



## ANNUAL SITE LICENSE AGREEMENT

These Annual Site License Agreement terms and conditions (“Agreement”) constitute a binding legal agreement between you (“Licensee”) and Claris International Inc. and/or Claris International (collectively referred to as “Claris”) after Claris processes your initial order and Claris 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 Claris FileMaker Pro (“FileMaker Pro”) and Claris FileMaker Server (“FileMaker Server”). Software may also include additional Software if confirmed by Claris in writing that such additional Software is added to this Agreement.

(b) **License Grant.** Licensee represents that the “License Count” provided by Licensee is its current total headcount for Licensee’s entire entity as identified by Tax ID#, site address or other identification acknowledged in writing by Claris. Upon payment of all applicable license fees and subject to the terms of this Agreement, Claris grants to Licensee a non- exclusive, limited term, nontransferable license to (i) make exact object code copies of the Software, and (ii) install and use such Software on computers owned or leased by Licensee at its site. Licensee may not install more copies of FileMaker Server software than the License Count. Only Licensee’s authorized users (as defined in Section 1(d)) that are included in the License Count may use the Software only during the term of this Agreement, and all use of the Software must cease on the Expiry Date stated in the Claris Contract system, unless the Software is subsequently purchased or the agreement is renewed in accordance with Section 4(a)(3) or Section 4(b). Claris 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) **Increased License Count.** The parties acknowledge that Licensee’s License Count may increase during the term of this Agreement. Licensee is not obligated to pay Claris for increased use during an annual term so long as the increase in License Count does not exceed 10% of the License Count paid for by Licensee. At the end of an annual term, if the Agreement is renewed then Licensee must pay the new license fees for Licensee’s actual count at that time. If you are under a multi-year annual contract, within (30) thirty days of the end of each annual term you will need to count and purchase any additional seats used during that annual term even if you did not exceed 10%. If the License Count increases by more than 10% during any annual term, then Licensee must notify and pay Claris the new license fees before such Software is used – fees will be calculated on a prorated basis for the balance of the agreement period. If Licensee fails to pay the new license fees when required, then the Agreement will terminate. In all cases the renewal must be for 100% of the then current License Count.

### (d) Authorized Users.

(i) **Licensees.** The Software may be used by all employees of Licensee at facilities governed by Licensee as identified by the Tax ID# or other identification acknowledged in writing by Claris, provided that such employees are included in the License Count. Temporary employees, contractors, and consultants of Licensee who work on-site at Licensee’s facilities may also use the Software in connection with the operation of the business of Licensee so long as such temporary employees, contractors and consultants were included in the License Count. Any

copies of the Software used by temporary employees, contractors and consultants must be removed from such individual's computers once they cease working at Licensee's facilities or upon expiry or termination of this Agreement.

(ii) **Education.** The Software may only be used by Licensee's enrolled students, faculty, teaching assistants, administrators and staff on Licensee's computers at facilities governed by Licensee during the term of the Agreement.

(iii) **Additional Restrictions.** Licensee will use commercially reasonable efforts to restrict network or any other access to the Software by anyone outside of Licensee's facilities who is not authorized to use the Software.

(e) **FileMaker Clients.** FileMaker Server Software includes the rights to access data stored in the database server using Claris FileMaker WebDirect ("FileMaker WebDirect") web browser clients, Claris FileMaker Go ("FileMaker Go") clients and FileMaker Pro clients (collectively "Client(s)"). Each Authorized User may use any Client to connect to FileMaker Server.

FileMaker WebDirect and FileMaker Go clients are not restricted for use by Authorized Users (as defined in Section 1(d)).

(f) **Claris FileMaker Data API License.** FileMaker Server software includes the Claris FileMaker data API feature ("Data API Feature"). The Data API Feature allows Licensee to pull and push data from and to the database on its FileMaker Server by making REST API data requests (each a "Data Request") to the database on its FileMaker Server. The number of Data Requests Licensee may make is limited by the amount of API data transfer ("API Data Transfer") Licensee receives with its Site License contract. For inbound Data Requests (pulling data into the database on Licensee's FileMaker Server) Licensee has unlimited API Data Transfer. For outbound Data Requests (pushing data out from the database on Licensee's FileMaker Server) Licensee is limited to the API Data Transfer included with its Site License contract along with any additional API Data Transfer that it purchases. The API Data Transfer Licensee receives under its Site License contract is shared among all the copies of FileMaker Server it installs. The API Data Transfer Licensee receives is for an annual term based on the start date of Licensee's contract, and any unused API Data Transfer will not roll over to the next annual term.

