

CLARIO, INC.
MASTER SERVICES AGREEMENT

PLEASE READ THIS AGREEMENT BEFORE USING CLARIO'S SERVICES. BY ACCESSING OR USING CLARIO'S SOFTWARE OR SERVICES OFFERING, CUSTOMER SIGNIFIES ACCEPTANCE OF AND AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, CUSTOMER SHOULD NOT ACCESS OR USE THE SERVICES. IF THE PARTIES HAVE A FULLY EXECUTED AGREEMENT THAT EXPRESSLY GOVERNS ORDERS FOR CLARIO'S SERVICES, SUCH AGREEMENT SHALL SUPERSEDE THIS AGREEMENT. THE "EFFECTIVE DATE" OF THIS AGREEMENT IS THE DATE WHICH IS THE EARLIER OF (A) CUSTOMER'S INITIAL ACCESS TO OR USE OF THE SERVICES OR (B) THE EFFECTIVE DATE OF THE FIRST ORDER REFERENCING THIS AGREEMENT.

1. DEFINITIONS

"**Affiliate(s)**" means an entity which is directly or indirectly controlling, controlled by, or under common control with a Party.

"**Agreement**" means this Master Services Agreement governing the purchase of the Services from Clario.

"**Clario**" means Clario, Inc., a Minnesota corporation with offices at 6600 City West Parkway, Suite 100, Eden Prairie, MN 55344-3732.

"**Customer**" means the entity entering into an Order with Clario, pursuant to this Agreement, for the purposes of purchasing the Services. Customer shall include any Customer Affiliate that enters into an Order pursuant to this Agreement.

"**Customer Data**" means electronic data and information submitted by or for Customer to the Services or collected and processed by or for Customer using the Services.

"**Order(s)**" means a written order executed by the Parties which identifies the details of the Services being purchased by Customer. Upon execution, each fully executed Order shall be incorporated into and to become a part of this Agreement. By entering into an Order hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"**Parties**" means, collectively, Clario, Customer and any Customer Affiliate that executes an Order.

"**Platform**" means Clario's proprietary software platform. Platform includes any Updates made during the Term.

"**Service(s)**" means the Platform and services the Customer or Customer Affiliate purchases under a fully executed Order and made available by Clario.

"**SLA**" means Clario's Service Level Agreement, located at <http://www.clar.io/legal/>.

"**Subscription**" means a time-limited right to use certain of the Services as specified in an Order.

"**Updates**" means modifications, updates, and changes made by Clario to the Platform which Clario makes generally available to its customers at no additional fee. Updates exclude new features, functionality and capabilities which are offered for an additional fee and are specified in an Order.

"User(s)" means Customer employees, representatives, consultants, contractors, or agents who are authorized to use the Services and have been supplied user identifications and passwords by Customer (or by Clario at Customer request).

2. SERVICES, RESTRICTIONS

- 2.1. Provision of Services. During the Term Clario will (a) make the Services available to Customer pursuant to this Agreement and the applicable Orders, (b) provide Clario's standard support for the Services to Customer at no additional charge, and/or upgraded support if purchased; (c) provide the Services to Customer in accordance with the SLA. During the Term set forth in an Order, and subject to the terms of this Agreement and the applicable Order, Clario grants Customer a non-exclusive, non-transferable, limited-term, revocable license, under Clario's applicable intellectual property rights and licenses, to use Services in the United States.
- 2.2. License by Customer. Customer grants Clario and Clario Affiliates a worldwide, limited-term, irrevocable license during the Term of this Agreement to: (a) host, copy, transmit, and display Customer Data to provide the Services; and (b) use and incorporate into the Services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer or Users relating to the operation of the Services.
- 2.3. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Clario reserves all right, title, and interest in and to the Services, including all of Clario's related intellectual property rights. Subject to the limited licenses granted herein, Clario acquires no right, title, or interest from Customer or Customer's licensors under this Agreement in or to Customer Data. No rights are granted to either Party beyond those expressly granted herein.
- 2.4. License by Customer to Use Benchmarking Data. Customer grants to Clario and Clario Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use Customer Data for the purposes of combining it with other Benchmarking Data on condition that (i) Clario aggregates and presents in anonymous form Customer Data with data from Clario's other customers, and (ii) any disclosure by Clario of such combined Benchmarking Data to third parties does not include (directly or by inference) any information identifying Customer or any identifiable individual as the source of such information.
- 2.5. Customer Responsibilities. Customer will (a) be responsible for all User's actions and Users' compliance with this Agreement, (b) be responsible for the accuracy, quality, and legality of Customer Data and the means by which Customer acquired Customer Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Clario promptly of any such unauthorized access or use, (d) be responsible to monitor User access via the provided "User Accounts & Roles" report and to notify support@clar.io via email when a User's access should be terminated. Clario is not responsible for monitoring and adjusting User access which continues when no such notification has occurred, and (e) use Services only in accordance with this Agreement, associated Orders, and applicable laws and government regulations.
- 2.6. Usage Restrictions. Customer will not (a) make any Service available to, or use any Service for the benefit of, anyone other than Customer or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) interfere with or disrupt the integrity or performance of any Service, (e) attempt to gain unauthorized access to any Service or its related systems or networks, (f) copy a Service or any part, feature, function or user interface thereof, (g) build or deliver a competitive product or service, or (h) reverse engineer any Service or decompile,

disassemble, disclose, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Platform (to the extent such restriction is permitted by law). If applicable law permits such activities, any information so discovered must be promptly disclosed to Clario and shall be deemed to be the confidential and proprietary information of Clario.

