

BarnOwl Cloud Terms and Conditions of Use

VERSION

Version No	Date	Comments
1.0	May 2021	First version

INTRODUCTION

- a) These Terms and Conditions of Use constitute a legally binding contract, and your continued use of the application, platform and software means that you accept and agree to be bound by these Terms and Conditions of Use.
- b) These Terms and Conditions of Use must be read together with any other applicable BarnOwl policies and procedures as published from time to time.
- c) Should You not agree to any of the Terms and Conditions contained in this document, you must not continue to use the application, platform and software.
- d) BarnOwl has developed certain software applications and platforms which it makes available to subscribers via the Internet on a subscription basis for the purposes of streamlining organizational task and project management within organisations.
- e) You, the “Organisation” wish to use BarnOwl’s services in its business operations.
- f) BarnOwl has agreed to provide, and you have agreed to take and pay for BarnOwl’s services subject to the terms and conditions set out in this Contract and any other policies to which this Contract refers.
- g) These Terms and Conditions of Use apply to any Organisation regardless of the pricing package they have chosen, or whether the Organisation subscribes to any Free services offered by BarnOwl.

BY CLICKING “ACCEPT” THE ORGANISATION AGREES AS FOLLOWS:

1. INTERPRETATION

The headings of the clauses in these Terms and Conditions of Use are to be used only for convenience and reference and shall not be used in the interpretation, nor to modify or amplify the terms of these Terms and Conditions of Use nor any clause hereof. Unless a contrary intention appears-

1.1. Words referring to-

1.1.1. any one gender includes the other genders and the neuter;

1.1.2. the singular includes the plural and vice versa; and

1.1.3. a natural person includes juristic persons (corporate or unincorporated) and vice versa.

1.2. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being, in force under it.

- 1.3. If any provision in a definition is a substantive provision which confers rights or imposes obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.4. When any number of days is prescribed in these Terms and Conditions of Use, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a business day, in which case the last day shall be the next succeeding business day.
- 1.5. The expiration or termination of these Terms and Conditions of Use shall not affect such of the provisions of these Terms and Conditions of Use as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. DEFINITIONS

- 2.1. The following words and phrases shall have the meanings assigned to them below, and similar words and/or phrases shall have the same meaning:
 - 2.1.1. **Account** shall be the account registered, administrated and managed by the Organisation which is hosted on <https://www.barnowl.cloud/>.
 - 2.1.2. **AFSA** means the Arbitration Foundation of South Africa.
 - 2.1.3. **BarnOwl** means BarnOwl Software Solutions (Pty) Ltd, a private, limited liability company registered in accordance with the Company Laws of South Africa, with registration number 2017/281530/07 and whose registered address is 75 Malibongwe Drive, Linden Ext, Gauteng, South Africa, 2194
 - 2.1.4. **Confidential Information** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information by a Party, or information which the receiving Party knows or ought reasonably to have known is of a proprietary or confidential nature.
 - 2.1.5. **Effective Date** means that date on which these Terms and Conditions of Use will come into force and effect, being the date on which the Organisation successfully registers an account on the BarnOwl Cloud.
 - 2.1.6. **Intellectual Property Rights** means all the rights in and to Intellectual Property including (without limitation) the rights in and to trademarks, service marks, trade names, domain names, logos, get-up, patents, provisional patents, inventions (whether patentable or not), know-how (including confidential industrial and commercial information and techniques in any form), utility models, registered and unregistered design rights, copyright, semi-conductor topography rights, database rights, rights in respect of any new or existing compilation of any data or information not covered under any existing copyright, any structured analysis, reports, application and any resulting know-how, use or any other results

originating or following from or as a consequence of data being made available in respect of any of the aforementioned or part thereof, and all similar proprietary rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations, as well as any Confidential Information or processes relating to that subject matter.

