



年度批量许可协议

签字页

“被许可人”

FILEMAKER, INC. (“FMI”)

客户名称：

寄送合同至：

北京菲墨客软件开发有限公司
北京市东城区建国门内大街 8 号中粮广场 B505
100005

寄送法律通知至：

Attn: Legal, MS C-51
FileMaker, Inc.

地址：

5201 Patrick Henry Drive
Santa Clara, CA 95054
U.S.A

协议编号： _____
(由 FMI 填写)

被许可人的联系信息

名称：

电子邮件：

地址：

电话：

合同日期： _____
(由 FMI 填写)

到期日： _____
(合同日期后的一年)

本页 (“签字页”)、后附的条款和条件 (也可通过 <http://www.filemaker.com/legal> 获得) 以及相关的附件一起构成了被许可人与 FMI 之间的一份有约束力的协议 (“协议”)。被许可人在下方的签名确认了被许可人接受所有的条款和条件，且被许可人明确理解关于今后续展或卸载软件的法律要求。本协议可以通过传真方式签署，当以传真方式签署时，传真件将被视为原件并具有与原件同等的效力，且传真件与原件一起将构成同一法律文书。**接受并同意：**

“被许可人”

签字人 (签名) : _____

印刷体签名 : _____

职务 : _____

FILEMAKER, INC.

签字人 (签名) : _____

印刷体签名 : _____

职务 : _____



年度批量许可协议

当FMI处理完您的初始订单并向您发送书面确认之后，此等年度批量许可协议的条款和条件（“协议”）即构成对您（“被许可人”）和FileMaker公司（“FMI”）均有约束力的法律协议。被许可人确认，其接受所有条款和条件，并理解关于以后软件续展或下载的法律要求。

1. 许可。

(a) **软件。**为本协议之目的，“软件”是指在FMI合同体系中确定的、许可给被许可人的特定FileMaker软件。

(b) **许可的授予。**受限于本协议的条款，在支付所有相关费用之后，FMI将在有效期内授予被许可人一项非排他、不可转让的许可，许可其在不超出FMI合同体系中确定的许可计数数量范围内复制软件目标代码，以及在其拥有或租赁的一台计算机上使用和安装该等软件拷贝。

可在额外的计算机和设备上同时使用FileMaker WebDirect 客户端和FileMaker Go 客户端访问FileMaker Server，但数量不得超过FMI合同系统中允许在此类客户端上使用的许可数量。

被许可人仅可在本协议有效期内使用软件，除非续购软件或者依据第4(a)(3)条或第4(b)条续展本协议，在FMI合同体系中确定的到期日必须停止对软件的所有使用。

FMI将向被许可人提供唯一的许可密码，该等许可密码需要保密，且仅用于使得被许可人依据本协议条款和条件使用软件之目的。对于被许可人复制或安装软件所产生的全部费用，被许可人应单独负责。

(c) **所有权。**被许可人拥有记录软件的媒介，但被许可人确认，FMI及其许可人保留软件本身的所有权。

(d) **终端用户许可协议。**与软件一同提供的终端用户许可协议（“终端用户许可协议”）中所述的条款和条件将适用于根据本许可所用软件的各份拷贝，但是终端用户许可协议不构成对软件的任何额外许可。

(e) **教育。**如果软件是在给教育折扣的情况下被许可，则软件只能由公认的教育机构（或同等机构）或仅为教育学生而成立并运营的高等教育机构内招收的学生、教员、老师和管理人员使用。

2. 限制

(a) **一般限制。**被许可人确认，软件中包含商业秘密，为保护该等商业秘密，除适用法律许可外，被许可人不可分解、逆向工程、分拆或以其他方式降低软件到人类感知的形式。被许可人不得修改、出售、出租、租借、借出、分销（除非本许可明确允许）或者在软件或软件任何部分的基础上创建衍生作品。