- 2.7. Customer agrees purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Clario regarding future functionality or features.

3. FEES AND PAYMENT FOR SERVICES

- 3.1. Fees. Customer will pay all fees specified in Orders. Except as otherwise specified herein or in an Order, (i) fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancelable and non-refundable, (iii) fees are due in advance, net within 30 days of the invoice date; fees are quoted and payable in United States dollars; and (iv) Customer is responsible for providing complete and accurate billing and contact information to Clario and notifying Clario of any changes to such information. If required by Customer to process payment, Customer will provide Clario with valid purchase order or alternative document reasonably acceptable to Clario.

Pricing. The pricing for any renewal term will be an increase of the greater of (i) 3% or (ii) the most recent Annual All Items CPI as reported by the BLS, unless Clario has given Customer written notice of a greater price increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

- 3.2. Reimbursable Expenses. Customer will reimburse Clario for travel costs related to Services. Travel costs, (i) will be pre-approved by Customer, (ii) will be subject to Customer's expense reimbursement policy if provided, and (iii) will be invoiced at Clario's cost.
- 3.3. Overdue Charges. If any invoiced amount is more than 15 days overdue, and upon 5 business days prior written notice, Clario may (a) charge Customer late interest for the overdue invoiced amounts, at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; (b) without limiting Clario's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable; and/or, (c) suspend Clario Services to Customer until such amounts are paid in full.
- 3.4. Payment Disputes. Clario will not exercise Clario's rights under Section 3.3 above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 3.5. Taxes. Clario fees do not include, and Customer is responsible to pay any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). For clarity, Clario is solely responsible for taxes assessable against Clario based on Clario's income, property and employees.

4. TERM AND TERMINATION

- 4.1. Term of Agreement. This Agreement commences on the date Customer first accepts it and continues until all Orders hereunder have expired or have been terminated.
- 4.2. Term of Subscriptions. The term of each Subscription shall be as specified in the applicable Order. Except as otherwise specified in an Order, Subscriptions will automatically renew for additional

periods equal to the expiring Subscription term or one year (whichever is shorter) at Clario's then current pricing, unless either party gives the other notice of non-renewal at least sixty (60) days before the end of the relevant Subscription term.

- 4.3. Termination. A party may terminate this Agreement (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Customer will pay Clario for any costs incurred for the Professional Services through the effective date of termination. In no event will termination relieve Customer of Customer's obligation to pay any fees payable to Clario for the period prior to the effective date of termination.
- 4.4. Data Deletion. For 30 days after the effective date of termination or expiration of this Agreement, Clario will make Customer Data available to Customer for export or download. After that 30-day period, Clario will have no obligation to maintain or provide Customer Data, and will thereafter delete or destroy all copies of Customer Data in Clario's systems or otherwise in Clario's possession or control, unless legally prohibited.
- 4.5. Surviving Provisions. Sections 2.4, 2.6, 5, 7 and 8, together with any sections which, by their nature, should survive, will survive any termination or expiration if this Agreement.

5. CONFIDENTIALITY, DATA SECURITY

- 5.1. Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information includes Customer Data; Clario's Confidential Information includes the Services, plus software and any other supporting material for the Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Orders (including pricing). Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 5.2. Protection of Confidential Information. The Receiving Party shall maintain the Confidential Information in strict confidence, shall disclose the Confidential Information only to those individuals or entities who have a need-to-know such information and are under confidentiality obligations at least as restrictive as those found in this Agreement, and shall not use the Confidential Information for any purposes other than as expressly permitted in this Agreement. The Receiving Party shall, at all times, remain liable for the acts and omissions of the party to whom the Receiving Party discloses Confidential Information. In the event the Receiving Party is obligated to disclose the Confidential Information pursuant to a valid legal order, then prior to such disclosure, the Receiving Party shall (unless prohibited at law to do so) notify the Disclosing Party, provide the Disclosing Party with a meaningful opportunity to contest the order prior to the Receiving Party disclosure, and take reasonable steps to limit the disclosure of Confidential Information to only that which is strictly necessary to comply with such legal order. Subject to each Party's confidentiality obligations hereunder, and without infringing on the other Party's intellectual property rights, nothing else in The Agreements shall operate so as to prevent either Party or any of its staff from making use of

know-how acquired, principles learned or experience gained, all of the foregoing of a general nature, during the execution of The Agreements.