- 2.1.7. **Organisation** means the Person (whether natural or juristic) in whose name the account is registered and under whose name Users use the Services. The Organisation may be a natural person, a juristic person or a collection of people.
- 2.1.8. **Organisation Data** means the data inputted by the Users, the Responsible Person, or BarnOwl, on the Organisation's behalf for the purpose of making use of the Services or facilitating the Organisation's use of the Services and includes (without limitation) Personal Information.
- 2.1.9. **Party** means either BarnOwl or the Organisation, and **Parties** means both BarnOwl and the Organisation.
- 2.1.10. **Personal Information** has the meaning given to it in the Protection of Personal Information Act 4 of 2013 (**POPIA**), and any other applicable law in South Africa.
- 2.1.11. **Responsible Person** means the individual who undertakes to be liable for payment of the Subscription Fee and whose details appear as such under the Account Information section of the Platform.
- 2.1.12. **Services** means the streamlining organizational task and project management software and platforms provided by BarnOwl to the Organisation under these Terms and Conditions of Use via <https://www.barnowl.cloud/> or any other website nominated by BarnOwl and communicated to the Organisation from time to time.
- 2.1.13. **Software** means the online software applications provided by BarnOwl as part of the Services.
- 2.1.14. **Subscription Fees** means the subscription fees payable by the Organisation to BarnOwl for the User Subscriptions, as set out in the Pricing section in <https://cloud.barnowl.co.za>.
- 2.1.15. **Subscription Term** means the entire period for which the Organisation uses the Services and/or Software.
- 2.1.16. **Terms and Conditions of Use** means this document and any schedules and annexures attached to this document.
- 2.1.17. **User** means any person authorised by the Organisation to make use of the Services under the name of the Obligation, including the Organisation itself and the Responsible Person, as further set out in Clause 3.

2.1.18. **Virus** means a device or thing (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

3. USERS

3.1. Depending on which pricing package the Organisation has selected, payment of the Subscription Fee shall entitle the Organisation to use the Software and Services, subject to the limitations imposed on the Organisation by virtue of the pricing packing for which it subscribes. BarnOwl hereby grants to the Organisation a non-exclusive, non-transferable right to permit the Users to use the Services during the Subscription Term.

3.2. The extent and ability of the Users to use the Services and Software shall be dependent on the permissions given to the User by the Organisation in accordance with Clause 5. BarnOwl does not control or set these permissions.

3.2.1. **Organisation Owner** – An Organisation Owner has full access to everything in the Organisation and can edit or delete the Organisation details. They are also responsible for the payment of the licence fee. The first person to create an Organisation is automatically the Organisation Owner. An Organisation Owner can give any other Participant Organisation Owner access.

3.2.2. **Administrator** – An Administrator has full access to everything in the Organisation but cannot edit or delete the Organisation and is not responsible for payment of the licence fee.

3.2.3. **Team Member** – A Team Member can create their own Action Plans and Tasks, will have full access to Action Plans and its Tasks where they are an Action Plan Participant or full access to the Tasks (but not the Action Plan) where they are a just a Task Participant.

3.2.4. **Guest** - A Guest only has access to Tasks where they are a Task Participant but cannot invite other participants. This role is mainly for people outside your Organisation that you want to assign Tasks to.

4. CHANGES TO THESE TERMS AND CONDITIONS OF USE

4.1. BarnOwl reserves the right to alter, amend or change these Terms and Conditions of Use at any time, and within its complete discretion.

4.2. In the event that there is a change to these Terms and Conditions of Use, BarnOwl will notify each user at login of any changes and the extent of these changes.

- 4.3. Should the Organisation continue to use the Services after being notified of the changes, it shall be presumed that the Organisation has read, accepts and intends to be bound by the changes to the Terms and Conditions of Use.
- 4.4. These Terms and Conditions of Use shall always bear a version number, indicating when they were last updated and what version currently applies.