(b) **声明。**被许可人：(i)不得从软件上移除任何版权声明或专有权图标；(ii)应在软件的所有拷贝上复制软件原件上的

版权声明和任何其他专有权图标 (iii)不得向任何人披露唯一的许可密钥，根据本协议许可使用软件而要求披露的情形除外；(iv)采取合理步骤，确保软件用户知晓并遵守本协议的条款和条件。

(c) 有限使用。软件不能用于核设施的操作、飞机导航、通信系统、空中交通管制，或其他软件故障会导致死亡、人身伤害或严重物质或环境损害的类似活动。

(d) 禁止转让或让与。未经FMI事先书面同意，被许可人不可向其他协议方转让或让与本协议的任何部分。

3. 维护软件

(a) 定义。

(i) “维护软件”包括升级和更新。

(ii) “升级”是指通过增加功能和/或提高性能对现有产品进行的改进。升级可通过产品版本号小数点左边或右边号码的变更进行识别。(如从FileMaker Pro 7.0升级到8.0，或者从5.0版本升级到5.5)。

(iii) “更新”是指错误修复更新，包括修复、使其符合说明的兼容更新和使其与特定标准相互操作的标准兼容更新。更新可根据“v”右边数字的变更予以识别(如FileMaker Pro 8.0v2)。更新通常仅通过电子下载的方式提供。

(b) 维护许可。作为本协议的一部分，被许可人使用软件的权利将扩展至在本协议有效期内商业发布的维护软件。FMI将提供或使被许可人取得在本协议有效期内商业发布的维护软件的原件。

(c) 限制和免责声明。被许可人对维护软件的权利不会授予被许可人取得带有不同名称产品的权利，或者取得为特定客户或市场细分制作的特殊版本维护软件

的权利，即使该等产品可能包含类似特征或提供类似功能。作为优惠活动，有时会在零售店或其他渠道提供不同配置的产品，除FMI自行决定提供之外，该等产品不得作为维护软件提供。维护软件由FMI及其许可人自行决定开发和发布。FMI及其许可人不保证和陈述，其将在本协议有效期内开发或发布任何维护软件。FMI及其许可人不保证，将在该等维护软件商业发布之后的特定时间段内向被许可人提供或使其取得维护软件。

4. 有效期和终止。

(a) 初始有效期。除非根据本协议第4条续展或终止本协议，本协议将自FMI合同体系中说明的合同日期开始，至到期日终止(“初始有效期”)。初始有效期过后，被许可人可以：

- (1) 根据第4(b)条续展本协议；
- (2) 根据第4(d)条终止本协议并停

止对软件的所有使用；或者

(3) 根据 FMI 当时有效的条款对 FMI 其他许可项目下的软件进行再许可。

(b) 续展期限。初始有效期后，本协议可以续展一年或两(1或2)年期限。为续展本协议，被许可人必须在每年的周年日或之前，以书面方式向 FMI 确认其许可计数，并向 FMI 支付当时的许可续展费。

(c) 违约。如果被许可人违反本协议，且在收到 FMI 的违约通知十(10)日后仍存在该等违约，FMI 可以书面通知被许可人终止本协议，则本协议及本协议中授予被许可人的所有许可将被立即终止。违约情形包括但不限于被许可人未支付任何到期的许可费。

(d) 终止的效力。本协议到期或因任何原因终止后，本协议项下的所有许可均被立即终止，被许可人应停止对软件的所有使用、安装和复制。在到期或终止后三十(30)天内，被许可人必须提交 FMI 合同体系中要求的通知，确认其已停止对软件的所用使用，并已删除或损毁软件的拷贝。如果 FMI 未在三十(30)天内收到被许可人的通知，FMI 将(i)向被许可人发出账单，且被许可人必须继续支付许可费；并且/或(ii)逐步禁用软件以至被许可人将无法继续使用。根据本协议支付给 FMI 的任何费用，在本协议到期或终止后均不退还。

