



FileMaker

FileMaker Business Alliance Agreement

PLEASE READ THIS AGREEMENT CAREFULLY. By joining the FileMaker Business Alliance program you certify that (1) you are authorized to accept this Agreement; (2) you have the full authority to permit FileMaker, Inc. and its subsidiaries to use the Materials as described in this Agreement; and (3) you accept all the terms and conditions of this Agreement. If you do not accept these terms, then do not join the FileMaker Business Alliance program and promptly contact FileMaker for a refund.

This FileMaker Business Alliance (“FBA”) Agreement (“Agreement”) is between you and the FileMaker, Inc. entity, subsidiary or branch office that manages the FBA program for your location (“FMI”). This Agreement becomes effective on the date confirmed in writing by FMI following your approval (“Effective Date”). You and FMI accept the following terms and conditions.

1. Appointment. Your application for FBA membership is subject to FMI’s acceptance, and FMI reserves the right, in its sole discretion, to deny membership to any FBA applicant. Upon FMI’s approval of your FBA application, you will become a member of the FileMaker Business Alliance and you are eligible for the current FBA benefits offered by FMI.

FMI may offer any products or services directly or indirectly at any time. FMI reserves the right to change or discontinue any FMI product, service or support, and FMI reserves the right to change the FBA benefits, categories and criteria. The FBA program may vary in certain countries, and some FBA benefits are not available in certain countries. You agree that FMI may verify your references and application information as part of FMI’s admissions and review processes.

2. Confidential Information. You agree that all information disclosed by FMI to you that relates to FMI’s products, designs, business plans, business opportunities, finances, research, development, know-how, personnel, or third-party confidential information, will be considered and referred to collectively as “Confidential Information.” Confidential Information, however, does not include: (a) information that FMI makes generally available to the public; (b) information that you can demonstrate to have had rightfully in your possession prior to disclosure to you by FMI; (c) information that is independently developed by you without the use of any Confidential Information; (d) information that you rightfully obtain from a third party who has been given the right to transfer or disclose it by FMI; or (e) any third party software and/or documentation provided by FMI and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such software and/or documentation. You agree not to disclose, publish, or disseminate Confidential Information to anyone other than

those employees and contractors working for the same entity as you who have an existing FBA membership. You further agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. You agree not to use Confidential Information otherwise for your own or any third party's benefit without the prior written approval of an authorized representative of FMI in each instance.

3. Obligations.

(a) General. You agree to conduct yourself and your business in a professional and competent manner that reflects favorably upon yourself, FMI, FMI products and other FBA members. You will represent FMI products fairly in comparison with competitive software. You will offer your services or products for the most current releases of FMI products. You are and will remain in good financial condition. You will comply with all applicable laws and regulations in performing your services with respect to FMI products, you will maintain a current business license within the U.S. and other applicable countries, and you agree to comply with the then-current FBA requirements stated in the Program Guide.

(b) Member Information. If you have requested to be listed in the directory of FBA members ("FBA Directories" which may include the FileMaker Resource Guide or other local equivalent as may be available in some countries), then you grant FMI the rights to use your company name, background information, company profile and any additional information which you provide to FMI ("Member Information") for FMI's marketing and/or internal purposes at FMI's sole discretion. FMI may remove your listings from the FBA Directories at FMI's sole discretion at any time. Pursuant to the E.U. Directive on the Protection of Personal Data and related laws, if applicable, you expressly agree that FMI may transmit such data outside European Union countries and use such information for FMI marketing (e.g., on the Internet) and internal purposes.

(c) Materials. Upon FMI's request, you agree to provide FMI a full working version of your solutions and any related documentation or materials regarding your FileMaker solutions or services ("Materials"). FMI agrees that it will only use and evaluate your Materials internally at FMI. FMI will not distribute your Materials to any third parties without your prior written permission, except as follows. In addition to the full version of your Materials, if you provide FMI with demonstration versions of your Materials, which are identified as such, then FMI may freely use, copy and distribute such demonstration versions of your Materials.

(d) Warranties & Representations. You warrant and represent that the Materials are original to you and/or you have full authority from the owner of the Materials to permit FMI to use the Materials as authorized under this Agreement. You further warrant that all of your materials, which refer or relate to FMI products, will not infringe any patents, copyrights, trademarks or trade secrets held by FMI or any third party. You understand that FMI is the exclusive owner of all rights, title and interest in the FBA directories and all advertising, promotional and/or informational materials containing the Materials, subject to your preexisting rights in such Materials.

(e) Limitations. FMI's receipt and use of the Materials does not impose any duty on FMI to endorse or purchase any services or products from you. FMI may edit,

revise, and correct your Member Information when including it in the FBA Directories, and FMI makes no warranties or representations regarding the accuracy. FMI will have no obligation to return any of the Materials to you. FMI may acquire, license, develop, market or distribute software, templates, services or other materials, which are similar to your Materials so long as FMI does not infringe any of your copyrights or patents.

(f) Information & Materials. The FBA materials and information are provided to you as a program member and may be transferred only to your employees and contractors. You may not otherwise transfer, publish, copy or disseminate the FBA materials or information to any other party except as authorized in writing by FMI.