5. CONTRACTUAL CAPACITY

- 5.1. The Organisation and the Users warrant that each person making use of the Software and Services has full contractual capacity to be bound by these Terms and Conditions of Use.
- 5.2. To the extent that any User has any form of limited contractual capacity by virtue of their status, that User warrants that they have the necessary consent to enter into and be bound by these Terms and Conditions of Use.
- 5.3. Each Person who makes use of the Software and Services warrants that they are over the age of 18 (eighteen) years.
- 5.4. Persons under the age of 18 (eighteen) but above the age of 7 (seven), shall not be permitted to use the Software and Services without the express written permission of their parent or guardian such permission should be emailed to support@barnowl.co.za
- 5.5. Persons under the age of 7 (seven) shall not be permitted to use the Software and Services.

6. ADDITIONAL USERS

- 6.1. The Organisation will be able to add additional users to its profile.
- 6.2. Each additional User shall be obliged to adhere to the terms and conditions of these Terms and Conditions of Use.

7. ACCOUNT SECURITY

- 7.1. It is the responsibility of every User to make sure that they keep their account information, including login credentials for the Website, Software and Services secure, and shall not share these details with any unauthorised third parties.
- 7.2. BarnOwl shall not accept any liability for any loss of whatsoever nature experienced by the Organisation, or any User caused (whether directly or indirectly) by the disclosure (whether intentional or unintentional) of any User's account information.

8. SERVICES

- 8.1. BarnOwl shall, during the Subscription Term, provide the Organisation with access to the Services and Software on and subject to the terms of these Terms and Conditions of Use.

- 8.2. BarnOwl shall use commercially reasonable endeavours to make the Services available 24 hours a day, 7 days a week, except for:
 - 8.2.1. Planned maintenance carried out during the maintenance window communicated in advance to Organisations; and
 - 8.2.2. Unscheduled maintenance performed from time to time beyond BarnOwl's control; and
 - 8.2.3. Unscheduled down-time of any third-party service utilised in order to provide the Services.
- 8.3. BarnOwl will, as part of the Services provide the Organisation with BarnOwl's standard Organisation support services during business hours in accordance with Clause 13.
- 8.4. Notwithstanding the foregoing, BarnOwl:
 - 8.4.1. does not warrant that the Organisation's use of the Services will be uninterrupted or error-free; and
 - 8.4.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities.
- 8.5. BarnOwl warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms and Conditions of Use.

9. THIRD PARTY PROVIDERS

- 9.1. The Organisation acknowledges that the Services may require access to certain platforms of, correspondence with, and the purchase of products and services from, third parties via third-party websites and that it does so solely at its own risk.
- 9.2. In addition, BarnOwl engages the services of third parties from time to time, in order to render the Services (currently, but not limited to Microsoft Azure).
- 9.3. BarnOwl shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Organisation, with any such third party.
- 9.4. BarnOwl does not endorse or approve any third-party website, nor the content of any third-party website made available via the Services and is in no way responsible for the content thereof.

10. PROHIBITED CONDUCT

- 10.1. The Organisation may not access or allow access to or use or allow the use of the Software and Services for any purpose other than that for which BarnOwl makes them available. The Software and Services may not be used in connection with any commercial endeavours except those that are specifically endorsed or approved by BarnOwl.
- 10.2. The Prohibitions contained in this Clause apply to all Users registered under the Organisation, including Guests.
- 10.3. All Users of the Software and Services agree to not:

