3.1); or
  - (b) any modifications or mergers made to the Product by the Customer, a Partner or any third parties and the Supplier is not obliged to provide Support for such modified or merged Products.

## 6. THIRD PARTY

- 6.1 **(separate licence)** With the Solution the Customer may receive Third Party Software. the Customer cannot use the Third Party Software by itself; the Customer can only use it in the course of using the Solution. If the Customer uses Third Party Software the Customer agrees to adhere to any licence agreement provided with that Third Party Software. If there is no licence agreement with that Third Party Software, this Agreement will apply to how the Customer uses the Third Party Software. The Customer also agree to keep to any other conditions the Supplier imposes on using the Third Party Software.

- 6.2 **(separate rights)** The owners of Third Party Software keep all relevant rights in their own software and in all copies of it.

- 6.3 **(own risk)** the Customer acknowledges that the Solution may enable or assist the Customer to submit data to, access the website content of, correspond with, and purchase products and services from, third party interfaces and that the Customer does so solely at its own risk. The Supplier makes no representation or commitment and will have no liability or obligation whatsoever in relation to the submission of data, content or use of, or correspondence with, any such third-parties, or any transactions

completed, and any contract entered into by the Customer, with any such third party.

- 6.4 **(supplier not liable)** Any contract entered into and any transaction completed via any third-party interface is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's terms and conditions prior to using the relevant third-party website and services. The Supplier does not endorse or approve any third-party services, website or interface nor the content of any of the third-party website made available via the Solution.

## 7. FEES

7.1 If the Customer buys:

- (a) **(one off)** a perpetual licence, the Customer shall pay to the Supplier the Fee on the date the Customer accepted this agreement.
- (b) **(subscription)** a Subscription, the Customer will provide valid up-to-date and complete purchase order information, billing details and complete a continuous direct debit mandate authority. The Supplier will invoice the Customer at the agreed intervals for the Subscription Fees and take this amount from the Customer's nominated bank account via direct debit on the dates agreed in the Documentation.
- (c) **(through Partners)** a Subscription through one of the Partners, if the Supplier require the Customer to pay the Subscription Fees directly to the Supplier (instead of paying these fees to the Partner), the Customer will provide to the Supplier valid up-to-date and complete purchase order information, billing details and complete a continuous direct debit mandate authority on demand. The Supplier will invoice the Customer at the agreed intervals for the Subscription Fees and take this amount from the Customer's nominated bank account via direct debit on the dates agreed in the Documentation.

7.2 **(VAT exclusive)** All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.

7.3 **(default interest)** If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under *clause 15*, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Supplier's clearing bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

## 8. CONFIDENTIALITY AND PUBLICITY

- 8.1 **(duty to keep confidential)** Each party shall, during the term of this licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other 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 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.
- 8.2 **(no public announcement)** No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## 9. EXPORT

- 9.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 9.2 Each party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
  - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 10. SUPPLIER'S WARRANTIES

- 10.1 **(warranty)** The Supplier warrants that the Software will conform in all material respects to the Specification for a period of 90 days from the date of this licence (**Warranty Period**). If, within the Warranty Period, the Customer notifies the Supplier

in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's option, do one of the following:

- (a) repair the Software;
- (b) replace the Software; or
- (c) terminate this licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

10.2 **(no warranty regarding interruption or errors)** The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.

10.3 **(Customer responsible)** The Customer accepts responsibility for:

- (a) the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer; and
- (b) results obtained from the use of the Software by the Customer, and for conclusions drawn from such use.

10.4 **(software provided on "as is" basis)** The Customer acknowledges that any Open-Source Software provided by the Supplier is provided "as is" and expressly subject to the disclaimer in *clause 10.5*.

10.5 **(no other warranties etc)** All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

10.6 **(No liability for not following instructions, back-up etc.)** In no event will the Supplier be liable to the Customer in relation to:

- (a) the Customer's use of the Software in a manner contrary to the instructions given to the Customer;

- (b) the Customer's failure to follow the Supplier's guidance and recommendations contained in the Documentation or any failure by the Customer to:
  - (i) use an operating system equal or better than the operating systems recommended by the Supplier;
  - (ii) make a copy of Customer Data prior to installation of the Software;
  - (iii) back-up Customer Data at all times;
  - (iv) use the Software and accompanying hardware in accordance with instructions provided by the Supplier; and/or
  - (v) scan and/or save Customer Data,
- (c) any loss of Customer Data caused by a failure to save or back-up; and
- (d) any modification of the Software by anyone other than the Supplier.

