

# **BARNESTORM, INC. Customer Agreement**

Last Updated: May 17, 2023

This BARNESTORM, INC. Customer Agreement (this “Agreement”) contains the terms and conditions that govern your access to and use of the Services (as defined below) and is an agreement between the applicable BARNESTORM, INC. Contracting Party specified in Section 12 below (also referred to as “Barnestorm,” “we,” “us,” or “our”) and you or the entity you represent (“you” or “your”). This Agreement takes effect when you click an “I Accept” button or check box presented with these terms or, if earlier, when you use any of the Services (the “Effective Date”). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. Please see Section 12 for definitions of certain capitalized terms used in this Agreement.

## **1. BARNESTORM, INC. Responsibilities**

1.1 General. You may access and use the Services in accordance with this Agreement. Service Level Agreements and Service Terms apply to certain Services.

1.2 Third-Party Content. Third-Party Content may be used by you at your election. Third-Party Content is governed by this Agreement and, if applicable, separate terms and conditions accompanying such Third-Party Content, which terms and conditions may include separate fees and charges.

1.3 BARNESTORM, INC. Security. Without limiting Section 8 or your obligations under Section 2.2, we will implement reasonable and appropriate measures designed to help you secure Your Content against accidental or unlawful loss, access or disclosure.

1.4 Data Privacy. We will not access or use Your Content except as necessary to maintain or provide the Services, or as necessary to comply with the law or a binding order of a governmental body. We will not (a) disclose Your Content to any government or third party or (b) move Your Content from BARNESTORM, INC; except in each case as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, we will give you notice of any legal requirement or order referred to in this Section 1.4. We will only use your Account Information in accordance with the Privacy Notice, and you consent to such usage. The Privacy Notice does not apply to Your Content.

1.5 Notice of Changes to the Services. We may change or discontinue any of the Services from time to time. We will provide you at least 1 month prior notice before discontinuing a material functionality of a Service that you are using, or materially altering a customer-facing API that you are using in a backwards-incompatible fashion, except that this notice will not be required if the 1 month notice period (a) would pose a security or intellectual property issue to us or the Services, (b) is economically or technically burdensome, or (c) would cause us to violate legal requirements.

1.6 Support Format. Barnestorm performs support for its systems via online, remote, permission-based chat and email via [customersupport@barnestorm.com](mailto:customersupport@barnestorm.com). All support requests are managed by a support ticketing system and handled in the order received. We provide our best effort to reply to each support request within 24 business hours but do not guarantee those timelines since support requests may be heavy periodically. Support by phone is neither offered nor guaranteed. Meetings (online or in-person) are not included in Barnestorm support. Consultation, advise, and analysis is not included in Barnestorm support.

1.7 Customization. Customizations are not included as part of Barnestorm's normal services or fees. Customization requests will require a quote and payment. [Customization Policy](#) applies to all customization requests.

## 2. Your Responsibilities.

2.1 Your Accounts. You will comply with the terms of this Agreement and all laws, rules and regulations applicable to your use of the Services. To access the Services, you must have an BARNESTORM, INC. account associated with a valid email address and a valid form of payment. Unless explicitly permitted by the Service Terms, you will only create one account per email address. Except to the extent caused by our breach of this Agreement, (a) you are responsible for all activities that occur under your account, regardless of whether the activities are authorized by you or undertaken by you, your employees or a third party (including your contractors, agents or End Users), and (b) we and our affiliates are not responsible for unauthorized access to your account.

2.2 Your Content. You are responsible for Your Content. You will ensure that Your Content and your and End Users' use of Your Content or the Services will not violate any of the Policies or any applicable law, specification, or rule applied by any agencies you work with.

2.3 Your Security and Backup. You are responsible for properly configuring and using the Services and otherwise taking appropriate action to secure, protect and backup your accounts and Your Content in a manner that will provide appropriate security and protection, which might include use of encryption to protect Your Content from unauthorized access and routinely archiving Your Content.

2.4 Log-In Credentials and Account Keys. BARNESTORM, INC. log-in credentials and private keys generated by the Services are for your internal use only and you will not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your agents and subcontractors performing work on your behalf.

2.5 End Users. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Your Content or use of the Services. You are responsible for End Users' use of Your Content and the Services, and for their compliance with your obligations under this Agreement. If you become aware of any violation of your obligations under this Agreement caused by an End User, you will immediately suspend access to Your Content and the Services by such End User. We do not provide any support or services to End Users unless we have a separate agreement with you or an End User obligating us to provide such support or services.