- 10.3.1. systematically retrieve data or other content from the Software and Services to create or compile, directly or indirectly, a collection, compilation, database, or directory without written permission from us.
- 10.3.2. make any unauthorized use of the Software and Services, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretences.
- 10.3.3. use a buying agent or purchasing agent to make purchases on the platform which provides the Software and Services.
- 10.3.4. use the Software and Services to advertise or offer to sell goods and services.
- 10.3.5. circumvent, disable, or otherwise interfere with security-related features of the Software and Services, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the Software and Services and/or the Content contained therein.
- 10.3.6. engage in unauthorized framing of or linking to the Website.
- 10.3.7. trick, defraud, or mislead BarnOwl and/or other users, especially in any attempt to learn sensitive account information such as user passwords;
- 10.3.8. make improper use of BarnOwl's support services or submit false reports of abuse or misconduct.
- 10.3.9. engage in any automated use of the system, such as using scripts to send comments or messages, or using any data mining, robots, or similar data gathering and extraction tools.
- 10.3.10. interfere with, disrupt, or create an undue burden on the Website or the networks or services connected to the Website.
- 10.3.11. attempt to impersonate another user or person or use the username of another user.
- 10.3.12. sell or otherwise transfer any User profile.
- 10.3.13. use any information obtained from the Website, or through the use of the Software and Services in order to harass, abuse, or harm another person.
- 10.3.14. use the Website and/or the Software and/or Services as part of any effort to compete with us or otherwise use the Site and/or the Content for any revenue-generating endeavour or commercial enterprise.
- 10.3.15. decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the Site.
- 10.3.16. attempt to bypass any measures of the Site designed to prevent or restrict access to the Site, or any portion of the Site.
- 10.3.17. harass, annoy, intimidate, or threaten any of our employees or agents engaged in providing any portion of the Site to the Organisation.
- 10.3.18. delete the copyright or other proprietary rights notice from any Content.
- 10.3.19. copy or adapt the Site's software, including but not limited to Flash, PHP, HTML, JavaScript, or other code.
- 10.3.20. upload or transmit (or attempt to upload or to transmit) viruses, Trojan horses, or other material, including excessive use of capital letters and spamming (continuous posting of repetitive text), that interferes with any party's uninterrupted use and enjoyment of the

- Site or modifies, impairs, disrupts, alters, or interferes with the use, features, functions, operation, or maintenance of the Site.
- 10.3.21. upload or transmit (or attempt to upload or to transmit) any material that acts as a passive or active information collection or transmission mechanism, including without limitation, clear graphics interchange formats (“gifs”), 1×1 pixels, web bugs, cookies, or other similar devices (sometimes referred to as “spyware” or “passive collection mechanisms” or “pcms”).
 - 10.3.22. except as may be the result of standard search engine or Internet browser usage, use, launch, develop, or distribute any automated system, including without limitation, any spider, robot, cheat utility, scraper, or offline reader that accesses the Site, or using or launching any unauthorized script or other software.
 - 10.3.23. disparage, tarnish, or otherwise harm, in our opinion, us and/or the Site.
 - 10.3.24. use the Site in a manner inconsistent with any applicable laws or regulations.
- 10.4. By agreeing to these Terms, the Organisation agrees that, when using the Services, the Organisation and all Users will follow the following rules:
- 10.4.1. Not to do anything illegal in their use of the Services or Software.
 - 10.4.2. Not to engage in any activity that exploits, harms or threatens to harm children.
 - 10.4.3. Not to send spam or engage in phishing. Spam is unwanted or unsolicited bulk email, postings, contact requests, SMS (text messages), instant messages or similar electronic communications. Phishing is sending emails or other electronic communications to fraudulently or unlawfully induce recipients to reveal personal or sensitive information, such as passwords, dates of birth, National Insurance Numbers, passport numbers, credit card information, financial information or other sensitive information, or to gain access to accounts or records, exfiltration of documents or other sensitive information, payment and/or financial benefit.
 - 10.4.4. Not to publicly display or use the Services and Software to share inappropriate content or material (involving, for example, nudity, bestiality, pornography, offensive language, graphic violence or criminal activity) or any content which does not comply with local legislation and/or regulations.
 - 10.4.5. Not to engage in activity that is fraudulent, false or misleading (e.g. asking for money under false pretences, impersonating someone else, manipulating the Services to increase play count, or affect rankings, ratings or comments) or libellous or defamatory.
 - 10.4.6. Not to circumvent any restrictions on access to or availability of the Services.
 - 10.4.7. Not to engage in activity that is harmful to the user, the Services or others (e.g. transmitting viruses, stalking, posting terrorist or violent extremist content, communicating hate speech or advocating violence against others).
 - 10.4.8. Not to infringe upon the rights of others (e.g. unauthorised sharing of copyrighted music or other copyrighted material, resale or other distribution of photographs).

