

**VAROS CORPORATION**  
**CLICK-THROUGH USER AGREEMENT**

This Click-Through User Agreement ( the “**Agreement**”) applies to and governs your use of the Services (as defined in Section 1 below). This Agreement is a binding agreement between: (a) the individual and/or entity identified during registration to the Service (“**you**” or “**Customer**”), and (b) Varos Corporation, a Delaware corporation (“**we**”, “**us**”, “**our**”, or “**Varos**”).

BY CLICKING ON THE "I AGREE" BUTTON, OR BY USING ANY PORTION OF THE SERVICES, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, DO NOT ACCESS OR OTHERWISE USE THE SERVICES.

In case of an entity, the individual signing-up to the Service for the entity confirms that he has the proper authority to legally bind the entity to these Terms and that the entity is subject to and contractually bound by this Agreement.

**1. Definitions**

1.1. “**Customer Data**” means all information and data provided by Customer to Varos through Customer’s use of the Services and Output Data.

1.2. “**Output Data**” means the various reports, alerts, analytics, recommendations, and notices that the Services generate, provide, and make available to Customer.

1.3. “**Services**” means the services provided by Varos via the Varos proprietary online platform for the analytics and benchmarking of different aspects of the Customer’s business operations.

1.4. “**Services Data**” means the data collected and processed by Varos in the course of providing the Services that relate to the use of the Services, including performance metrics, metadata, bandwidth utilization, statistical or aggregated information about Customer’s use of the Services, and information concerning compatibility and interoperability of the Services.

1.5. “**Term**” means the period of this Agreement as specified in Section 11 below.

1.6. “**Users**” means Customer’s employees, contractors, agents, or any other persons who are authorized by Customer to use and access the Services on Customer’s behalf.

**2. Proprietary Rights.**

2.1 Customer acknowledges and agrees that the Services and the Services Data are proprietary to Varos. All right, title and interest, including all intellectual property rights, in and of the Services and the Services Data, and any materials therein, including computer code, algorithms, know-how, trade secrets, design, graphics, structure, selection, coordination, expression, “look and feel” and arrangement of the Services, and all derivatives, enhancements, modifications, and improvements thereto, conceived, reduced to practice, and/or developed during the term of this Agreement by either party, are and shall be the sole and exclusive property of Varos. All trademarks, trade names, service marks, and copyrights in and pertaining to the Services are owned by Varos. This Agreement does not grant Customer any intellectual property rights in the Services. The Customer is entitled to access and use the Services only in accordance with the terms of this Agreement and the Services are not sold or licensed in any other way. ALL RIGHTS TO THE SERVICES AND ANYTHING ELSE NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY VAROS.

**3. Grant of Right of Access and Use.**

Provided that Customer complies with the terms and conditions of this Agreement, Varos grants to Customer a non-exclusive, non-transferable limited right to access and use the Services, subject to the following restrictions:

(a) The right acquired by Customer under this Agreement is solely to access and use the Services for Customer's own internal business purposes.

(b) Customer may not: (i) reproduce or copy the Services in whole or in part; (ii) sell, license, assign, or transfer the Services to any party, or otherwise permit any party to access or utilize the Services; (iii) translate, reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from, the Services; (iv) modify the Services or merge all or any part of the Services with another program; (v) prepare derivative works based on the Services; (vi) disable, damage or attempt to penetrate or hack the Services in any manner, including, without limitation, pursuant to an "ethical hack"; (vii) publish, offer or distribute the Services or any data therefrom in any manner; (viii) expose or feed the data from the Services via integration or otherwise to any third party; (ix) use the Services in, or to generate, any advice, recommendations, guidance, publications or alerts; (x) remove any proprietary notices, labels, or marks on the Services; nor (xi) use the Services for any purpose other than as contemplated under this Agreement.

#### **4. Customer Responsibilities.**

4.1 Customer Data and Connections. Customer is solely responsible for the quality, accuracy, and completeness of the Customer Data transmitted via the Services. Customer must provide and/or obtain, at Customer's own expense, any equipment (including servers and computer systems) and/or telecommunications lines, links, and connections that may be necessary for Customer to access and use the Services. Varos shall have no responsibility for any such connections.

4.2 User Logins. Customer agrees that the log-in access codes, user names, and/or passwords ("Logins") provided to Customer and to other Users are personal to, and for use only by, the Users. Customer shall ensure that all such Logins are kept confidential by the applicable Users. Customer will use commercially reasonable efforts to ensure that no unauthorized person accesses the Services through Customer's systems and interfaces. Customer is responsible and liable for all activities conducted through the Logins.

4.3 Acceptable Use. Customer is solely responsible for the content of any data or transmissions or any other use of the Services by Customer or by any User. Customer shall not interfere with, or disrupt, other users of the Services. Customer will use commercially reasonable efforts to prevent the introduction of any errors into or the corruption of any data which is transmitted via the Services. Customer shall ensure that Customer has implemented security systems and procedures to prevent the unauthorized access to, or misuse or disruption of, the Services. Customer shall immediately email Varos at yarden@varos.io if Customer becomes aware of any unauthorized access to, or misuse, or disruption of, the Services, setting forth in reasonable detail the nature of the security breach and the measures taken by Customer to cure such breach.

