

## 1. Definitions

'You' and 'Your' mean the client detailed on the Order Form.

'Fileman' means Fileman Pty Ltd of Suite 205, 14 Bruce Avenue, Paradise Point, QLD, Australia.

'Fileman Minimum Monthly Amount' means the amount that equals thirty-six (36) monthly payments of the Fileman Minimum Monthly Amount on the Fileman Software Subscription and Services Agreement. 'Software' means the Fileman website, third party integrations and Scan2PracticeManagement Software.

'Services' means all Records Management and associated services including but not limited to the carriage, storage, retrieval and destruction of client records.

'Client Records' means all paper-based and electronic documents, files, media or other goods supplied to You or collected by Fileman at Your request for the provision of services pursuant to this agreement. 'Monthly Amount' means the monthly amount paid for the Services ordered by You and may include the following benefits:

- a) Continuous research, development and improvement (upgrades and iterative improvements)
  - b) Support for the Software and Services;
  - c) Hosting of your data and documents on Fileman Servers;
  - d) Client access license to order Services and search the file repository;
  - e) Initial uplift, carriage and storage of paper-based records including a comprehensive file audit;
  - f) Conversion of paper-based files to an electronic medium (PDF) for retrieval and viewing purposes;
  - g) Secure destruction of client records (shredding and/or disk and memory scrubbing);
  - h) 60 days pre-approved credit for disbursements;
  - i) Access to free training videos for support staff and lawyers;
  - j) Unlimited access to the Fileman Help Desk for technical support;
- 'Fileman Term' means recurring minimum contract periods of thirty-six (36) months.

'Fileman Renewal' means a subsequent Fileman Term.

'Major Problem' means that the Software will not start or no users can access it. 'Term' means recurring periods of 36 months during which the Software and Services are provided.

'Trial Period' means the first 120 business days from the date of software installation.

## 2. Disbursement and Reimbursement

(a) After the date of installation Fileman will create a 'file management' disbursement for each new matter created in your practice management software and this disbursement fee will become due and payable when the first invoice for the matter is raised to Your client.

(b) For paper-based client records the 'file management' disbursement includes the collection of the client records from Your office, cataloguing, seven years' storage and destruction. There is no limitation to the number of client records provided for a matter subject to our acceptable use policy.

(c) For electronic client records the 'file management' disbursement includes the transfer of all documents and data within the matter to be stored on Fileman servers for a minimum of seven years.

(d) If the amount of disbursed fee's each month is equal to (or higher) than the Fileman Minimum Monthly Amount and your account is within our standard trading terms, Fileman will reimburse the Fileman Minimum Monthly Amount into your nominated bank account.

(e) If the matter is an electronic file and a paper-based client record will not be sent to Fileman a 20% contribution of the disbursement fee will be paid into your nominated bank account to offset any bandwidth resources consumed by the Scan2PracticeManagement Software which facilitates the upload of client documents.

(f) All reimbursement and contributions are calculated pro-rata and calculated cumulatively.

## 3. Inclusive Services

(a) All-inclusive services are subject to our acceptable use policy.

(b) Uplift and Audit - After the date of installation Fileman will perform an uplift of all your closed files and transfer them to our secure facility. Included with the uplift is a comprehensive file audit which includes barcoding, cataloguing, coversheet imaging and upload to our servers. The initial uplift is performed as a single collection and charges may apply for additional collections.

(c) Storage and Destruction - During the Fileman term You can continue to store Your client records indefinitely or selectively destroy them based on your own retention schedule. Fileman will set the destruction date on each client record to a date seven years forward from the date of collection.

(d) Document Inserts - During the Fileman term You can add any document or media to an existing paper-based client record by creating a barcoded instruction sheet on the Fileman website and providing the document insert on Your next scheduled collection.

(e) Online Retrieval - During the Fileman term You can order a digital copy of any paper-based file or document held within the repository and it will be made available to you as a PDF which can be downloaded from the Fileman website.

(f) Scheduled Collections - After the date of installation Fileman will allocate a collection driver to attend Your office each calendar month during the Fileman term. You will be provided with an annual schedule of the collection dates.

(g) Matters in Progress - For paper-based client records that were 'Matters in Progress' (i.e. opened before the Fileman term) they will be treated as though they were part of the initial 'uplift and audit' and will be collected progressively on each scheduled collection as they close.

(h) Matters not Proceeding - For matters that do not proceed which would normally be subject to a disbursement fee, if no invoice was raised and a paper-based client record exists they will be treated as though they were part of the initial 'uplift and audit'. It is a requirement that You ensure the matter status is marked as 'Not Proceeding' in Your practice management system.