- 10.4.9. Not to engage in activity that violates the privacy or data protection rights of others.
- 10.4.10. Not to assist others to break these rules.

11. FAIR USE

- 11.1. BarnOwl's products offer a multi-tenant service. This means that BarnOwl's products are used concurrently by a number of Organisations and Users. If a single Organisation places very high demands on the service, then it is possible that this will affect the experience for other users.
- 11.2. The vast majority of Organisations use this service considerably and usage levels during peak hours don't disproportionately affect the shared network and service capacity. Even though only a very small number of Organisations may use the service inappropriately, their activity has the potential to affect the service for others. This clause manages the inappropriate use and makes sure the service can be used fairly by everyone.
- 11.3. Usage of BarnOwl products is monitored on a continuous basis. Only customers that consistently generate exceptionally high load over a sustained period of time will be affected by this Clause. This is currently defined as per the limits detailed below, although BarnOwl reserves the right to amend these limits from time to time.
 - 11.3.1. This Fair Use Clause covers the use of BarnOwl products
 - 11.3.2. Fair Usage of the product means not exceeding the 100Gb of storage or transaction volumes (create / update / delete / upload) in excess of 10,000 per month.
 - 11.3.3. If an Organisation or its Users repeatedly exceeds its fair usage, BarnOwl reserves the right to restrict service or levy charges for excessive usage

12. ORGANISATION'S OBLIGATIONS

The Organisation shall:

- 12.1. provide BarnOwl with:
 - 12.1.1. all necessary co-operation in relation to these Terms and Conditions of Use; and
 - 12.1.2. all necessary access to such information as may be required by BarnOwl in order to render the Services, including but not limited to personal information required to register an account.
- 12.2. comply with all applicable laws and regulations with respect to its activities under these Terms and Conditions of Use;
- 12.3. ensure that the Users use the Services and the Software in accordance with these Terms and Conditions of Use; and
- 12.4. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to BarnOwl's Services and Software.

13. SUPPORT SERVICES AND SOFTWARE MAINTENANCE

- 13.1. BarnOwl shall be entitled, in its own discretion, to make the Software and Services temporary unavailable for scheduled maintenance and shall endeavour to communicate the timing of the scheduled maintenance to the customer at least 12 (twelve) hours before it is scheduled to occur.
- 13.2. BarnOwl reserves the right to conduct emergency maintenance and upgrades to the Software and Services as needed, and an Organisation's inability to use the Software and Services due to any unforeseen or emergency maintenance shall not be considered a breach of these Terms and Conditions of Use by BarnOwl.
- 13.3. Organisations may seek support by emailing support@barnowl.co.za.
- 13.4. BarnOwl will do its best to help with and provide support in respect of any technical or other difficulties with the Software or Services, however BarnOwl does not warrant or promise in any way that it will be able to solve any requests for support or queries and reserves the right to refer the party requesting the support to appropriate third parties should the support to be provided fall within that third party's own support policy. BarnOwl will not be held liable for the fulfilment of any third party's support policies or procedures.

14. SITE MANAGEMENT

- 14.1. BarnOwl reserve the right, but not the obligation, to:
 - 14.1.1. monitor the Site for violations of these Terms and Conditions of Use,
 - 14.1.2. take appropriate legal action against anyone who, in its sole discretion, violates the law or these Terms and Conditions of Use, including without limitation, reporting such user to the relevant law enforcement authorities,
 - 14.1.3. in its sole discretion and without limitation, refuse, restrict access to, limit the availability of, or disable (to the extent technologically feasible) any of the Organisations documents or data uploaded or any portion thereof,
 - 14.1.4. in its sole discretion and without limitation, notice, or liability, to remove from the Site or otherwise disable all files and content that are excessive in size or are in any way burdensome to our systems,
 - 14.1.5. otherwise manage the Website, and Software and/or Services in a manner designed to protect its rights and property and to facilitate the proper functioning of the Website, or the Services and/or Software.
 - 14.1.6. Modify or terminate the whole or a part of the Website or the Services and/or Software at any time.