4.4 Suspension of Access. Varos may suspend or terminate Customer's access to the Services immediately, without prior notice to Customer, if Varos believes, in good faith, that Customer is utilizing the Services for any illegal, abusive, or disruptive purpose. In addition, notwithstanding any other provision of this Agreement, Customer acknowledges that Varos shall have the right to restrict or suspend Customer's access to the Services if in Varos's sole determination any of the following circumstances

occurs: (i) full or partial interface failure; (ii) a breach in the security of the Services; (iii) a material breach by Customer of Customer's obligations under this Agreement; or (iv) in order to comply with applicable law.

## **5. Confidentiality.**

Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("Confidential Information"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's consultants, contractors, attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information, at least as stringent as it takes to protect its own Confidential Information.

## **6. Aggregated Data.**

While Customer Data shall remain the property of Customer, Varos is permitted to aggregate and anonymize Customer Data and/or other data that Customer provides to Varos or that is related to Customer's use of the Services ("Aggregated Data"), provided that such Aggregated Data is anonymized and does not identify to any third party that Customer is the source of the Aggregated Data. Varos shall be the owner of the Aggregated Data and reserves the right to use, license, and sublicense the Aggregated Data.

## **7. Feedback**

Customer and/or its Users may provide Varos with information about the Services' use experience, including information pertaining to bugs, errors and malfunctions of the Services, performance of the Services, the Services' compatibility and interoperability, and information or content concerning enhancements, changes or additions to the Services that Customer or its Users request, desire or suggest (collectively, the "**Feedback**"). Customer and its Users hereby assigns all right, title and interest in and to the Feedback to Varos, including the right to make commercial use thereof, for any purpose Varos deems appropriate.

## **8. Personal Data**

The parties do not expect that any personal data will be disclosed by one party to the other through Customer's use of the Services.

## **9. Support**

9.1 Varos will endeavor to have the Services operate properly. However, as a service that relies on back-end software, infrastructure, servers, third-party networks, and continuous internet connectivity, it cannot guarantee that the Services will operate in an uninterrupted or error-free manner, or that it will always be available, or free from errors, omissions or malfunctions. If Varos becomes aware of any failure or malfunction, it shall attempt to regain the Service's availability as soon as practicable. However, such incidents will not be considered a breach of these Terms.

9.2 During the Term, Varos, either directly or with the assistance of third parties, will endeavor to provide Customer with technical support for technical questions, problems, and inquiries regarding the

Services, during Varos' business days and hours, and pursuant to its then-applicable support scheme, hours and channels. Varos will attempt to respond to Customer's technical questions, problems and inquiries as soon as practicably possible. However, Varos makes no warranties to the successful or satisfactory resolution of the question, problem or inquiry; and may decline to provide such support for matters that it deems, in its sole discretion, to require unreasonable time, effort, costs or expenses. For the purpose of the provision of technical support for Customer's technical questions, problems and inquiries, Customer will cooperate, and work closely with Varos, to reproduce malfunctions, including conducting diagnostic or troubleshooting activities, as Varos reasonably requests.

## **10. Consideration**

10.1 In consideration for the Customer's access to and use of the Services, Customer will pay Varos the fees specified in Varos' Pricing Policy at [www.varos.io/pricing](http://www.varos.io/pricing) as applied to the Services for which Customer subscribes (the "**Consideration**"), in accordance with the payment terms specified in the Pricing Policy. The Consideration is non-refundable.

10.2 The Consideration is exclusive of any excise, sales tax, VAT, withholding tax or other governmental charges or transaction charges associated with use of the Services. Customer shall bear all such taxes and charges, excluding taxes based solely on Varos' net income.

## **11. Term and Termination**

11.1 This Agreement is effective until terminated by Customer or Varos (the "**Term**").

11.2 Either Customer or Varos may terminate this agreement at any time upon thirty (30) days prior written notice to the other. Customer's notice of termination shall be sent via email to: [support@varos.io](mailto:support@varos.io). Any material failure by Customer to comply with the terms and conditions of this Agreement will result in automatic termination of its right of access and use and of this Agreement, unless otherwise agreed to by Varos in writing.

11.3 Upon termination of this Agreement:

- (a) Customer shall cease and shall ensure that its Users cease any and all use of the Services;
- (b) Varos will charge Customer for all then-outstanding Fees (if any).

11.4 Sections in this Agreement that by their purpose or nature should survive termination of this Agreement, will so survive.

## **12. No Warranty and Limitation on Liability**

12.1 THE SERVICES ARE PROVIDED "AS IS". VAROS HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND THE OUTPUT DATA, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, NON-INFRINGEMENT, TITLE, SECURITY, COMPATIBILITY OR PERFORMANCE.

