



End-User License Agreement

Mountain View - Whisman School District

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US

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Reference: 20230817-104816084



FileWave USA, Inc
12125 E 65th St #361445
Indianapolis, IN 46236

Prepared by: Gina Ruiz

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Order Form - Products & Services Purchased

PRODUCTS & SERVICES	QUANTITY	TERM
Desktop Client License Win/Mac EDU	900	12
Mobile License Android/iOS/tvOS EDU	900	12

END-USER LICENSE AGREEMENT

This End-User License Agreement (this "Agreement") is entered into as of November 1, 2023 (the "Effective Date") by and between FileWave USA, Inc. ("FileWave"), and Mountain View - Whisman School District ("Customer").

RECITALS

FileWave provides an on-premise software application known as FileWave, and the parties have agreed that FileWave will provide the Software to Customer and also provide support services related to the Software. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below, including those outlined on any applicable Order Form, the adequacy of which consideration is hereby accepted and acknowledged, the parties agree as set forth below.

TERMS AND CONDITIONS

1. **DEFINITIONS.** The following capitalized terms shall have the following meanings whenever used in this Agreement.

- "Customer Data" means all information processed or stored through the Software by Customer or on Customer's behalf. Customer data does not include payment records, credit cards or other information Customer uses to pay FileWave, or other information and records related to Customer's account, including without limitation identifying information related to Customer staff involved in payment or other management of such account.
- "Documentation" means the Software's knowledge base.
- "Order Form" means an order for Software, (executed by both parties) or the purchase order setting forth applicable pricing, the terms of which are incorporated herein by this reference.
- "Software" means the edition and version of FileWave's software set forth in the Order Form, in object code format.
- "Specifications" means FileWave's standard specifications for the Software set forth in its then-current Documentation and at filewave.com
- "Term" is defined in Section 12 below.
- "Upgrade" means a new versions, updates, added feature, service enhancements or other upgrades of the Software, in object code format.

2. **LICENSES & DELIVERY.**

- License. FileWave hereby grants Customer a nonexclusive license to reproduce and use the number copies of the Software set forth on the Order Form during the Term, provided Customer complies with the restrictions set forth in the *Restrictions on Software Rights* subsection of this Section 2 set forth below.
- Restrictions on Software Rights. Copies of the Software created or transferred pursuant to this Agreement are licensed, not sold, and Customer receives no title to or ownership of any copy or of the Software itself. Furthermore, Customer receives no rights to the Software other than those specifically granted in the *License* subsection of this Section 2 set forth above. Without limiting the generality of the foregoing, Customer shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Software; (b) use the Software for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Software; or (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Software's source code.
- Documentation: Customer may reproduce the Documentation as reasonably necessary to support internal use of the Software.
- Delivery. FileWave shall provide the Software and Documentation to Customer, through a reasonable system of electronic download, within three (3) days of the Effective Date.

3. **Support.**

- Provision of Support. During the Term, FileWave shall maintain the Software according to the Service Level Agreement available at: filewave.com, which is incorporated herein by this reference.
- Upgrades. Certain Upgrade(s) which result in service enhancements, or added features or functionality, may be subject to an additional fee. Upon delivery to Customer, each Upgrade will constitute an element of the Software and will thereafter be subject to this Agreement's terms regarding Software, including without limitation license, warranty, and indemnity terms.
- Backup. Customer is solely responsible for performing backups of Customer Data. Any problems relating to Customer's failure to perform backups are outside of the scope of this Agreement and applicable Support Plan, and FileWave will charge its standard consulting fees for assisting Customer to resolve those problems.