(e) 存续。第 1(b)条、第 2 条、第 4 条、第 5 条、第 6 条、第 7 条和第 11 条将在本协议到期或终止后继续存续。

5. 有限保证。FMI 保证从 FMI 合同系统中所述的初始合同日期起九十(90)天内，FMI 提供的软件将基本符合从 FMI 处可得该软件公布的说明。违反前述有限保证时，FMI 的全部责任和被许可方所有和唯一救济是，FMI 自行更换媒体、退还购买款项或修理或更换软件。本有限保证是 FMI 做出的唯一保证，FMI 和其许可方明确放弃所有其它明示或默示保证和条件，包括但不限于适销性、令人满意的质量和适合特殊用途的默示保证和条件。此外，对于干扰被许可方使用软件或软件侵害第三方专有权的不做保证。FMI 不保证软件所含功能符合被许可方要求，或软件的运行没有间断或没有错误，或软件里的瑕疵将被修正。此外，关于软件使用或软件使用结果的正确性、准确性、可靠性或其他方面，FMI 不做保证或任何陈述。FMI 或 FMI 授权代表的口头或书面信息或建议不构成保证或以任何方式增加本保证的范围。因一

些司法管辖地不允许排除默示保证和条件，故以上排除也许不适用于被许可方。

6. 救济和损害赔偿限制。在包括疏忽的任何情况下，FMI 或其许可方不对由使用或无法使用软件而产生的附带、特殊或间接损害负责，即使 FMI、其许可方或 FMI 的授权代表已被告知此等损害的可能性。因一些司法管辖地不允许排除或限制对附带或间接损害的责任，故以上限制或排除也许不适用于被许可方。在任何情况下，FMI 或其许可方对所有损害、损失和诉因(无论是在合同、侵权行为(包括疏忽)或其他中)的赔偿责任总额都不应超出本协议项下所支付的数额。各方同意此救济和损害赔偿限制规定应独立执行，且在任何保证救济的主要目的未能达到时仍有效。上述限制不适用于适用法律规定此等责任时且适用法律规定此等责任范围内的人身伤害。

7. 审计。每年至多一次，且在正常营业时间内(发出合理提前通知后)，为确认被许可方遵照本协议之目的，FMI 或由任一方选择的双方都能合理接受的独立第三方，可对被许可方及其与本协议项下付款义务相关的记录进行审计。经 FMI 要求，被许可方将提供一名了解此事的员工协助此等审计。若此等审计显示被许可方未完全支付本协议项下应支付给 FMI 的款项，被许可方将立即支付 FMI 此等逾期未付金额。若任一期间被许可方的未付金额超过在该期间内实际应付 FMI 的金额 10% 或更多，被许可方将立即补偿 FMI 在执行此等审计中产生的直接现金支付费用。

8. 支持。FMI 无义务向被许可方提供针对被许可方在本协议项下使用软件的任何技术支持服务。被许可方可订购本协议期限内 FMI 当前提供的额外支持服务。

9. 出口法律保证。被许可方不可使用或以其他方式出口或再出口软件，美国法律或取得软件地区的管辖法律授权的除外。特别是，但不限于，软件不可出口或再出口至（a）任何美国禁运国家（或其国民或居民）（现包括古巴、伊朗、利比亚、朝鲜、苏丹和叙利亚），或（b）列于美国财政部特别指定国民名单或美国商务部被禁人士或实体名单中的任何人。通过使用软件，被许可方陈述并保证，不处于该等国家，不受该等国家控制，不为其国民或居民，且未列于任何该等清单内。

10. 政府终端用户。所有根据 1995 年 12 月 1 日前发出之请求提供给美国政府的软件都具有 FAR, 48 CFR 52.227-14 (1987 年 6 月) 或 DFAR, 48 CFR 252-227-7013 (1988 年 10 月) 中规定的适用有限权利。