(g) Additional Locations. If you own and manage more than one business office location operating under the same name as the entity entering into this Agreement (“Additional Location(s)”), then you may submit such Additional Location(s) for a separate listing in the FBA Directories during the term of this Agreement. Inclusion of such Additional Location(s) in the FBA Directories is subject to a separate fee for each location, and subject to FMI’s approval. Additional Location(s) must be established business offices, and P.O. boxes or home addresses will not be accepted. No other FBA benefits will apply to the Additional Locations. If you wish to add additional FBA benefits to any Additional Location, then such Additional Location must apply for a separate FBA membership. By enrolling Additional Location(s), you agree to be responsible for (i) informing each Additional Location of the terms and conditions of this Agreement and (ii) ensuring that each Additional Location abides by the terms and conditions of this Agreement. If any Additional Location does not abide by the terms and conditions of this Agreement, then FMI has the right to terminate such Additional Location’s listing in the FBA Directories.

4. FBA Benefits. As a FBA member, you will receive certain benefits applicable to your membership level (“Benefits”) as set forth in the then-current listing of FBA benefits and requirements in the Program Guide. **Benefits may vary depending upon the country.** FMI reserves the right to modify the Benefits from time to time in FMI’s sole discretion, and in such event FMI will notify you via mail or e-mail of the new Benefits.

(a) FBA Online Forum. You will have access to (i) a private area on the FMI web site for FBA members which contains FMI business information, and (ii) an online discussion area for FBA members on business topics (“Biz Talk”). Use of Biz Talk is subject to the current terms posted by FMI, and misuse of Biz Talk may result in disciplinary action by FMI, including discontinued access to Biz Talk and/or termination of your FBA membership. Such misuse includes, but is not limited to any conduct that is unlawful, offensive or that, in FMI’s discretion, restricts or inhibits any other FBA member from using or enjoying Biz Talk. Examples of such conduct are communications which (i) harass, threaten, embarrass or cause distress or discomfort to another FBA member, (ii) are defamatory toward FMI or other FBA members, (iii) are obscene or contain other objectionable content, or (iv) disrupt the normal flow of dialogue on Biz Talk.

(b) FMI Software. Subject to applicable license terms, you can order FMI Software at special discounts and redistribute the FMI Software to your customers. **(Please note that if you also purchase licenses under a Software Bundle Agreement**

(SBA), these terms still require that ALL licenses purchased under that Agreement MUST be bundled with your solutions.) You may also order discounted FMI Software for your own internal use. You may not use the discounted FMI Software to host any databases that are accessed outside your organization. Your violation of these restrictions may result in termination of this Agreement. You acknowledge the use of all FMI software is subject to the FileMaker software license terms and conditions provided with such software.

(c) FileMaker Pro Advanced Cross Platform Permission. The software license for FileMaker Pro Advanced provides that customers can use the software on a single computer, Mac or Windows, but not both. In addition, FMI allows the primary user of the computer to make a second copy to use for his or her exclusive use on either a home or portable computer (“Home/Portable Use”). FMI understands and recognizes that developers will often have the need to use the software on both a Mac and a Windows based desktop computer to develop and test their cross-platform FileMaker solutions. So as a special benefit for FBA members that license FileMaker Pro Advanced software under Section 4(b) of this Agreement, FMI allows such members to use a single licensed copy of FileMaker Pro Advanced software for their own exclusive internal use on both a Mac and a Windows based computer in lieu of their Home/Portable Use rights described above. You may not use both copies of the software concurrently.

(d) Platinum Level. If FMI notifies you in writing that you are granted Platinum level status in the FBA program, then you are eligible for such additional benefits subject to the current requirements stated in the Program Guide. In addition, your use of the special Platinum logo is subject to Section 6 below.

5. Fees and Payment. In consideration of the FBA Benefits, you shall pay FMI the applicable Membership Fee(s). Unless otherwise specifically provided, all prices are FOB FMI shipping point, and are exclusive of applicable sales, use or value-added taxes or other taxes, import or export fees, duties or tariffs, and any other taxes, duties, or fees of any kind that may be levied in connection with the transactions covered hereby, all of which shall be paid by you.

6. FMI Trademarks. FMI will provide you with access to the “FBA Members Only” area of the web site, which includes FMI and FBA trademarks and logos for use by FBA members (collectively, the “FMI Trademarks”). You may use the FMI Trademarks only in connection with your advertisement and promotion of your Materials, provided that your Materials are of a standard and quality at least equal to those Materials which you submitted to FMI with your FBA membership application, and adequate to maintain the reputation for services and/or products bearing the FMI Trademarks. Your use of the FMI Trademarks must be in accordance with FMI’s then-current trademark policies described in the FMI Trademark Guidelines included on the “FBA Members Only” area. As set forth in the FMI Trademark Guidelines, **you may not use any FMI Trademarks, including but not limited to the FileMaker name, as part of your company name, product name or service name.** All use of the FMI Trademarks must cease if FMI determines, in its sole discretion, that such use conflicts with the applicable FMI policy or if your Materials no longer meet FMI’s quality standards. In such case, FMI will notify you and provide you a commercially reasonable period in which to meet FMI’s standards