4. **FEES & REIMBURSEMENT.**

- Fees. Customer shall pay FileWave as follows:

- Customer shall pay FileWave the fee set forth in each Order Form (the “Subscription Fee”) for each Term. FileWave’s invoices are due within 30 days of issuance. For late payment, Customer shall pay interest charges from the time the payment was due at the rate that is the lower of 1.5% per month or the highest rate permissible under applicable law. FileWave will not be required to refund the Subscription Fee under any circumstances.
- At the end of the Initial Term (as defined in Section 12), and after every Renewal Term (as defined in Section 12), as applicable, the Subscription Fee will be automatically updated in accordance with the Producer Price Index for final demand. Additionally, FileWave reserves the right to increase the Subscription Fee at the end of the Initial Term or the then-current Renewal Term, as applicable, with advanced written notice to Customer. For clarity, Customer shall pay FileWave the increased Subscription Fee for subsequent Renewal Term(s) if Customer does not provide notice of its intent not to renew the Agreement in accordance with Section 12.
- Taxes. Amounts due under this Agreement are payable to FileWave without deduction and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value added tax withheld at the source. If applicable law requires withholding or deduction of such taxes or duties, Customer shall separately pay FileWave the withheld or deducted amount. However, the prior two sentences do not apply to taxes based on FileWave’s net income.

5. CUSTOMER DATA & PRIVACY.

- Use of Customer Data. FileWave shall not: (a) access, process, or otherwise use Customer Data other than as necessary to perform its obligations hereunder; or (b) give Customer Data access to any third party, except FileWave’s subcontractors and third-party vendors that have a need for such access to facilitate FileWave’s performance of its obligations hereunder, and who are subject to a reasonable written agreement governing the use and security of Customer Data. Further, FileWave: (c) shall exercise reasonable efforts to prevent unauthorized disclosure or exposure of Customer Data; and (d) shall comply with all Privacy/Security Laws that are applicable both specifically to FileWave and generally to data processors in the jurisdictions in which FileWave does business and operates physical facilities.
- Additional Fees. Customer recognizes and agrees that FileWave may charge additional fees (without limitation) (a) for activities (if any) required by Privacy/Security Laws and (b) for activities Customer requests to help it comply with Privacy/Security Laws.
- De-Identified Data. Notwithstanding the provisions above of this Section 5, FileWave may use, reproduce, sell, publicize, or otherwise exploit De-Identified Data (as defined below) in any way, in its sole discretion, including without limitation aggregated with data from other customers. (“De-Identified Data” refers to Customer Data with the following removed: information that identifies or could reasonably be used to identify an individual person, a household, or Customer.)
- Erasure. FileWave may permanently erase Customer Data if Customer’s account is delinquent, suspended, or terminated for 30 days or more, without limiting FileWave’s other rights or remedies.
- Required Disclosure. Notwithstanding the provisions above of this Section 5, FileWave may disclose Customer Data as required by applicable law or by proper legal or governmental authority. FileWave shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer’s expense.
- Data Accuracy. FileWave shall have no responsibility or liability for the accuracy of data uploaded to the Software by Customer, including without limitation Customer Data and any other data uploaded by Users.
- Excluded Data. Customer warrants that (a) it has not and will not transmit Excluded Data (as defined below), or permit transmission of Excluded Data, to FileWave or its computers or other media and, (b) to the best of its knowledge, Customer Data does not and will not include Excluded Data. Customer shall inform FileWave of any Excluded Data within Customer Data promptly after discovery (without limiting FileWave’s rights or remedies). Customer recognizes and agrees that: (i) the provisions of this Agreement related to Customer Data do not apply to Excluded Data; (ii) FileWave has no liability for any failure to provide protections in the Excluded Data Laws (as defined below) or otherwise to protect Excluded Data; and (iii) FileWave’s systems are not intended for management or protection of Excluded Data and may not provide adequate or legally required security for Excluded Data. FileWave is not responsible or liable for any data exposure or disclosure or related loss to the extent that it involves Excluded Data. (“Excluded Data” means: (i) protected health information (“PHI”), as such term is defined under the Health Insurance Portability and Accountability Act of 1996; (ii) government issued identification numbers (e.g., social security numbers); or (iii) financial account numbers or credit card numbers. “Excluded Data Laws” means any law or regulation governing Excluded Data, including without limitation any law or regulation protecting privacy or security rights of Excluded Data subjects).