15. WARRANTIES BY THE ORGANISATION

- 15.1. The Organisation warrants that:
 - 15.1.1. Any information provided by it or any of its Users to use the Services, including Personal Information, shall be true, accurate, correct, up-to-date, and relevant to the party to whom it relates.

- 15.1.2. It will comply and ensure compliance by any User with these Terms and Conditions of Use.
- 15.1.3. That it will not provide information, which is fraudulent, misleading, or designed in any way to create a false impression in respect of the subject to which it relates.

16. CHARGES AND PAYMENT

- 16.1. The Organisation shall pay the Subscription Fees to BarnOwl monthly, in advance, on or before the date that their current subscription expires. i.e. If the Organisation first subscribes on 15th of January, payment for the next subscription will be due on or before the 15th of February.
- 16.2. Payment shall be made by way of a secure third-party payment gateway and is the responsibility of the Organisation. BarnOwl does not directly receive payment from the Organisation, but rather makes use of the services of a secure third-party payment gateway to collect the Subscription Fee.
- 16.3. If BarnOwl has not received payment within 2 business days after the due date;
 - 16.3.1. BarnOwl will notify the Organisation that payment is outstanding, and
 - 16.3.2. If payment is not received within 2 business days after the notification in terms of 16.4.1, BarnOwl shall be entitled to disable the Organisation's Account and Password.
- 16.4. In the event that an Organisation's account is disabled for non-payment, that Organisation shall have a further 3 business days to rectify payment, failing which the Organisation's Account shall be logged for deletion, and these Terms and Conditions of Use shall be terminated in accordance with Clause 24.
- 16.5. The Subscription Fee payable may be amended or changed in the sole discretion of BarnOwl. Any pricing changes shall be communicated to the Organisation, via the Responsible Person, at least 30 (thirty) calendar days before the changes will take effect.

17. DISPUTE RESOLUTION

Any dispute arising from or in connection with this Contract, and which cannot be resolved by informal negotiation, shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator appointed by the Foundation.

18. INTELLECTUAL PROPERTY

The Organisation acknowledges and agrees that BarnOwl and/or its licensors own all Intellectual Property Rights in and to the Services and the Software. Except as expressly stated herein, these Terms and Conditions of Use does not grant the Organisation any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other Intellectual Property Rights, or licences in respect of the Services or the Software.

19. DATA PRIVACY AND PROTECTION

- 19.1. The Organisation shall own all rights, title, and interest in and to all of the Organisation Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Organisation Data.
- 19.2. The treatment and use of the Organisation's Organisation Data shall be in accordance with BarnOwl's Privacy Policy, accessible in the footer in <https://cloud.barnowl.co.za>

20. CONFIDENTIALITY

- 20.1. Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under these Terms and Conditions of Use. A Party's Confidential Information shall not be deemed to include information that:
 - 20.1.1. is or becomes publicly known other than through any act or omission of the receiving Party;
 - 20.1.2. was in the other Party's lawful possession before the disclosure;
 - 20.1.3. is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;
 - 20.1.4. is independently developed by the receiving Party, which independent development can be shown by written evidence; or
 - 20.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 20.2. Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of these Terms and Conditions of Use.
- 20.3. Each Party shall take all reasonable steps to ensure that the other Party's Confidential Information to which it has access, is not disclosed, or distributed by its employees or agents in violation of the terms of these Terms and Conditions of Use.
- 20.4. BarnOwl will only be able to access, edit, amend, or in any other manner change any data uploaded to its Software Platform in order to debug data issues and ensure that the Services and Software are working properly. BarnOwl will never access, edit, amend or in any other manner change any data uploaded to the Software Platform, other than as set out in these Terms and Conditions of Use.
- 20.5. To the extent that any additional terms and conditions apply to Confidential Information insofar as it relates to Microsoft Azure, or any third party engaged to allow BarnOwl to provide the Services and Software, it is the responsibility of the Organisation to familiarise themselves with these terms and conditions.

