

**IMPORTANT!** Please read carefully through this Agreement ("Agreement"). If you use the File Direct software by using your account credentials (which are made available only to persons having accredited access granted by **FILE DIRECT LIMITED** ("File Direct") in order to incorporate companies and file information with Companies House in the United Kingdom on your own behalf or on behalf of third parties), you are deemed to accept the terms and conditions of this Agreement with respect to its use. **BY USING THE SOFTWARE, YOU ARE DEEMED TO ACCEPT THIS AGREEMENT AND ARE BOUND BY ITS TERMS.** File Direct is a company registered in England under number 04970487 with a registered office at Business Resource Network, 53 Whateley's Drive, Kenilworth, Warwickshire CV8 2GY which is also our address for general correspondence.

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# AGREED TERMS

## 1. DEFINITIONS

In this Agreement, unless inconsistent with the context or otherwise specified the following definitions will apply:

**Customer:** Means any third party granted access to the Software by File Direct to enable such Customers to incorporate companies and file Company information with Companies House in the United Kingdom.

**Filings:** Submissions of any form to Companies House relevant to company information or administration inclusive of, but not limited to incorporations, annual returns, accounts or changes of officers of any relevant company in England, Wales or Scotland.

**Payment:** Means the sum or sums invoiced in accordance with clause 10 by File Direct and payable by the Customer to File Direct in respect of every incorporation or other service obtained from File Direct.

**Points:** Shall have the meaning as set out in sub-clause 10.1.

**Software:** Means the company filing and formation software program, any new programs or programs licensed to File Direct by a third party together with any new releases, upgrades or enhancements that have been made available to Customers during the term of this Agreement

## 2. RIGHTS

- 2.1 In consideration of the Customer's agreement to the terms of this Agreement, File Direct grants to the Customer non-exclusive rights to access through the Website [www.FileDirect.com](http://www.FileDirect.com) and use the Software to generate Filings in relation to proposed or existing companies in England, Wales and Scotland only in accordance with clause 3 below, provided that sufficient Points have been obtained by the Customer and subject to any termination pursuant to clause 12 below.
- 2.2 The granting of these rights is personal to the Customer and shall commence when the Customer first logs in following issue of a password/unique user identification by File Direct to the Customer to enable the Customer to use the Software in accordance with this Agreement.
- 2.3 Unless further terms are imposed in the event that any updates or enhanced versions of the Software are issued to the Customer, this Agreement will apply to any such updates or enhanced versions.

## 3. PERMITTED USE

As a registered user of the Software, subject to the following conditions, the Customer is permitted to:

- 3.1 Use the Software and use it from any computer under the Customer's control.
- 3.2 Copy the records for back-up and archival purposes, provided that the original and the copy are kept in the Customer's possession and use of the Software is for no other purpose except for the purposes expressly permitted by this Agreement.

## 4. RESTRICTIONS ON USE

The Customer may not nor permit others to:

- 4.1 Sub-license, sell, assign, rent, lease or transfer the licence in this Agreement or the Software except as permitted by this Agreement.
- 4.2 Translate, reverse engineer, decompile, disassemble, modify or create derivative works based on the Software except as permitted by law.
- 4.3 Make copies of the database records, in whole or part, except for back-up or archival purposes as permitted in this Agreement.
- 4.4 Vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software.

## 5. UNDERTAKING

The Customer undertakes to ensure that, prior to use of the Software by its employees or agents, all such parties are notified of the terms of this Agreement.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 The party which licences File Direct shall at all times retain ownership of all intellectual property rights in Software which File Direct Sub-licences pursuant to this Agreement.
- 6.2 The Customer agrees that the password and unique user identification issued to the Customer by File Direct are confidential and shall not be disclosed to any third party.

## **7. DISCLAIMER**

- 7.1 The Software is provided "as is" and "as available" and File Direct does not warrant that this Software will meet the Customer's requirements or conform to any description or specification of functionality or that its operation will be uninterrupted or error free or that defects in the Software will be corrected.
- 7.2 Without prejudice to the generality of the foregoing, no warranty is given by File Direct that any Filings completed using the Software are compliant with current law or relevant guidance or standards of accurate procedure (notwithstanding any new releases, upgrades or enhancements of the Software made available by File Direct) nor are any guarantees given or may be implied as to the time taken to complete or achieve any Filing.
- 7.3 It is understood and acknowledged by the Customer that the Customer shall use the Software entirely at its own risk.
- 7.4 File Direct excludes and expressly disclaims all express and implied warranties or conditions not stated in this Agreement (including without limitation, loss of profits, loss or corruption of data, business interruption or loss of contracts), so far as such exclusion or disclaimer is permitted under the applicable law.
- 7.5 Neither party shall be liable for any failure or delay in performance of this Agreement, which is caused by circumstances beyond the reasonable control of either the Customer or File Direct.

## **8. SUPPORT**

File Direct shall answer by telephone any routine technical queries raised by the Customer regarding the operation of the Software and shall provide by telephone any required and reasonable explanation or assistance in the procedure relating to Filings between the hours of 0900 and 1700 Monday to Friday inclusive.

## **9. TERM**

- 9.1 The Agreement to use the Software shall commence upon activation of the User Name and Password, and shall remain in force until a notice to cancel unless and until terminated in accordance with any of the provisions of clause 12 below.
- 9.2 In the event that the Customer requires the Agreement to be reinstated, File Direct shall consider but shall not be obliged to grant a new Agreement.