2.6 Operating System. Licensee understands that the Barnestorm, in order to be used at all, requires a properly configured Computer System with an operating system that is compatible with the Barnestorm. We are not responsible for specifying or supplying any computer hardware, or for supplying any operating system or programming language except for programming contained within the Software. You are responsible for obtaining and maintaining hardware and software that is compliant and compatible with Barnestorm if you wish to use Barnestorm.

### 3. Fees and Payment.

3.1 Service Fees. We calculate and bill fees and charges monthly. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for use of the Services as described on the BARNESTORM, INC. invoices using one of the payment methods we support. All amounts payable by you under this Agreement will be paid to us without setoff or counterclaim, and without any deduction or withholding.

Service fees are due on the first day of every month and considered late if not received within 20 days from the due date. Licensor has the right to terminate all services when service fees are more than 20 days overdue.

Fees and charges for any new Service or new feature of a Service will be effective when we post updated fees and charges on the BARNESTORM, INC. Site, unless we expressly state otherwise in a notice.

We may increase or add new fees and charges for any existing Services you are using by giving you at least 30 days' prior notice. We may elect to charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

#### 3.2 Taxes.

(a) Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by you are exclusive of Indirect Taxes, except where applicable law requires otherwise. We may charge and you will pay applicable Indirect Taxes that we are legally obligated or authorized to collect from you. You will provide such information to us as reasonably required to determine whether we are obligated to collect Indirect Taxes from you. We will not collect, and you will not pay, any Indirect Tax for which you furnish us a properly completed exemption certificate or a direct payment permit certificate for which we can claim an available exemption from such Indirect Tax. All payments made by you to us under this Agreement will be made free and clear of any deduction or withholding, as required by law. If any such deduction or withholding (including cross-border withholding taxes) is required on any payment, you will pay such additional amounts as are necessary so that the net amount received by us is equal to the amount then due and payable under this Agreement. We will provide you with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

We will invoice you electronically by email from our registered office at the email address of your establishment (as registered with the tax authorities, if applicable) receiving the Services in accordance with the applicable indirect tax laws.

### 4. Temporary Suspension.

4.1 Generally. We may suspend your or any End User's right to access or use any portion or all of the Services immediately upon notice to you if we determine:

(a) your or an End User's use of the Services (i) poses a security risk to the Services or any third party, (ii) could adversely impact our systems, the Services or the systems or Content of any other BARNESTORM, INC. customer, (iii) could subject us, our affiliates, or any third party to liability, or (iv) could be fraudulent;

(b) you are, or any End User is, in breach of this Agreement;

(c) you are in breach of your payment obligations under Section 3; or

(d) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

4.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Services:

(a) you remain responsible for all fees and charges you incur during the period of suspension; and

(b) you will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

(c) suspension will not end until all outstanding fees are paid in full.

## 5. Term; Termination.

5.1 Term. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated under this Section 5. Any notice of termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 5.2.

### 5.2 Termination.

(a) Termination for Convenience. You may terminate this Agreement for any reason by providing us written notice and closing your account for all Services for which we provide an account closing mechanism. We may terminate this Agreement for any reason by providing you at least 30 days' advance notice.

(b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains uncured for a period of 30 days from receipt of notice by the other party. No later than the Termination Date, you will close your account.

(ii) By Us. We may also terminate this Agreement immediately upon notice to you (A) for cause if we have the right to suspend under Section 4, (B) if our relationship with a third-party partner who provides software or other technology we use to provide the Services expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, or (C) in order to comply with the law or requests of governmental entities.

### 5.3 Effect of Termination.

(a) Generally. Upon the Termination Date:

(i) except as provided in Sections 5.3(a)(iv) and 5.3(b), all your rights under this Agreement immediately terminate;

(ii) you remain responsible for all fees and charges you have incurred through the Termination Date and are responsible for any fees and charges you incur during the post-termination period described in Section 5.3(b);

(iii) you will immediately return or, if instructed by us, destroy all BARNESTORM, INC. Content in your possession; and

(iv) Sections 2.1, 3, 5.3, 6 (except Section 6.3), 7, 8, 9, 11 and 12 will continue to apply in accordance with their terms.

(b) Post-Termination. Unless we terminate your use of the Services pursuant to Section 5.2(b), during the 30 days following the Termination Date:

(i) we will not take action to remove from the BARNESTORM, INC. systems any of Your Content as a result of the termination; and

(ii) we will allow you to retrieve Your Content from the Services only if you have paid all amounts due under this Agreement.