6. IP & FEEDBACK.

- IP Rights in the Software. FileWave retains all right, title, and interest in and to the Documentation and Software, including without limitation Upgrades, except to the extent of the limited licenses specifically set forth in the *License* and *Documentation* subsections of Section 2. Customer recognizes that the Software and its components are protected by copyright and other laws.
- Feedback. Customer hereby grants FileWave a perpetual, irrevocable, worldwide license to use any Feedback (as defined below) Customer communicates to FileWave during the Term, without compensation, without any obligation to report on such use, and without any other restriction. FileWave's rights granted in the previous sentence include, without limitation, the right to exploit Feedback in any and every way, as well as the right to grant sublicenses. Notwithstanding the provisions of Section 7 (*Confidential Information*) below, Feedback will not be considered Customer's Confidential Information. ("Feedback" refers to any suggestion or idea for modifying any of FileWave's products or services, including without limitation all intellectual property rights in any such suggestion or idea.)

7. **CONFIDENTIAL INFORMATION.**

- Confidential Information Defined. "Confidential Information" refers to the following one party to this Agreement ("Discloser") discloses to the other ("Recipient"): (a) any document Discloser marks "Confidential"; (b) any information Discloser orally designates as "Confidential" at the time of disclosure, provided Discloser confirms such designation in writing within five (5) business days; (c) the non-public features and functions of the Software, for which FileWave is Discloser; and (d) any other nonpublic, sensitive information Recipient should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient's possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction; or (iv) is approved for release in writing by Discloser. Recipient is on notice that the Confidential Information may include Discloser's valuable trade secrets.
- Nondisclosure. Recipient shall not use Confidential Information for any purpose other than to facilitate the transactions contemplated by this Agreement (the "Purpose"). Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Section 7; and (b) shall not disclose Confidential Information to any other third party without Discloser's prior written consent. Without limiting the generality of the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient's attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser's expense.
- Injunction. Recipient agrees that breach of this Section 7 would cause Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- Termination & Return. With respect to each item of Confidential Information, the obligations of this Section 7 above (*Nondisclosure*) will terminate two (2) years after the date of disclosure; provided that such obligations related to Confidential Information constituting Discloser's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof.
- Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Discloser will retain all right, title, and interest in and to all Confidential Information.

8. **SOFTWARE AUDIT.** During the Term of this Agreement and at any time during the one (1) year thereafter, FileWave may audit Customer's use of Licensed Software on ten (10) days' advance written notice. Customer shall cooperate with the audit, including by providing access to any books, computers, records, or other information that relate or may relate to use of Licensed Software. Such audit shall not unreasonably interfere with Customer's business activities. If FileWave discovers unauthorized use, reproduction, distribution, or other exploitation of Licensed Software, Customer shall reimburse FileWave for the reasonable cost of the audit, or of the next audit in case of discovery without an audit, in addition to such other rights and remedies as FileWave may have. FileWave may not conduct an audit more than once per year.

9. **REPRESENTATIONS & WARRANTIES.**

- From FileWave.

TWELVE (12) MONTHS PROCEEDING THE CLAIM.

- Excluded Damages. Except with regard to breaches of Section 7 (*Confidential Information*), IN NO EVENT WILL FILEWAVE BE LIABLE FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS SECTION 11 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF FILEWAVE IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 11, FileWave's liability will be limited to the maximum extent permissible. For the avoidance of doubt, FileWave's liability limits and other rights set forth in this Section 11 apply likewise to FileWave's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.
- Exceptions to Limitation of Liability. Subsections (*Dollar Cap*) and (*Excluded Damages*) of this Section 11 set forth above do not apply to: (a) claims pursuant to Section 10 above (*Indemnification*); or (b) claims for attorneys' fees and other litigation costs recoverable by the prevailing party in any action.

