

# CUSTOMER TERMS OF SERVICE

Effective as of OCTOBER 2018.

Thank you for using barhamhouse.com and our related apps and services (the “**Services**”).

If you are a Customer (defined below), then these Customer Terms of Service (the “**Customer Terms**”) will govern your use of the Services. If you are using the Services but are not a Customer, then our User Terms of Service will govern your use of the Services. Those are available at <http://barhamhouse.com/user-terms.pdf>.

“**Customer**” means the individual or business that signed an order form with us (an “**Order Form**”). “**You**” means the individual using the Services on behalf of the Customer.

“**Us**” (and similar words such as “we” and “our”) mean Barham House Associates, LLC, a Missouri limited liability company (regardless if they are capitalized).

“**Agreement**” means collectively, the Customer’s Order Form and these Customer Terms. If any provision in the Customer’s Order Form conflicts with a provision in these Customer Terms, then the provisions in the Order Form shall control.

## Use of the Services

### Subscriptions

By signing the Order Form, the Customer will be agreeing to pay for a license to use the Services for a specified contract term (a “**Subscription**”).

### Provision of Services

We will use commercially reasonable efforts to ensure the Services are available to the Customer at all times during the Subscription, subject to scheduled downtime, which will generally not occur without prior advance notice to the Customer. We may add to, modify, or terminate, portions of the Services at any time for any reason, however, we may not materially decrease the functionality of the Services during the Subscription.

### Support

We will provide the Customer with reasonable technical support in accordance with our standard practices.

### Prohibited Uses

The Customer may not do anything on the Services directly or indirectly that: (a) is illegal or violates another contract; (b) will harm the Services, including without limitation using bots, scrapers, harvesters, or other automated systems; or (c) constitutes reverse engineering, decompiling, disassembling, or otherwise attempting to discover the source code, object code, or underlying structure or algorithms, of the Services.

### User Accounts

We may allow individuals to create user accounts to use the Services under or as a result of the Customer’s Subscription. We may also allow the Customer to establish different types of user accounts, each with unique permission sets. The Customer is responsible for everything which users do under the Customer’s Subscription. Unless otherwise permitted by us, the Customer and individual users may deactivate an account, but may not delete an account.

## Payment Obligations

## **General**

The Customer's fees will be described on the Order Form. All fees must be paid in advance, are non-cancelable, and non-refundable. All fees are exclusive of taxes and similar government assessments of every nature and form, all of which must be paid by the Customer and not us.

## **Additional Services**

If the Customer requests additional services beyond those described in the Order Form, then we may provide the additional services and invoice the Customer for the same. The Customer shall pay all undisputed payments in those invoices within 30 days of receipt. However, we will not provide any additional services without the Customer's prior and express written (including email) consent.

## **Interest**

We may charge the Customer interest at 1.5% per month for any undisputed fees which are not timely paid in accordance with this Agreement.

## **Change to Fees**

We may change the fees for the Services (and/or additional services) after the Initial Term by providing the Customer with written (including email) notice of the change at least 30 days prior to the expiration of the Initial Term or the then current renewal term.

# **Content & Intellectual Property**

## **Our Rights**

As between us on the one hand, and the Customer and its users on the other hand, we own and will continue to own the Services and all intellectual property rights related to the Services. We grant the Customer a non-sublicensable, non-transferable, non-exclusive, limited license for the Customer and its authorized users to use the Services for their intended purposes in accordance with this Agreement.

## **Your Rights**

As between us on the one hand, and the Customer and its users on the other hand, the Customer will own all Customer Content. "**Customer Content**" means all content uploaded to the Services by the Customer or its users. Subject to the terms in this Agreement, the Customer (on behalf of itself and all of its users) grants us a worldwide, non-exclusive, license to access, use, process, copy, distribute, perform, export, and display, the Customer Content as reasonably necessary to (a) provide, maintain, and update the Services; (b) to prevent or address service, security, support, and technical issues; (c) as required by law or this Agreement; and (d) as permitted by the Customer in writing. The Customer represents and warrants that it has all rights in and to the Customer Content from all individuals and businesses required to allow it to grant that license to us.