For any use of the Services after the Termination Date, the terms of this Agreement will apply and you will pay the applicable fees at the rates under Section 3.

## 6. Proprietary Rights.

6.1 Your Content. Except as provided in this Section 6, we obtain no rights under this Agreement from you (or your licensors) to Your Content. You consent to our use of Your Content to provide the Services to you and any End Users.

6.2 Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Suggestions; (b) you have all rights in Your Content and Suggestions necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content or End Users' use of Your Content or the Services will violate the [Acceptable Use Policy](#).

6.3 Intellectual Property License. The [Intellectual Property License](#) applies to your use of BARNESTORM, INC. Content and the Services.

6.4 Restrictions. Neither you nor any End User will use the BARNESTORM, INC. Content or Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any End User will use the BARNESTORM, INC. Content or Services in any manner that is illegal or restricted in any way by any third party, including Medicare, Medicaid, HIPAA, private insurance. Neither you nor any End User will, or will attempt to (a) reverse engineer, disassemble, or decompile the Services or BARNESTORM, INC. Content or apply any other process or procedure to derive the source code of any software included in the Services or BARNESTORM, INC. Content (except to the extent applicable law doesn't allow this restriction), (b) access or use the Services or BARNESTORM, INC. Content in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (c) resell the Services or BARNESTORM, INC. Content. The BARNESTORM, INC. Trademark Guidelines apply to your use of the BARNESTORM, INC. Marks. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors).

You will not imply any relationship or affiliation between us and you except as expressly permitted by this Agreement.

6.5 Suggestions. If you provide any Suggestions to us or our affiliates, we and our affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us any assistance we require to document, perfect, and maintain our rights in the Suggestions.

## 7. Indemnification.

7.1 General. You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any Losses arising out of or relating to any third-party claim concerning: (a) your or any End Users' use of the Services (including any activities under your BARNESTORM, INC. account and use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you, End Users or Your Content; or (c) a dispute between you and any End User. You will reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to any third party subpoena or other compulsory legal order or process associated with third party claims described in (a) through (c) above at our then-current hourly rates.

### 7.2 Intellectual Property.

(a) Subject to the limitations in this Section 7, you will defend Barnestorm and its respective employees, officers, and directors against any third-party claim alleging that any of Your Content does not comply with any laws, rules, or regulations specified by any third party, and will pay the amount of any adverse final judgment or settlement.

(b) Subject to the limitations in this Section 7, you will defend Barnestorm and its respective employees, officers, and directors against any third-party claim alleging that any of Your Content infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(c) Neither party will have obligations or liability under this Section 7.2 arising from infringement by combinations of the Services or Your Content, as applicable, with any other product, service, software, data, content or method. In addition, BARNESTORM, INC. will have no obligations or liability arising from your or any End User's use of the Services after BARNESTORM, INC. has notified you to discontinue such use. The remedies provided in this Section 7.2 are the sole and exclusive remedies for any third-party claims of infringement or misappropriation of intellectual property rights by the Services or by Your Content.

(d) For any claim covered by Section 7.2, BARNESTORM, INC. will, at its election, either: (i) procure the rights to use that portion of the Services alleged to be infringing; (ii) replace the alleged infringing portion of the Services with a non-infringing alternative; (iii) modify the alleged infringing portion of the Services to make it non-infringing; or (iv) terminate the allegedly infringing portion of the Services or this Agreement.

7.3 Process. The obligations under this Section 7 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party (at the other party's expense) in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any commitment, other than the payment of money, without the written consent of the other party.

## 8. Disclaimers.

THE SERVICES AND BARNESTORM, INC. CONTENT ARE PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, WE AND OUR AFFILIATES AND LICENSORS (A) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES OR BARNESTORM, INC. CONTENT OR THE THIRD-PARTY CONTENT, AND (B) DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SERVICES OR BARNESTORM, INC. CONTENT OR THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

## 9. Limitations of Liability.

WE AND OUR AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES OR BARNESTORM, INC. CONTENT, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICES OR BARNESTORM, INC. CONTENT, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENTS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES OR BARNESTORM, INC. CONTENT; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, EXCEPT FOR PAYMENT OBLIGATIONS UNDER SECTION 7.2, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE. THE LIMITATIONS IN THIS SECTION 9 APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 10. Modifications to the Agreement.