(i) Other Records - During the Fileman term any non-matter paper-based records can be sent to Fileman and they will be treated as though they were part of the initial 'uplift and audit' subject to the records being appropriately labelled.

## 4. Acceptable Use Policy

(a) The total lodgements of paper-based client records must not exceed a total number of archive boxes equivalent to the total number of matters disbursed. Boxes are measured at 410(l) x315(w) x260(h) mm.

(b) Online Retrieval and Document Inserts are limited to a reasonable number as defined by Fileman and supported further by Industry standards. In the event the total number of retrievals or inserts exceeds 5% of the total archived holdings then additional charges may apply.

## 5. Invoicing, Payment and Credit Terms

(a) All Fileman invoices are sent by email to Your email address as disclosed on the Fileman Agreement or to such other email address as You specify and are payable within the period specified on the invoice.

(b) The Fileman Minimum Monthly Amount is payable by Direct Debit only using a transaction agent nominated by Fileman.

(c) In the event that an amount due to Fileman for any reason or to a third-party finance company for payment of the Fileman Minimum Monthly Amount becomes overdue, all support, online services, and access to your Fileman Website will be suspended and Fileman may also exercise a general lien over the client records.

(d) All overdue amounts may at Fileman's sole discretion, attract interest at the rate of 18 percent per annum.

(e) Where any payments are being made by Direct Debit, in the event of the Direct Debit transaction failing for three (3) or more months the total outstanding amount will immediately become due and payable and the provision of support, online services, and access to your Fileman Website will be suspended and Fileman may also exercise a general lien over Your client records.

(f) A dishonour fee may be charged for each failed Direct Debit.

(g) In the event of a debt being handed over to a collections agency, You will be liable for all the legal costs associated with the collection of the debt.

(h) All prices are exclusive of Goods and Services Tax unless otherwise expressly stated.

## 6. Commencement of Fileman Term

The Fileman Term starts ninety (90) days from the date of order acceptance.

## 7. Installations

(a) The scheduling of the initial 'Uplift and 'Audit' is subject to the availability of resources and Fileman gives no undertaking or guarantee regarding these dates.

(b) Onsite delays caused by Your failure to comply with the Fileman System Requirements will result in You being responsible for the additional costs occasioned by the delay.

## 8. Internet Speed

The Service is subject to the limitations inherent in the use of the Internet and other third-party communication software and devices and Fileman is not responsible for any delays, delivery failures, or other damage resulting from their use.

## 9. Indemnity

The Client hereby indemnifies and agrees to keep indemnified Fileman together with its officers, employees and agents against all actions, claims, proceedings, liabilities, losses, damages, costs and expenses incurred by Fileman in relation to or in any way arising out of the storage, scanning, retrieval, carriage or destruction of the Client Records or the provision of services by Fileman in relation to the Client Records.

## 10. Limitation of Liability

(a) To the maximum extent permitted by law Fileman shall not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any

way from:

- (i) any errors in or omissions from the Services,
- (ii) the unavailability or interruption to the supply of the Services,
- (iii) the Customer's use or misuse of the Services
- (iv) the Client's use of any equipment in connection with the Services,
- (v) the content of Materials,
- (vi) any delay or failure in performance beyond the reasonable control of Fileman, or
- (vii) any negligence of Fileman or its employees, contractors or agents in connection with the

performance of our obligations under this agreement (other than liability for death or personal injury).

(b) Fileman's liability to the Client for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that the Client caused or contributed to that loss or damage.

(c) To the maximum extent permitted by law, the aggregate liability of Fileman whether for breach of this agreement or in tort (including negligence) or for any other common law or statutory cause of action shall not exceed the lesser of the Client's actual direct damages or the amount the Client paid for the services in the twelve-month period immediately preceding the date the claim arose.

(d) Fileman's maximum liability, if any, for loss, or damage, or destruction to part or all of the client records is limited to two dollars per archive box or twenty cents per file (whichever amount is less);

(e) Fileman's total liability in respect of loss of or damage to tangible property (excluding Client Records) will not in any circumstances exceed a maximum aggregate of ten thousand Australian dollars.

(f) Fileman shall not be liable for any special, indirect, incidental, or consequential damages of any kind whatsoever (including, without limitation, legal fees and loss of profits, contracts, business, revenue, goodwill, anticipated savings, business information or data) in any way arising in connection with the services or arising in connection with the services or the failure of Fileman to perform its obligations, regardless of any negligence of Fileman.