# **Confidentiality**

## **Non-Disclosure**

Both us and the Customer are likely to disclose Confidential Information to the other that the disclosing party desires to maintain as confidential. Accordingly, the receiving party shall (a) take all commercially reasonable measures to protect the confidentiality of the disclosing party's Confidential Information in the receiving party's possession; (b) not disclose any of the disclosing party's Confidential Information to any third party; and (c) not use any of the disclosing party's Confidential Information except as contemplated in this Agreement.

Notwithstanding the foregoing, the receiving party may disclose the disclosing party's Confidential Information to its employees and contractors as required in the ordinary course of the receiving party's business provided each recipient agrees to protect the disclosing party's Confidential Information in a written

agreement with confidentiality protections substantially similar to the confidentiality protections in this Agreement. Additionally, a party may disclose the disclosing party's Confidential Information to the extent it is compelled to do so by law, provided it (a) takes reasonable measures to maintain the confidentiality of the Confidential Information (for example, seeking a protective order); and (b) provides reasonable prior notice to the disclosing party to the extent legally permitted.

#### **“Confidential Information”**

“Confidential Information” means all of the disclosing party's information acquired by or disclosed to the receiving party as a result of this Agreement that reasonably should be understood to be confidential given the nature of the information and the circumstances of acquisition or disclosure. “Confidential Information” includes Customer Content and the provisions in the Customer's Order Form.

“Confidential Information” does not include information that the receiving party can demonstrate: (i) was known by the receiving party without restriction before acquisition or disclosure under this Agreement; (ii) becomes public through no fault of the receiving party; (iii) was independently developed by the receiving party; or (iv) was rightfully given to the receiving party by another party.

#### **Duration**

The confidentiality obligations in this Agreement shall apply during the Subscription and shall survive the termination of the Subscription for five years. Notwithstanding anything contrary in this Agreement, this Agreement shall not be used to limit or invalidate a party's rights under applicable trade secret laws.

## **Disclaimers**

**Except as expressly provided in this Agreement, the Services are offered on an “as is” and “as available” basis without any warranties of any kind; and we expressly disclaim any and all warranties, whether express or implied, including the implied warranties of merchantability, title, fitness for a particular purpose, accuracy of data, and non-infringement.**

## **Limitation of Liability**

**In no event will the Customer, us, or any of our Released Parties, have any liability to the other party or to any third party for any lost profits or revenues or for any indirect, special, incidental, consequential, cover, or punitive damages, however caused, whether in contract, tort, or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages. Us and our Released Parties' liability to the Customer under this Agreement (if any) shall not, together with amounts associated with all other claims, exceed the fees paid by the Customer to us for Services in the 12-months prior to the act that gave rise to the liability. Additionally, any cause of action or claim which the Customer may have which arises out of or relates to this Agreement must be brought (if at all) within one year after the cause of action or claim accrued, otherwise, such cause of action or claim shall be permanently barred. “Released Parties” means our parents, subsidiaries, affiliates, and licensors, and the owners, members, directors, officers, employees, contractors, and agents, of all of them.**

## **Term & Termination**

#### **Termination**

The term of this Agreement begins on the effective date of the Order Form and continues during the Initial Term defined in the Order Form. The term will automatically renew on an annual basis after the expiration of the Initial Term. This Agreement may not be terminated early except as provided below.

**Non-Renewal**

Either party may terminate this Agreement at the end of the then current term by providing written (including email) notice of non-renewal at least 30 days before the end of the then current term.

**Termination for Cause**

If we materially breach this Agreement and we fail to cure the breach within 10 days of receiving written notice of the breach from the Customer, then the Customer may immediately terminate this Agreement by providing written notice to us (including email).