We may modify this Agreement (including any Policies) at any time by posting a revised version on the BARNESTORM, INC. Site or by otherwise notifying you in accordance with Section 11.10. The modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Services or BARNESTORM, INC. Content after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the BARNESTORM, INC. Site regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the beginning of this Agreement.

## 11. Miscellaneous.

11.1 Assignment. You will not assign or otherwise transfer this Agreement or any of your rights and obligations under this Agreement, without our prior written consent. Any assignment or transfer in violation of this Section 11.1 will be void. We may assign this Agreement without your consent (a) in connection with a merger, acquisition or sale of all or substantially all of our assets, or (b) to any affiliate or as part of a corporate reorganization; and effective upon such assignment, the assignee is deemed substituted for BARNESTORM, INC. as a party to this Agreement and BARNESTORM, INC. is fully released from all of its obligations and duties to perform under this Agreement. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

11.2 Entire Agreement. This Agreement incorporates the Policies by reference and is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement. We will not be bound by, and specifically object to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) including for example, any term, condition or other provision (a) submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document, (b) related to any online registration, response to any Request for Bid, Request for Proposal, Request for Information, or other questionnaire, or (c) related to any invoicing process that you submit or require us to complete. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document.

11.3 Force Majeure. We and our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

11.4 Governing Law. The Governing Laws, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between you and us. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

11.5 Disputes. Any dispute or claim relating in any way to your use of the Services, or to any products or services sold or distributed by BARNESTORM, INC. will be adjudicated in the Governing Courts, and you consent to exclusive jurisdiction and venue in the Governing Courts, subject to the additional provisions below.

(a) Disputes will be resolved by binding arbitration, rather than in court, except that either party may elect to proceed in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this Agreement. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. Before you may begin an arbitration proceeding, you must send a letter notifying us of your intent to pursue arbitration and describing your claim to us at Barnestorm, Inc, PO Box 1743, Lexington, NC. The arbitration will be conducted by the American Arbitration Association (AAA) under its commercial rules, which are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Payment of filing, administration and arbitrator fees will be governed by the AAA commercial fee schedule. We and you agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. We and you further agree that the underlying award in arbitration may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules. If for any reason a claim proceeds in court rather than in



arbitration we and you waive any right to a jury trial. Notwithstanding the foregoing we and you both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

11.6 Trade Compliance. In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control regulations, including all such regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Services or BARNESTORM, INC. Content, including your transfer and processing of Your Content, the provision of Your Content to End Users, and the BARNESTORM, INC. region in which any of the foregoing occur. You represent and warrant that you and your financial institutions, or any party that owns or controls you or your financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority.

11.7 Independent Contractors; Non-Exclusive Rights. We and you are independent contractors, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party, and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

11.8 Language. All communications and notices made or given pursuant to this Agreement must be in the English language. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

11.9 Confidentiality and Publicity. You may use BARNESTORM, INC. Confidential Information only in connection with your use of the Services or BARNESTORM, INC. Content as permitted under this Agreement. You will not disclose BARNESTORM, INC. Confidential Information during the Term or at any time during the 5-year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of BARNESTORM, INC. Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to this Agreement or your use of the Services or BARNESTORM, INC. Content.

11.10 Notice.

(a) To You. We may provide any notice to you under this Agreement by: (i) posting a notice on the BARNESTORM, INC. Site; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on the BARNESTORM, INC. Site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) To Us. To give us notice under this Agreement, you must contact BARNESTORM, INC. by email or mailing address, as applicable, listed for the applicable BARNESTORM, INC. Contracting Party in Section 12 below. We may update the address for notices to us by posting a notice on the BARNESTORM, INC. Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

11.11 No Third-Party Beneficiaries. Except as set forth in Section 7, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

11.12 U.S. Government Rights. The Services and BARNESTORM, INC. Content are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Services and BARNESTORM, INC. Content. If you are using the Services and BARNESTORM, INC. Content on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Services and BARNESTORM, INC. Content. The terms “commercial item” “commercial computer software,” “commercial computer software documentation,” and “technical data” are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

11.13 No Waivers. The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

11.14 Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

## 12. Definitions.

“Acceptable Use Policy” means the policy labeled as such on the Barnestorm site (and any successor or related locations designated by us), as may be updated by us from time to time.

“Account Information” means information about you that you provide to us in connection with the creation or administration of your BARNESTORM, INC. account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with your BARNESTORM, INC. account.

“API” means an application program interface.