or cease use of the FMI Trademarks. This license to use the FMI Trademarks is nonexclusive and nontransferable. FMI retains all rights in the FMI Trademarks not expressly licensed in this Section and all use of the FMI Trademarks by you shall inure to FMI's benefit. Following FMI's request, you will promptly submit copies of your Materials, which contain the FMI Trademarks for FMI's review. If you were previously a member of the FileMaker Solutions Alliance, then you may continue to use the trademarks licensed under the terms of conditions of your previous FSA agreement until the later of (1) December 31, 2007, or (2) expiration of your annual FSA term.

7. Term and Termination. This Agreement commences on the Effective Date and will terminate one (1) year following the Effective Date, unless earlier terminated by either party as set forth below. This Agreement may be renewed on a yearly basis for a subsequent one (1) year term upon the written consent of FMI and your payment of the applicable renewal fee. Neither party may rely on this Agreement being extended or renewed. FMI, at its sole discretion, may terminate this Agreement immediately following FMI's written notice to you if: (a) you engage in any unlawful business practice, (b) you fail to perform any obligation or violate any restriction contained in this Agreement or the then-current Program Guide, (c) FMI receives complaints from your customers demonstrating that you have not maintained the quality of services required by FMI, (d) there is any material change in your ownership or management or your business or assets, or (e) you become the subject of any proceeding under any bankruptcy, insolvency or debtor's relief law. Upon termination, your rights to use the FMI Trademarks, as well as any FMI software and other materials provided to you in the course of your FBA membership immediately cease, and you agree to promptly return such FMI software and other materials, and any copies thereof, to FMI. FMI may continue to use and distribute the Materials pursuant to Section 3 for one (1) year following termination. **NEITHER PARTY WILL BE LIABLE FOR DAMAGES OR COSTS OF ANY NATURE ARISING FROM THE EXPIRATION OR TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.** Sections 2, 5 and 7 - 14 will survive the termination of this Agreement.

8. Indemnification. You will indemnify, hold harmless and, upon FMI's request, defend FMI against any claims, liabilities and expenses (including court costs and reasonable attorneys' fees) arising from acts or omissions of you or your employees and agents.

9. Limitation of Liability. **FMI'S LIABILITY WITH REGARD TO THIS AGREEMENT OR THE FMI PRODUCTS WILL NOT INCLUDE CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHER INDIRECT DAMAGES, SUCH AS LOST PROFITS, EVEN IF FMI HAS KNOWLEDGE OF THE LIKELIHOOD OF SUCH DAMAGES.** In no event shall FMI's or its licensors' total liability for all damages, losses, and causes of action (whether in contract, tort, negligence or otherwise) exceed the amount paid by you for the current year's FBA membership fee.

10. Disclaimer of Warranty. OTHER THAN AS SET FORTH IN THE APPLICABLE END-USER LICENSE, ALL FBA INFORMATION AND MATERIALS ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THEIR PERFORMANCE, ACCURACY, COMPLETENESS, OR NON-INFRINGEMENT. To the extent that FMI makes available any products or product information, you understand that FMI is under no obligation to provide updates, enhancements, or corrections, or to notify you of any product changes that FMI may make, or to publicly announce or introduce the product(s) at any time in the future.

11. Relationship with FMI. You understand and agree that the FBA program does not create a legal partnership or agency relationship between you and FMI. Neither you nor FMI is a partner, an agent or has any authority to bind the other. You agree not to represent otherwise.

12. FMI Independent Development. You understand and agree that FMI may acquire, license, develop for itself or have others develop for it, and market and/or distribute similar software, products or services to that which you may develop. In the absence of a separate written agreement to the contrary, FMI will be free to use any information you provide to FMI for any purpose, subject to any applicable patents or copyrights.

13. Export Law Assurances. You agree that you will not export or re-export any of the software or Confidential Information received from FMI (a) into (or to a national or resident of) any U.S. embargoed country (currently, Cuba, Iran, North Korea, Sudan, or Syria; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. In joining this program, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list. You also agree that you will not use these products for any purposes where prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missile, chemical or biological weapons.

14. General. This Agreement supersedes all previous agreements and representations on behalf of the parties. This Agreement may not be changed, terminated or amended except in writing and signed by an authorized FMI representative. FMI's failure or delay in exercising any of its rights will not constitute a waiver of such rights unless expressly waived in writing and signed by an authorized FMI representative. You may not transfer or assign this Agreement without FMI's prior written approval. If there is a local subsidiary of FMI in the country in where you are located, then the local law in which the subsidiary sits shall govern this Agreement. Otherwise, this Agreement shall be governed by the laws of the United States and the State of California. If a court of law finds any provision of this Agreement unenforceable, the parties agree to replace the offending provision with an enforceable provision that most nearly achieves the intent and economic effect of the unenforceable provision. The English language version of this Agreement controls when interpreting this Agreement.