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

(h) **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.

## **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 Authorized Users under this License; 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 THE PRIOR WRITTEN CONSENT OF CLARIS.

(e) **No Hosting for Third Parties.** Licensee may only use the Software to host applications owned by Licensee. Licensee may not use the Software to host applications owned by third parties, notwithstanding any other terms in this Agreement.

### 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.

(iii) "Update" means bug fix updates containing fixes, compatibility updates to maintain compliance with specifications, and standards compatibility updates to interoperate with specific standards.

(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. Claris 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 the sole discretion of Claris. MAINTENANCE SOFTWARE WILL BE DEVELOPED AND RELEASED BY CLARIS AND ITS LICENSORS IN THEIR SOLE DISCRETION. CLARIS AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT THEY WILL DEVELOP OR RELEASE ANY MAINTENANCE SOFTWARE DURING THE TERM OF THIS AGREEMENT. CLARIS 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 the Claris Contract system ("Initial Term"), unless the Agreement is renewed or terminated under the provisions of this Section 4. Following the Initial Term, Licensee must:

(i) Renew the Agreement under Section 4(b);

(ii) Terminate the Agreement under Section 4(d) and cease all use of the Software; or

(iii) Relicense the software under one of the other Claris license programs under the then-current terms.

(b) **Renewal Term(s).** Following the Initial Term, the Agreement may be renewed if approved by Claris for an additional one-year term or a multi-year term as follows. Licensee must confirm its License Count in the Claris Contract system on or before each Expiry Date and pay the license renewal fees in order to renew the Agreement. Claris will confirm such renewal by issuing a license certificate that states the new Expiry Date and updating the Claris 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 Claris, Claris 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 the Claris 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 Claris does not receive Licensee's notice within thirty (30) days, then Claris 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 Claris under this Agreement are non-refundable upon expiry or termination of this Agreement.

(e) **Survival.** Sections 1(g), 2, 4, 5, 6, 7, 9 and 11 shall survive expiry or termination of this Agreement.

**5. Limited Warranty.** Claris warrants for a period of ninety (90) days from the initial Contract Date stated in the Claris Contract system that the Software as provided by Claris will substantially conform to the published specifications for the Software available from Claris. Claris entire liability and Licensee's sole and exclusive remedy for any breach of the foregoing limited warranty will be, at the option of Claris, 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 CLARIS AND CLARIS AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHERMORE, THERE IS NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE SOFTWARE OR AGAINST INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS BY THE SOFTWARE. CLARIS DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, CLARIS DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CLARIS, OR AN AUTHORIZED REPRESENTATIVE OF CLARIS SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE.

**6. Limitation of Remedies and Damages.** UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL CLARIS, 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 CLARIS, ITS LICENSORS OR AN AUTHORIZED REPRESENTATIVE OF CLARIS 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 Claris 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) Claris, 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 the request of Claris, Licensee will provide a knowledgeable employee to assist in such audit. If such audit reveals that Licensee has underpaid amounts owing

to Claris under this Agreement, Licensee will promptly pay Claris 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 Claris for such period, Licensee will promptly reimburse Claris for the direct out-of-pocket expenses incurred in conducting such audit.

**8. Support.** Claris 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 Claris during the term of this Agreement.

**9. Export Control.** Licensee 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, Licensee represents and warrants that Licensee is not located in any such country or on any such list. Licensee also agrees that Licensee 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.** This Software and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

**11. General Terms.** If there is a local subsidiary of Claris 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 Claris. 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 Claris, 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 Claris. 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 Claris 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 Claris shall operate as a waiver or preclude any other or further exercise of that or any other right or remedy.