5.3. Protection of Customer Data. Clario will maintain a written information security program that is reasonably designed to (i) ensure the security, integrity and confidentiality of Confidential Information; (ii) protect against anticipated threats or hazards to the security or integrity of Confidential Information; and (iii) protect against unauthorized access to or use of Confidential Information. Such program shall contain physical, technical and administrative controls for the maintenance, transmittal and disposal of Confidential Information provided under this Agreement, as same are reasonable and appropriate given the type of Confidential Information received or anticipated to be received by Clario, and shall include regularly-scheduled data security risk assessments and adjustments. The Services will be provided in accordance with Clario's Data Processing Addendum, located at <http://www.clar.io/legal/> which is incorporated herein and is subject to the terms of this Agreement, and which may be modified by Clario at any time.

5.4. Survival. The obligations of this Section 5 shall survive any termination of this Agreement for a period of 5 years.

6. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES, AND DISCLAIMERS

6.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so and to perform under this Agreement.

6.2. Clario Warranties. Clario further warrants that (a) it will perform the Services in a professional and workmanlike manner consistent with industry standards; (b) the Services will perform materially in accordance with this Agreement and associated Orders; and (c) the Services, will, at the time of delivery to Customer, be free of any computer "virus" or other similar harmful or malicious code or data. For any breach of an above warranty, Customer's exclusive remedies are those described in Sections 4 (Termination).

6.3. Customer Warranties. Customer further warrants that the Customer Data and any other data or information provided to Clario will, at the time of delivery to Clario, be free of any computer "virus" or other similar harmful or malicious code or data.

6.4. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SERVICES ARE PROVIDED "AS IS,". EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

7. MUTUAL INDEMNIFICATION

7.1. Indemnification by Clario. Clario will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the use of the purchased Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer by a court of last resort or as a result of, or for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer, provided Customer (a) promptly gives Clario written notice of the Claim Against

Customer, (b) gives Clario sole control of the defense and settlement of the Claim Against Customer (except that Clario may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Clario all reasonable assistance, at Clario's expense, excluding Customer's internal expenses. If Clario receives information about an infringement or misappropriation claim related to a Service, Clario may in Clario's sole discretion and at no cost to Customer (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's Subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated Subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from Customer breach of this Agreement.

7.2. Indemnification by Customer. Customer will defend Clario against any claim, demand, suit or proceeding made or brought against Clario by a third party alleging that Customer Data, or Customer use of any Service in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim Against Clario"), and will indemnify Clario from any damages, attorney fees and costs finally awarded against Clario as a result of, or for any amounts paid by Clario under a court-approved settlement of, a Claim Against Clario, provided Clario (a) promptly gives Customer written notice of the Claim Against Clario, (b) gives Customer sole control of the defense and settlement of the Claim Against Clario (except that Customer may not settle any Claim Against Clario unless it unconditionally releases Clario of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense, excluding Clario's internal expenses.

7.3. Exclusive Remedy. This Section 7 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 7.

8. LIMITATION OF LIABILITY

8.1. Limitation of Liability. NEITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT THAT GAVE RISE TO THE CLAIM. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 4 (FEES AND PAYMENT FOR SERVICES). THE PARTIES MUST BE NOTIFIED OF ALL CLAIMS WITHIN ONE YEAR OF THE OCCURRENCE OF ANY INCIDENT OR THE PARTIES WILL HAVE NO LIABILITY TO THE OTHER FOR THE INCIDENT.

8.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9. PUBLICITY

9.1. Publicity. Customer grants Clario the right to use Customer name and logo on Clario website simply to identify Customer as Clario's customer, without revealing any specifics about the parties'

relationship or this Agreement. Any other use requires Customer's prior written consent in each instance.

10. GENERAL PROVISIONS

- 10.1. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Orders), without the other party's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.
- 10.2. Governing Law. This Agreement, shall be governed by, and construed in accordance with, the laws of the State of Minnesota (without giving effect to the choice of law principles thereof). If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this agreement. Both parties irrevocably agree to submit to jurisdiction of Minnesota courts to resolve disputes hereunder. The Uniform Computer Information Transactions Act or any version thereof adopted by any state shall not apply to this Agreement.
- 10.3. Notices. All legal notices required to be provided under this Agreement must be delivered in writing (a) in person, (b) by nationally recognized overnight delivery service to the other party at the address set forth in the relevant Order or as otherwise communicated to the other party in writing. If to Clario, a copy must also be sent to Terri Krivosha, Maslon LLP, 3300 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402. All notices shall be deemed to have been given upon receipt or, if earlier, three (3) business days after being deposited with the courier as required above. Either party may change its address by giving timely notice of the new address to the other party pursuant to this Section and identifying in such notice the date on which such change is effective.
- 10.4. Entire Agreement and Order of Precedence. This Agreement together with all Orders, schedules, exhibits and documents referenced by URL in this Agreement constitute the entire agreement between Customer and Clario regarding Customer's use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order, (2) this Agreement, and (3) any referenced schedule or linked document.
- 10.5. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 10.6. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.