If the Customer or any of the Customer's users materially breach this Agreement (including non-payment of fees), then we may immediately terminate this Agreement by providing written notice to the Customer (including email).

**Survival**

All provisions in this Agreement which by their nature should survive termination of this Agreement shall survive termination.

**Miscellaneous****Privacy Policy**

Please read our Privacy Policy (available at <http://barhamhouse.com/privacy-policy.pdf>). That policy describes what data we collect and how we use that data.

**The Parties**

For clarity, the parties to this Agreement are the Customer and us.

**Force Majeure**

A party shall not be liable for any delay or non-performance of its obligations in this Agreement due to events beyond its reasonable control, including without limitation denial-of-service attacks, a failure by a third-party hosting provider or utility provider, strikes, shortages, riots, fires, acts of God, war, terrorism, and governmental action.

**Entire Agreement**

This Agreement sets forth the complete and entire agreement between the parties relating to the subject matter in this Agreement and supersedes all other discussions, negotiations, proposals, and agreements, whether oral or written, previously discussed or entered into, by the parties relating to the subject matter in this Agreement.

**Waiver**

The failure or delay by a party to exercise any right or remedy in this Agreement shall not operate as a waiver of the same. The waiver by a party of a breach of any provision in this Agreement shall not operate as a waiver of any subsequent breach. A waiver shall not be effective unless and until it is in written form and signed by the waiving party.

**Severability**

Each provision in this Agreement shall be treated as separate and independent of the other provisions. Accordingly, if a court with competent jurisdiction declares a provision unenforceable, then the provision should be limited to the minimum extent necessary so that it remains enforceable. If such amendment is not possible, then the unenforceable provision should be deemed removed from this Agreement, but the remaining provisions shall remain in full force.

## Assignment

This Agreement and the rights and obligations in this Agreement may not be assigned by either party without the other party's written consent (which shall not be unreasonably withheld). However, either party may assign this Agreement in its entirety if the assignment is part of an acquisition, merger, or other change of control.

## Notices

Unless otherwise provided in this Agreement, any notice or demand (each a "**Notice**") required or permitted under this Agreement or applicable law shall be in writing and all delivery expenses prepaid and shall be deemed to have been delivered as follows: (a) if delivery is by hand, then at the time of the actual hand delivery; (b) if delivery is by written electronic communication (including email), then at the time the intended recipient provides non-automated express or implied confirmation of receipt, whether in writing or by written electronic communication; (c) if by overnight delivery using a nationally recognized overnight courier, then one business day after having been given to the courier.

## Legal Terms

This Agreement shall be governed by and construed in accordance with Missouri law, excluding its conflict of law principles. If a dispute arises between the parties related to this Agreement, then the dispute shall be resolved in the US. District Court for the Western District of Missouri and/or the courts in Jackson County, Missouri, and all parties consent to venue and personal jurisdiction there. The prevailing party in any litigation or other dispute resolution proceeding between the parties that results from this Agreement shall be entitled to reimbursement from the other party of all of its costs and expenses, including reasonable attorneys' fees, incurred in connection with the proceeding and any appeal. **Each party waives all rights it may have to a jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.**

## Power to Amend These Terms

We may amend these Customer Terms at any time by providing advance notice to the Customer on this website, through the Services, or through another communication channel. The Customer's continued use after we provide the notice constitutes its consent to the amendment(s).

However, the following amendments may not be made unless they are approved in writing by both us and the Customer: (a) any amendment to these Customer Terms that would materially interfere with the Customer's right to use the Services as contemplated in the Order Form; and (b) any amendment to the terms in an Order Form.

## Contact

Except as otherwise required, all notices and communications the Customer may send to us shall be sent to us, with all expenses prepaid, at the following address: 1712 Main Street, Suite 330, Kansas City, MO 64108. The Customer may also contact us via email at [info@barhamhouse.com](mailto:info@barhamhouse.com).