“BARNESTORM, INC. Confidential Information” means all nonpublic information disclosed by us, our affiliates, business partners, or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. BARNESTORM, INC. Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. BARNESTORM, INC. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be

shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by you without reference to the BARNESTORM, INC. Confidential Information.

"BARNESTORM, INC. Content" means APIs, WSDLs, sample code, software libraries, command line tools, proofs of concept, templates, advice, information, programs (including credit programs) and any other Content made available by us and our affiliates related to use of the Services or on the BARNESTORM, INC. Site and other related technology (including any of the foregoing that are provided by our personnel). BARNESTORM, INC. Content does not include the Services or Third-Party Content.

"BARNESTORM, INC. Contracting Party" means the party identified in the table below, based on your Account Country. If you change your Account Country to one identified to a different BARNESTORM, INC. Contracting Party below, you agree that this Agreement is then assigned to the new BARNESTORM, INC. Contracting Party under Section 11.1 without any further action required by either party.

"BARNESTORM, INC. Marks" means any trademarks, service marks, service or trade names, logos, and other designations of BARNESTORM, INC. and its affiliates that we may make available to you in connection with this Agreement.

"BARNESTORM, INC. Site" means any web site associated with Barnestorm, CareChamp (and any successor or related locations designated by us), as may be updated by us from time to time.

"[Acceptable Use Policy](#)" is located here: [AcceptableUsePolicy.pdf \(barnestorm.biz\)](#) If that link doesn't work, the policy is posted on Barnestorm Support site.

"Content" means software (including machine images), data, text, audio, video, or images.

"[Customization Policy](#)" is located here: [Customization Policy](#). If that link doesn't work, the policy is posted on Barnestorm Support site.

"End User" means any individual or entity that directly or indirectly through another user (a) accesses or uses Your Content, or (b) otherwise accesses or uses the Services under your account. The term "End User" does not include individuals or entities when they are accessing or using the Services or any Content under their own BARNESTORM, INC. account, rather than under your account.

"[Intellectual Property License](#)" means the separate license terms that apply to your access to and use of BARNESTORM, INC. Content and Services located on our Intellectual Property License document (and any successor or related locations designated by us), as may be updated by us from time to time. If that link doesn't work, the policy is posted on Barnestorm Support site.

"Losses" means any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees).

"Policies" means the Acceptable Use Policy, Privacy Notice, the Site Terms, the Service Terms, the BARNESTORM, INC. Trademark Guidelines, all restrictions described in the BARNESTORM, INC. Content and on the BARNESTORM, INC. Site, and any other policy or terms referenced in or incorporated into this Agreement, but does not include whitepapers or other marketing materials referenced on the BARNESTORM, INC. Site.

“Privacy Notice” means the privacy notice located on the Barnestorm site (and any successor or related locations designated by us), as may be updated by us from time to time.

“Service” means each of the services made available by us or our affiliates, including those web services described in the Service Terms. Services do not include Third-Party Content.

“Service Level Agreement” means all service level agreements that we offer with respect to the Services and post on the BARNESTORM, INC. Site, as they may be updated by us from time to time.

“Acceptable Use Policy” is located here: [AcceptableUsePolicy.pdf \(barnestorm.biz\)](#) If that link doesn’t work, the policy is posted on Barnestorm Support site.

“Service Terms” means the rights and restrictions for Barnestorm, Inc. Services (and any successor or related locations designated by us), as may be updated by us from time to time. Service Terms include [Barnestorm Service Policy](#), which describes Your responsibilities. If that link doesn’t work, the policy is posted on Barnestorm Support site.

“Site Terms” means the terms of use of the BARNESTORM, INC. Site located (and any successor or related locations designated by us), as may be updated by us from time to time.

“Suggestions” means all suggested improvements to the Services or BARNESTORM, INC. Content that you provide to us.

“Term” means the term of this Agreement described in Section 5.1.

“Termination Date” means the effective date of termination provided in a notice from one party to the other in accordance with Section 5.

“Third-Party Content” means Content made available to you by any third party on the BARNESTORM, INC. Site or in conjunction with the Services.

“Your Content” means Content that you or any End User enters in or transfers to us for processing, storage or hosting by the Services in connection with your BARNESTORM, INC. account and any computational results that you or any End User derive from the foregoing through their use of the Services. For example, Your Content includes Content that you or any End User stores in Barnestorm or CareChamp. This includes all patient, visit, and employee information as well as all reports. Your Content does not include Account Information.