## 11. LIMITS OF LIABILITY

### 11.1 (warranty limits) Except as expressly stated in *clause 11.2*:

- (a) the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
  - (i) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
  - (ii) loss of profits;
  - (iii) loss of anticipated savings;
  - (iv) loss of business opportunity;
  - (v) loss of goodwill;
  - (vi) loss or corruption of data,provided that this *clause 11.1(a)* shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of *clause 11.1(b)* or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this *clause 11.1(a)*;
- (b) the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the Fee; and
- (c) the Customer agrees that, in entering into this licence, either it did not rely on any representations (whether written or oral) of any kind or of any person

other than those expressly set out in this licence or (if it did rely on any representations, whether written or oral, not expressly set out in this licence) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability in any circumstances otherwise than in accordance with the express terms of this licence.

11.2 **(warranty limitations do not exclude)** The exclusions in *clause 10.5*, *clause 10.6* and *clause 11.1* shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for:

- (a) death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any other liability which may not be excluded by law.

11.3 **(dates)** All dates supplied by the Supplier for the delivery of the Software or the provision of Support shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

11.4 **(affiliates of Supplier)** All references to "the Supplier" in this *clause 11* shall, for the purposes of this clause and *clause 21* only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with *clause 21*.

## 12. **PRIVACY AND YOUR INFORMATION**

12.1 **(Information the Customer provides to the Supplier excluding Customer Data)** The Supplier will use any information the Customer provides the Supplier or the Supplier collects under this agreement (excluding Customer Data) as described in the Privacy Policy and in particular to:

- (a) provide, manage and administer the Customer's use of the Software;
- (b) fulfil the Supplier's contractual obligations under this agreement;
- (c) liaise with regulators, banks, law enforcement agencies (including the police) and fraud detection parties;
- (d) (subject to clause 12.5) contact the Customer to see if the Customer would like to take part in the Supplier's customer research;
- (e) (subject to clause 12.5) contact the Customer about other products and services which thinks the Customer will be interested in;

- (f) deliver targeted advertising, marketing (including in-product messaging) or information to the Customer which may be useful, based on the Customer's use of the Software or any other information the Supplier has about the Customer (the Customer may be able to configure these features to suit the Customer's preferences); and
  - (g) otherwise in accordance with our Privacy Policy.
- 12.2 The Supplier will always try to speak to the relevant person in the Customer's organisation. The Supplier may contact the Customer directly or use other organisations to contact the Customer.
- 12.3 The Supplier may disclose information to other companies in its group of companies, its contractors, and other organisations for example, the Supplier may disclose information to:
  - (a) organisations which the Supplier uses to help it send communications;
  - (b) companies the Supplier uses to help it provide the Software or services (such as hosting providers, where relevant);
  - (c) law enforcement agencies and fraud detection parties;
  - (d) third parties (if any) used by the Supplier to perform its obligations to you under this agreement; and
  - (e) any other person in order to meet any legal obligations on the Supplier, including statutory or regulatory reporting.
- 12.4 If the Customer provides the Supplier with information which contains personal data it will process that data in accordance with the Data Protection Laws and the Customer agrees and authorizes the Supplier to use it as described in this Clause 12.
- 12.5 If at any time you do not want us to use your personal data in the manner described at clauses 12.1(d) (customer research) and 12.1(e) (information about other products or services), please contact us.

### **13. CUSTOMER DATA**

- 13.1 The Customer owns its Customer Data and has sole responsibility for its legality, reliability, integrity, accuracy and quality.
- 13.2 To the extent personal data is included in any Customer Data the Supplier will process that data on the Customer's behalf as a data processor. The Supplier will only process such personal data in accordance with the Customer's instructions (and the Customer hereby instructs the Supplier to take such steps in the processing of personal data on its behalf as are necessary for the provision of the Software and the performance of the Supplier's obligations under this agreement).