## **10. PAYMENT**

- 10.1 In relation to each incorporation generated by the Customer using the Software, the Customer shall pay to File Direct an amount invoiced by File Direct on the basis of £6.00 (six pounds) and additional Filings shall attract further Points in accordance with File Direct's standard tariff published electronically and amended periodically.
- 10.2 Amounts due to File Direct generated in accordance with sub-clause 10.1 and capable of invoice by File Direct may be subject to a discount agreed between the parties in the event of volume Filings.
- 10.3 The amounts shown payable under this Agreement are exclusive of VAT, which shall be payable by the Customer at the rate and in the same manner for the time being prescribed by law against submission of a valid tax invoice.
- 10.4 Payments due under this Agreement as invoiced shall be paid immediately by the Customer.
- 10.5 File Direct shall have the right to charge interest on overdue invoices for any part of the payment at the rate of 4% per year above the base rate of Lloyds, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment, whether before or after judgment.

## **11. LIABILITY**

- 11.1 Further to sub-clause 7.1 the Customer acknowledges that it is the responsibility of the Customer to ensure that the facilities and functions provided by the Software meet his requirements.

- 11.2 Save in respect of claims for death or personal injury arising from File Direct's negligence, in no event will File Direct be liable for any damages resulting from loss of data or use, loss of profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of File Direct, whether such damages were reasonably foreseeable or actually foreseen and even if File Direct has been advised of the possibility of such damages.
- 11.3 File Direct accepts no liability for any programs or data made or stored with the Software nor for the costs of recovering or replacing such programs or data.
- 11.4 All liability that is not expressly assumed by File Direct in this Agreement is excluded.
- 11.5 The Customer acknowledges and agrees that the limitations contained in this clause 11 are reasonable in the light of the nature and purpose of the Software.

## **12. TERMINATION**

- 12.1 Either party may terminate this Agreement forthwith on giving notice in writing to the other party if either party commits any material breach of any term of this Agreement and (in the case of a breach capable of remedy) shall have failed within 30 days after the receipt of a request in writing from the other party to do so, to remedy the breach.
- 12.2 File Direct may terminate this Agreement forthwith on giving notice in writing if any Customer circumvents or attempts to circumvent the Software's security system.
- 12.3 In the event of termination in accordance with sub-clause 12.1 or expiry of this Agreement the Customer shall cease using the Software from all computers under the Customer's control.
- 12.4 Forthwith upon the termination of this Agreement, the password and unique user identification will be withdrawn so disabling the Customer's access to the Software.
- 12.5 The Customer indemnifies File Direct in full against the financial consequences of any breach of the nature described under sub-clauses 12.1 or 12.2.
- 12.6 Any termination of this Agreement shall not affect any accrued rights or liabilities of either party.

## **13. STATUTORY RIGHTS**

- 13.1 This Agreement gives to the Customer specific legal rights and the Customer may also have other rights that vary from country to country which rights may allow for the exclusion of implied warranties of certain limitations or exclusions of liability as provided for in clause 11 above.
- 13.2 Where local jurisdictions allow limitations and exclusions subject to certain conditions, the limitations and exclusions contained in this Agreement shall apply to the fullest extent permitted and if part of such limitations and exclusions are held to be void or unenforceable, such part shall be deemed to be deleted from this Agreement and the remainder of the limitation or exclusion shall continue in full force and effect.
- 13.3 Any rights that the Customer may have as a consumer (i.e. a private purchaser as opposed to business, academic or government use) are not affected.

## **14. CONFIDENTIALITY**

- 14.1 Each party shall treat as confidential all information obtained from the other pursuant to this Agreement and shall not divulge such confidential information to any person (except such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent providing that this clause shall not extend to information which was rightfully in possession of such party prior to the commencement of negotiations leading to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious.
- 14.2 Each party shall ensure that its employees are aware of and comply with the provisions of this clause.
- 14.3 The foregoing obligations as to confidentiality shall survive any termination of this Agreement.

## **15. WAIVER OF REMEDIES**

The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

## **16. ENTIRE AGREEMENT**

- 16.1 This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.
- 16.2 No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representation of each of the parties.

## **17. VARIATIONS**

Any variation to this Agreement must be in writing and signed on behalf of each of the parties by a duly authorised person.

## **18. DATA PROTECTION**

The parties shall comply with the provisions and principles of the Data Protection Act 1998.

## **19. THIRD PARTIES**

- 19.1 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.
- 19.2 This clause 19 does not affect any right or remedy of any person that exists or is available or otherwise pursuant to the said Act.

## **20. ASSIGNMENT**

This Agreement is personal to the Customer and it may not be assigned, transferred or sub-contracted under it without the prior written consent of File Direct.

## **21. NO PARTNERSHIP**

Nothing in this Agreement shall constitute or be deemed to constitute any partnership or joint venture or either party as the agent of the other for any purpose whatsoever and neither of the parties shall have any authority or power to bind the other or to contract in the name of the other party or create a liability against the other party.

## **22. NOTICES**

- 22.1 Any notice under or in connection with this Agreement shall be in writing and shall be delivered personally, sent by email (with confirmation of delivery) or by recorded delivery to the addresses shown above or by fax or as specified otherwise.
- 22.2 Any notice shall be deemed to be duly served: if delivered personally, on delivery; if sent by recorded delivery five (5) days after posting or if sent by fax during normal business hours, immediately on transmission or outside normal business hours, on the following business day.

## **23. HEADINGS**

The headings to the clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

## **24. ILLEGALITY OR SEVERANCE**

If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provisions in question shall not be affected thereby.

## **25. LAW**

- 25.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 25.2 The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.