12.2 From time to time, Varos may change the Services's structure, features, layout, design or display, as well as the scope and availability of the information and content therein, without prior notice. Changes of this type by their very nature may result in glitches or cause inconvenience of some kind. CUSTOMER AGREES AND ACKNOWLEDGES THAT VAROS DOES NOT ASSUME ANY RESPONSIBILITY WITH RESPECT TO, OR IN CONNECTION WITH THE INTRODUCTION OF SUCH CHANGES OR FROM ANY MALFUNCTIONS OR FAILURES THAT MAY RESULT THEREFROM.

12.3 CUSTOMER BEARS SOLE AND EXCLUSIVE RESPONSIBILITY FOR COMPLYING WITH ANY APPLICABLE LAWS REGARDING ITS USE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY LAWS AND REGULATIONS REGARDING THE PROTECTION OF PERSONAL INFORMATION. VAROS TAKES NO RESPONSIBILITY FOR ANY CLAIM WHICH MAY ARISE OUT OF OR IN CONNECTION WITH CUSTOMER'S USE OF THE SERVICES IN BREACH OF APPLICABLE LAW.

12.4 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT IN THE EVENT OF INTENTIONAL MISCONDUCT OR BREACH OF VAROS' CONFIDENTIALITY OBLIGATIONS, VAROS, INCLUDING ITS EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, ADVISORS, AND ANYONE ACTING ON ITS BEHALF, WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, STATUTORY OR PUNITIVE DAMAGES, LOSSES (INCLUDING LOSS OF PROFIT, LOSS OF BUSINESS OR BUSINESS OPPORTUNITIES AND LOSS OF DATA), ARISING FROM, OR IN CONNECTION, WITH THIS AGREEMENT, ANY USE OF, OR THE INABILITY TO USE THE SERVICES OR THE OUTPUT DATA, ANY RELIANCE UPON THE OUTPUT DATA, OR ANY ERROR, INCOMPLETENESS, INCORRECTNESS OR INACCURACY OF THE SERVICES OR THE OUTPUT DATA.

12.5 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT IN THE EVENT OF INTENTIONAL MISCONDUCT, OR BREACH OF CONFIDENTIALITY OBLIGATIONS, THE TOTAL AND AGGREGATE LIABILITY OF VAROS (INCLUDING ITS RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, ADVISORS, AND ANYONE ACTING ON ITS BEHALF), FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES, OR THE OUTPUT DATA, SHALL BE LIMITED TO THE FEES PAID TO VAROS FOR THE SERVICE FROM WHICH THE CLAIM AROSE IN THE 12 MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM.

### **13. Indemnification**

Customer agrees to indemnify and hold harmless Varos and its directors, officers, employees, and subcontractors, upon Varos' request and at Customer's expense, from, and against, any damages, loss, costs, expenses and payments, including reasonable attorney's fees and legal expenses, arising from any third-party complaint, claim, plea, or demand in connection with Customer's or any Customer's Users' breach of any provision in this Agreement.

### **14. Governing Law and Jurisdiction**

14.1 Regardless of Customer's jurisdiction of incorporation, or the jurisdiction where it engages in business or from where it accesses the Services, this Agreement and Customer's use of the Services will be exclusively governed by and construed in accordance with the laws of the State of New York, excluding any otherwise applicable rules of conflict of laws, which would result in the application of the laws of a jurisdiction other than New York. Any dispute, controversy or claim which may arise out of or in connection with this Agreement or the Services, shall be submitted to the sole and exclusive jurisdiction of the competent court in New York City. Subject to Section 14.2 below, Customer and Varos hereby expressly consent to the exclusive personal jurisdiction and venue of such courts, and waive any objections related thereto including objections on the grounds of improper venue, lack of personal jurisdiction or *forum non conveniens*.

14.2 Notwithstanding the foregoing, Varos may also lodge a claim against Customer: (a) pursuant to the indemnity clause above, in any court adjudicating a third party claim against Varos; and (b) for interim, emergency or injunctive relief in any other court having general jurisdiction over Customer.

## **15. Miscellaneous**

**15.1 Assignment.** Customer may not assign this Agreement without obtaining Varos' prior written consent. Any purported assignment without Varos' prior written consent is void.

**15.2 Relationship of the Parties.** The relationship between Varos and Customer is strictly that of independent contractors, and neither is an agent, partner, joint venturer or employee of the other.

**15.3 Entire Agreement and Severability.** This Agreement constitutes the entire and complete agreement between Customer and its Users and between Varos concerning the subject matter herein and supersedes all prior oral or written statements, understandings, negotiations and representations with respect to the subject matter herein. If any provision of this Agreement is held invalid or unenforceable, that provision shall be construed in a manner consistent with the applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining provisions will remain in full force and effect.

**15.4 No Waiver.** Neither Varos nor Customer will, by mere lapse of time, without giving express notice thereof, be deemed to have waived any breach, by the other, of any terms or provisions of this Agreement. The waiver, by either Varos or Customer, of any such breach, will not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.