- 13.3 The Supplier will use any Customer Data that the Customer transfers to the Supplier pursuant to this agreement to:
- (a) provide, manage and administer the Customer's use of the Software; and
  - (b) fulfil the Supplier's contractual obligations under this agreement.
- 13.4 The Customer acknowledges that it controls and is responsible for the release of Customer Data to the Supplier and the Customer accepts all liability for, and consents to, the Supplier viewing such released Customer Data.
- 13.5 The Customer warrants and represents that:
- (a) the Customer will comply with the Data Protection Laws;
  - (b) the Customer is authorised pursuant to the Data Protection Laws to disclose any personal data which the Customer discloses or otherwise provide to the Supplier regarding persons other than the Customer;
  - (c) the Customer will where required under the Data Protection Laws obtain all necessary consents in order for (i) the Customer to disclose the personal data to the Supplier; (ii) the Supplier to process the personal data for the purposes of providing the Software; (iii) the Supplier to disclose the personal data to those parties set out in clause 13.8 below including where the recipients of the personal data are outside the European Economic Area ("EEA").
- 13.6 The Supplier warrants and represents that during the term of this agreement the Supplier will:
- (a) comply with the Data Protection Laws applicable to the Supplier whilst such personal data is in our possession; and
  - (b) take reasonable steps to ensure the reliability of the Supplier's employees who have access to any personal data.
- 13.7 The Customer acknowledges and agrees that for the purposes of providing the Software under this agreement personal data may be transferred outside the EEA.
- 13.8 The Supplier may, subject to clause 13.3, provide Customer Data that the Customer transfers to the Supplier pursuant to this agreement to:
- (a) our agents, service providers and other companies in the Filestream group of companies;
  - (b) law enforcement agencies and fraud detection parties;
  - (c) any other person in order to meet any legal obligations on the Supplier, including statutory or regulatory reporting; and
  - (d) any other person who has a legal right to require disclosure of the information.

## 14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 **(no rights to third party software)** The Customer acknowledges that all Intellectual Property Rights in the Software and any Maintenance Releases belong and shall belong to the Supplier or the relevant third-party owners (as the case may be), and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this licence.
- 14.2 **(Supplier to defend claims of infringement)** The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this licence infringes the UK Intellectual Property Rights of a third party (**Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, *clause 14.2* shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this licence, use of the Software in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 14.3 **(conduct of infringement claims)** If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under *clause 14.2* are conditional on the Customer:
- (a) as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
  - (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
  - (c) giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
  - (d) subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

14.4 **(Supplier can vary software or terminate)** If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

- (a) procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this licence;
- (b) modify the Software so that it ceases to be infringing;
- (c) replace the Software with non-infringing software; or
- (d) terminate this licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in *clause 10.1* and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

14.5 **(application of this clause)** Notwithstanding any other provision in this agreement, clause 14.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.

14.6 **(exclusive remedy)** This *clause 12* constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 11.1.

## 15. DURATION AND TERMINATION

15.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified [in writing] to do so;
- (c) the other party is in default under any other financial obligation to any person or an administration order is made in relation to the other party or a receiver or manager or administrative receiver is appointed of the other party or any of the other party's assets or the other party enters into liquidation or any petition is presented, any resolution is proposed or any other steps or proceedings are taken which may lead to any such occurrence referred to above or any distress or execution is levied on or

affects any of the other party's property or assets or the other party is deemed to be insolvent or unable to pay its debts or the other party ceases to carry on business.

- 15.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 15.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 15.4 On termination for any reason:
- (a) all rights granted to the Customer under this licence shall cease;
  - (b) the Customer shall cease all activities authorised by this licence;
  - (c) the Customer shall immediately pay to the Supplier any sums due to the Supplier under this licence; and
  - (d) the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.
- 15.5 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement including *clause 1, clause 8, clause 9, clause 10 (except clause 10.1), clause 11 and clause 15.*

## **16. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **17. REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **18. ENTIRE AGREEMENT**

- 18.1 This licence, the schedules and the documents annexed as appendices to this licence and the Documentation contain the whole agreement between the parties

relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

18.2 Each party acknowledges that, in entering into this licence and the Documentation, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this licence or not) (**Representation**) other than as expressly set out in this licence or those documents.

18.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this licence.

18.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **19. VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **20. SEVERANCE**

20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

20.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **21. THIRD-PARTY RIGHTS**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **22. NO PARTNERSHIP OR AGENCY**

22.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**23. FORCE MAJEURE**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

**24. NOTICES**

24.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.

24.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service,

24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

**25. GOVERNING LAW AND JURISDICTION**

25.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This licence has been entered into on the date stated at the beginning of it.