11. 一般条款。本协议适用美国和加利福尼亚州法律，且应依照美国和加利福尼亚州法律解释，该等法律同样适用于由加利福尼亚州居民签署和仅在加利福尼亚州范围内履行的协议。各方同意《联合国国际货物买卖合同公约》(1980)，及修订后的上述公约，被明确地排除在本协议的适用范围外。本协议构成双方间关于依据此等条款被授权使用软件的完整协议，它将取代所有先前或同时存在的关于此等标的之协议、安排和谅解。被许可方承认并同意被许可方没有依赖FMI所作的任何陈述，但本协议并不限制或排除任何欺诈性陈述的责任。对本协议的任何修改或修正都需以书面形式并由FMI签字才具有约束力。若本协议任何条款被具有司法管辖权的法院判定为违反法律，此条款应在最大允许范围内得到执行，且本协议的其它部分仍具有完全效力。除非有明确书面通知，否则FMI未能或迟延行使其权利或救济不得视为对本协议的放弃。单独或部分行使FMI的任何权利或救济不得视为对本协议的放弃、或排除任何其它或进一步行使上

述或其它任何权利或救济。

SC AVLA 031715



ANNUAL VOLUME LICENSE AGREEMENT
Signature Page

“LICENSEE”

FILEMAKER, INC. (“FMI”)

Customer Name:

Send contracts and legal notices to:

FileMaker, Inc.

Address:

5201 Patrick Henry Drive

Santa Clara, CA 95054

Agreement Number: _____

(To be completed by FMI)

LICENSEE CONTACT INFORMATION

Name:

Email:

Address:

Phone:

CONTRACT DATE: _____

(To be completed by FMI)

EXPIRY DATE: _____

(One year following the Contract date)

This page (“Signature Page”), the attached Terms and Conditions (also available at <http://www.filemaker.com/legal/>), and the related exhibit(s) together constitute a binding legal agreement between Licensee and FMI (“Agreement”). Licensee's signature below confirms that Licensee accepts all the terms and conditions, and that Licensee specifically understands the legal requirements regarding future renewal or de-installation of the software. This Agreement may be executed in facsimile, which when so executed shall be deemed to be an original and shall have the same force and effect as an original and the facsimile and original together shall constitute one and the same instrument. **Accepted and Agreed:**

“LICENSEE”

FILEMAKER, INC.

By (Signature): _____

By (Signature): _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____



ANNUAL VOLUME LICENSE AGREEMENT

These Annual Volume License Agreement terms and conditions (“Agreement”) constitute a binding legal agreement between you (“Licensee”) and FileMaker, Inc. and/or FileMaker International (collectively referred to as “FMI”) after FMI processes your initial order and FMI sends you written confirmation. Licensee confirms that it accepts all the terms and conditions and specifically understands the legal requirements regarding future renewal or de-installation of the software.

1. License.

(a) Software. For purposes of this Agreement “Software” means the specific FileMaker software licensed by Licensee as confirmed in FMI’s contract system.

(b) License Grant. Upon payment of all applicable fees and subject to the terms of this Agreement, FMI grants to Licensee a non-exclusive, non-transferable license during the term to make exact object code copies of the Software not to exceed the License Count quantity indicated in FMI’s contract system, and use and install each such copy of the Software on a single computer owned or leased by Licensee. FileMaker WebDirect and FileMaker Go clients may be used on additional computers and devices to access FileMaker Server on a concurrent basis, not to exceed the License Count quantity indicated in FMI’s contract system for such clients.

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

FMI will provide Licensee with a unique License Key, and such License Key must be kept confidential and used solely for the purpose of enabling Licensee to use the Software in accordance with the terms and conditions of this Agreement. Licensee shall be solely responsible for all expenses incurred in the copying and installation of the Software by Licensee.

(c) Ownership. Licensee owns the media on which the Software is recorded, but Licensee acknowledges that FMI and its licensors retain ownership of the Software itself.

(d) End User License Agreement. The terms and conditions stated in the end user license agreement (“EULA”) provided with the Software will govern the use of each respective copy of the Software used under this License, except that the EULA does not constitute the granting of any additional license to the Software.