(g) The Client acknowledges and agrees that:

(i) Fileman is not an insurer and that any insurance against damage or loss by fire, theft, injury, or any other cause to the Client Records must be obtained by the Client at its own cost. The charges payable by the Client do not relate to the value of the Client Records or the property of others located in Fileman's premises; and Fileman does not hold itself out to be and is not a common carrier and accepts no liability as such.

(ii) Fileman does not examine the contents of the Client Records placed with it and the Client warrants and undertakes that:

(1) it is the owner or legal custodian of the Client Records placed with Fileman and has authority to store such material with Fileman.

(2) it will not, at any time, store with or deliver to, Fileman (without limitation), any narcotics, materials considered to be highly flammable, explosive, toxic, radioactive, organic material which may attract vermin or insects, or any other materials which are otherwise illegal, dangerous and unsafe, not fit for purpose or which are regulated under any applicable law or regulation relating to hazardous materials;

(3) it will pay the charges for any services that are incorrect or cancelled by the Client; and

(4) any representation made to Fileman by the Client or the Client's employees, agents and permitted assigns is true and correct and the Client has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated herein.

(h) to the extent the terms of this Agreement relate to Client Records, which are in Fileman's possession, custody or control, Client Records only come into Fileman's possession and control, when they are in a Fileman controlled vehicle or are at any of the Fileman facilities.

(i) the Client acknowledges that Fileman will not be responsible or liable whatsoever for the contents of the Client Records and Fileman will have no liability to the Client or any third party for the destruction of Client Records at the direction of the Client.

#### 11. Force Majeure and Delay Beyond Fileman's Control

Fileman will not be responsible for delays or failure to perform resulting from acts beyond its control, including but not limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, earthquakes or other disasters and failure of suppliers to perform including telecommunication breakdowns or interruptions and power failures.

#### 12. Fitness For Purpose

Fileman does not guarantee or warrant the fitness of the Software and Services for any purpose other than the particular purpose for which they are supplied.

#### 13. Money-Back Guarantee

You may at any time after the end of the Trial Period and prior to the date twelve (12) months after the date of installation at Your firm, apply to Fileman to cancel Your Order and refund the Fileman Minimum Monthly Amount You have paid, and Fileman will make the refund, subject to the

following:

(a) You and Your staff must have completed the recommended training in the use of the Software & Services and have used the Service continuously for the Trial Period.

(b) You must have followed Fileman recommendations for implementing the software & services and received training for You and Your staff.

(c) Only the Monthly Amount is refundable, and You must pay any moneys due for installation, training, consulting, transition, travel time and costs and any other associated expenses or fee rebates. You must pay any interest accrued as a result of a Software Funding Agreement. Fileman may deduct these before any refund is made.

(d) You must remove all client records from Fileman's facility (within 7 business days of cancellation), take all steps necessary to ensure that neither You nor anyone through You continues to have use of any part of the Service and if requested confirm in writing by way of Statutory Declaration that this has been done.

(e) Because you have the benefit of this money back guarantee, you agree that Fileman's liability for breach of any warranty, term or condition in relation to the Service will be limited to:

(i) In the case of goods - repair or replacement (at Fileman's election) at Fileman's cost;

(ii) in the case of services - re-supply those services;

(iii) or instead of (i) and (ii), you can request a refund of your money during the twelve (12) Month Period as set out above.

(f) Except as provided above in this clause, or where the injury is personal injury, Fileman will not be liable for any other loss, damage, claim or expense however caused (including liability by virtue of contract or negligence) and Fileman shall not in any circumstances be liable for any indirect or consequential losses, loss of profits or business or loss of or damage to data or client records.

#### 14. Cancellation before commencement of Trial Period

You may cancel this Order at any time before commencement of the Trial Period by written notice to Fileman and subject to You paying Fileman: -

(a) Thirty percent (30%) of the Fileman Amount; and

(b) All fees for work done prior to the date of cancellation.

#### 15. Acknowledgements

You acknowledge that You have conducted your own due diligence and selected the Service based upon your own skill and judgment and You have satisfied Yourself as to the suitability of the Software and Services.

#### 16. Supply and Support Terms and Conditions

These Supply and Support Terms and Conditions are subject to change without notice. The current version is published at [www.fileman.com.au](http://www.fileman.com.au).

#### 17. Entire Agreement

This agreement constitutes the entire understanding between Fileman and You and supersedes all other negotiations, agreements or understandings whether written or oral relating to the supply and installation of the Service and the other services provided under this agreement. All implied terms are hereby excluded, to the full extent permitted by law and this agreement is governed by the laws of New South Wales, Australia and the jurisdiction of the Sydney Courts.