12. **Term & Termination.**

- Term. The term of this Agreement will commence on the Effective Date and continue for a period of 12 month[s] (the "Initial Term"). Thereafter, the Term will renew for successive one (1) year periods (each, a "Renewal Term," and collectively with the Initial Term, the "Term"), unless either party refuses such renewal by written notice 60 or more days before the renewal date.
- Termination for Cause. Either party may terminate this Agreement for the other's material breach by written notice specifying in detail the nature of the breach, effective in thirty (30) days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.
- Effects of Termination. Upon termination of this Agreement, Customer shall cease all use of the Software and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) the *Restrictions on Software Rights* subsection of Section 2, the *IP & Feedback* subsection of Section 5, Section 7 (*Confidential Information*), Section 8 (*Software Audit*), the *Warranty Disclaimers* subsection of Section 9, Section 10 (*Indemnification*), and Section 11 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

13. **MISCELLANEOUS.**

- Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.
- Notices. Notices pursuant to this Agreement shall be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (a) actual receipt or (b) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested. For FileWave: FileWave (USA) Inc., 12125 E 65th St #361445, Indianapolis, IN 46236. For Customer: Mountain View - Whisman School District 1400 Montecito Ave Mountain View 94043.
- Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
- Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without FileWave's express written consent. Except to the extent forbidden in this subsection, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- S. Government Restricted Rights. The Software and Documentation are commercial items, as that term is defined in 48 CFR 2.101, consisting of commercial computer software and commercial computer software documentation, as those terms are used in 48 CFR 12.212. If the Software or Documentation is acquired by

or on behalf of the U.S. government or by a U.S. government contractor (including without limitation prime contractors and subcontractors at any tier), then in accordance with 48 CFR 227.7202-4 (for Department of Defense licenses only) and 48 CFR 12.212 (for licenses with all federal government agencies), the government's rights to the Software and Documentation are limited to the commercial rights specifically granted in this Agreement, as restricted by this Agreement. The rights limited by the preceding sentence include, without limitation, any rights to reproduce, modify, perform, display, disclose, release, or otherwise use the Software or Documentation. This subsection does not grant Customer any rights not specifically set forth in this Agreement.

- o Bankruptcy Rights. The rights and licenses granted to Customer in the *License* and *Documentation* subsections of Section 2 (collectively, the "License Provisions") are licenses to "intellectual property" rights, as defined in Section 365(n) of the United States Bankruptcy Code (11 U.S.C. Sections 101, *et seq.*). If FileWave is subject to any proceeding under the United States Bankruptcy Code, and FileWave as debtor in possession or its trustee in bankruptcy rejects this Agreement, Customer may, pursuant to 11 U.S.C. Section 365(n)(1) and (2), retain any and all rights granted to it under the License Provisions to the maximum extent permitted by law. This subsection will not be construed to limit or restrict any right or remedy not set forth in this subsection, including without limitation the right to retain any license or authority this Agreement grants pursuant to any provision other than the License Provisions.
- o Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of Indiana, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Indianapolis, Indiana. This subsection governs all claims arising out of or related to this Agreement, including without limitation tort claims.
- o Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- o Use Cases. FileWave is entitled to publish the Customer's use cases unless the Customer in advance has expressly objected to this in writing.
- o Technology Export. Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export the Software or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export it to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
- o Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter, including without limitation any previous license agreement(s) for the Software. Neither party has relied upon any such prior or contemporaneous communications.
- o Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- o Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party.

[Signature Page Follows]

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

_____	_____
CUSTOMER	FILEWAVE USA, INC.
By: _____	By: _____
(signature)	(signature)
Name: Jon Aker	Name: _____
(print)	(print)
Title: Director of Technology	Title: _____
Date: _____	Date: _____