(e) Education. If the Software is licensed at an education discount, then the Software may only be used by enrolled students, faculty, teachers and administrators at an accredited educational institution (or equivalent) or higher education institution organized and operated exclusively for the purpose of teaching its students.

2. Restrictions

(a) General Restrictions. Licensee acknowledges that the Software contains trade secrets and to protect them, Licensee may not decompile, reverse engineer, disassemble or otherwise reduce the Software to any human-perceivable form except as permitted under applicable law. Licensee may not modify, sell, rent, lease, loan, distribute (except as expressly permitted by this License), or create derivative works based upon the Software in whole or in part.

(b) Notices. Licensee shall: (i) not remove any copyright notices or proprietary legends from the Software; (ii) reproduce on all copies of the Software the copyright notice and any other proprietary legends that were on the original copy of the Software; (iii) not disclose the unique License Key to anyone except as required to use the Software as permitted under this Agreement; and (iv) take reasonable steps to ensure that each user of the Software is aware of and complies with the terms and conditions of this Agreement.

(c) Restricted Uses. THE SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATIONS SYSTEMS, OR AIR TRAFFIC CONTROL OR SIMILAR ACTIVITIES IN WHICH CASE THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

(d) No Transfer or Assignment. LICENSEE MAY NOT TRANSFER OR ASSIGN ANY PORTION OF THIS AGREEMENT TO ANOTHER PARTY WITHOUT FMI’S PRIOR WRITTEN CONSENT.

3. Maintenance Software

(a) Definitions.

(i) “Maintenance Software” includes both Upgrades and Updates.

(ii) “Upgrade” means an improvement to an existing product through added functionality and/or enhanced performance. Upgrades are identified by a change in the number to the left or right of the decimal point in the product version number (e.g., an upgrade from FileMaker Pro 7.0 to 8.0, or an upgrade from version 5.0 to 5.5).

(iii) “Update” means bug fix updates containing fixes, compatibility updates to maintain compliance with specifications, and standards compatibility updates to interoperate with specific standards. Updates are identified by a change in the number to the right of the “v” (e.g., FileMaker Pro 8.0v2). Updates are generally made available only through electronic download.

(b) Maintenance License. As part of this Agreement, Licensee’s rights to use the Software will extend to the Maintenance Software that is commercially released during the term of this Agreement. FMI will provide or make available to Licensee a master copy of such Maintenance Software commercially released during the term of this Agreement.

(c) Restrictions and Disclaimers. Licensee’s rights to Maintenance Software does not grant Licensee the right to acquire products bearing different names or special versions of the Maintenance Software created for certain customers or market segments, even though they may contain similar features or perform similar functions. From time to time products will be

offered in the retail or other channels in different configurations as special promotions, which will not be made available as Maintenance Software, except in FMI's sole discretion. MAINTENANCE SOFTWARE WILL BE DEVELOPED AND RELEASED BY FMI AND ITS LICENSORS IN THEIR SOLE DISCRETION. FMI AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT THEY WILL DEVELOP OR RELEASE ANY MAINTENANCE SOFTWARE DURING THE TERM OF THIS AGREEMENT. FMI AND ITS LICENSORS DO NOT WARRANT THAT THE MAINTENANCE SOFTWARE WILL BE PROVIDED TO LICENSEE OR MADE AVAILABLE WITHIN ANY SPECIFIED TIME PERIOD FOLLOWING THE COMMERCIAL RELEASE OF SUCH MAINTENANCE SOFTWARE.

4. Term & Termination.

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

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

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

(c) Breach. If any breach of this Agreement by Licensee continues for more than ten (10) days after receipt of written notice of such breach by FMI, FMI may terminate this Agreement by written notice to Licensee, whereupon this Agreement and all rights granted to Licensee herein shall immediately cease. Breach of this Agreement includes, but is not limited to, Licensee's failure to pay any license fees when due.

(d) Effect of Termination. Upon expiry or termination of this Agreement for any reason, all licenses under this Agreement are immediately terminated, and Licensee will cease all use, installation and copying of the Software. Within thirty (30) days following expiry or termination, Licensee must submit the required notice in FMI's contract system, confirming that Licensee has ceased all use of the Software and confirming that copies of the Software have been deleted or destroyed. If FMI does not receive Licensee's notice within thirty (30) days, then FMI may (i) invoice Licensee and Licensee is required to continue paying the license fees; and/or (ii) take steps to deactivate the Software so that Licensee may not continue to use it. Any fees paid to FMI under this Agreement are non-refundable upon expiry or termination of this Agreement.

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

5. Limited Warranty. FMI warrants for a period of ninety (90) days from the initial Contract Date stated in FMI's contract system that the Software as provided by FMI will substantially conform to the published specifications for the Software available from FMI. FMI's entire liability and Licensee's sole and exclusive remedy for any breach of the foregoing limited warranty will be, at FMI's option, replacement of the media, refund of the purchase price, or repair or replacement of the Software. THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY FMI AND FMI AND ITS LICENSORS EXPRESSLY

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6. Limitation of Remedies and Damages. UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL FMI, OR ITS LICENSORS BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF FMI, ITS LICENSORS OR AN AUTHORIZED REPRESENTATIVE OF FMI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO LICENSEE. In no event shall FMI's or its licensors' total liability for all damages, losses, and causes of action (whether in contract, tort (including negligence) or otherwise) exceed the amount paid under this Agreement. The parties agree that this limitation of remedies and damages provision shall be enforced independently of and survive the failure of essential purpose of any warranty remedy. THE ABOVE LIMITATION WILL NOT APPLY IN CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY.

7. Audit. No more than once per year and during ordinary business hours (after giving reasonable advance notice) FMI, or at either party's option, an independent third party reasonably acceptable to both parties, may audit Licensee and its records relating to its payment obligations under this Agreement for the purpose of confirming Licensee's compliance with this Agreement. At FMI's request, Licensee will provide a knowledgeable employee to assist in such audit. If such audit reveals that Licensee has underpaid amounts owing to FMI under this Agreement, Licensee will promptly pay FMI such past due amounts. If the amount which Licensee has underpaid in any period exceeds ten percent (10%) or more of the amounts actually owed to FMI for such period, Licensee will promptly reimburse FMI for the direct out-of-pocket expenses incurred in conducting such audit.

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

9. Export Control. You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S. embargoed countries 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. By using the Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

10. Government End Users. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with RESTRICTED RIGHTS as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252-227-7013 (OCT 1988), as applicable.

11. General Terms. If there is a local subsidiary of FMI in the country in which this Agreement was purchased, then the local law in which the subsidiary sits shall govern this License. Otherwise, this Agreement shall be governed by the laws of the United States and the State of California. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980), as amended, is specifically excluded from application to this License. This Agreement constitutes the entire Agreement between the parties with respect to the Software licensed under these terms, and it supersedes all prior or contemporaneous Agreement, arrangement and understanding regarding such subject matter. This Agreement prevails over any other terms or conditions contained in or referred to in Licensee's purchase order or elsewhere or implied by trade custom or course of dealing, unless those other terms or conditions are specifically agreed to in writing by a duly authorized representative of FMI. Any purported provisions to the contrary are hereby excluded or extinguished. Licensee acknowledges and agrees that it has not relied on any representations made by FMI, however, nothing in this Agreement shall limit or exclude liability for any representation made fraudulently. No amendment to or modification of this Agreement will be binding unless in writing and signed by FMI. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect. No failure or delay by FMI in exercising its rights or remedies shall operate as a waiver unless made by specific written notice. No single or partial exercise of any right or remedy of FMI shall operate as a waiver or preclude any other or further exercise of that or any other right or remedy.

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