21. LIMITATION OF LIABILITY

- 21.1. EXCEPT TO THE EXTENT PROHIBITED BY ANY PREVAILING LAW APPLICABLE IN THE REPUBLIC OF SOUTH AFRICA, IN NO EVENT WILL BARNOWL OR ITS DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO THE ORGANISATION OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT, LOST REVENUE, LOSS OF DATA, OR OTHER DAMAGES ARISING FROM THE ORGANISATION'S USE OF THE WEBSITE AND SOFTWARE AND/OR SERVICES, EVEN IF BARNOWL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

22. INDEMNIFICATION

The Organisation shall indemnify, and hold BarnOwl (including our subsidiaries, affiliates, and all of our respective officers, agents, partners, and employees) harmless from and against any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of: (1) User Data uploaded onto the platform; (2) use of the Website and Software and/or Services; (3) breach of these Terms and Conditions of Use; (4) any breach of the Organisation's representations and warranties set forth in these Terms and Conditions of Use; (5) any violation of the rights of a third party by the Organisation, including but not limited to intellectual property rights; or (6) any overt harmful act toward any other user of the Site with whom the Organisation is connected via the Software and/or Services.

23. TERM AND TERMINATION

- 23.1. These Terms and Conditions of Use shall commence on the Effective Date and shall continue either on a month-to-month basis or for a period of 12 (twelve) months from the date on which the Account is registered, depending on the nature of the Organisation's subscription (i.e. monthly or annual).
- 23.2. In the event that the Organisation does not make payment of the Subscription Fee and does not remedy such non-payment in accordance with the provisions of Clause 10 of these Terms and Conditions of Use, these Terms and Conditions of Use shall immediately be terminated.
- 23.3. On termination of these Terms and Conditions of Use for any reason:
- 23.3.1. all licences granted under these Terms and Conditions of Use shall immediately terminate; and
 - 23.3.2. **the Organisation's account shall be logged for deletion, and the Organisation shall have 30 days within which to remove all Documentation and Organisation Data uploaded to BarnOwl's Cloud, after which time all Documentation and Organisation Data uploaded to the Organisation's Account shall be permanently and irrevocably deleted. During this period, the Organisation will only be able to remove and download its documentation and will not be able to make use of the Services in any other manner, including to upload Documentation to its Account.**

- 23.4. in the event that an Organisation's Account is terminated at any point during a particular month, the Organisation shall be entitled to a pro rata refund of any Subscription Fee paid by it in respect of annual subscriptions (excluding the balance of the month in which termination occurs), but Organisations who are subscribing on a month-to-month basis shall not be entitled to a pro-rata refund in respect of that months' subscription fee.

24. FORCE MAJEURE

BarnOwl shall have no liability to the Organisation under these Terms and Conditions of Use if it is prevented from or delayed in performing its obligations under these Terms and Conditions of Use, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of BarnOwl or any other party), failure of a utility service or transport or telecommunications network, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Service Providers or sub-contractors, provided that the Organisation is notified of such an event and its expected duration.

25. WAIVER

- 25.1. A waiver of any right under these Terms and Conditions of Use is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given.
- 25.2. Unless specifically provided otherwise, rights arising under these Terms and Conditions of Use are cumulative and do not exclude rights provided by law.

26. SEVERANCE

- 26.1. If any provision (or part of a provision) of these Terms and Conditions of Use is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force.
- 26.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

27. ENTIRE AGREEMENT

- 27.1. These Terms and Conditions of Use, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 27.2. Each of the Parties acknowledges and agrees that in entering into these Terms and Conditions of Use it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Terms and

Conditions of Use or not) relating to the subject matter of these Terms and Conditions of Use, other than as expressly set out in these Terms and Conditions of Use.

28. ASSIGNMENT

- 28.1. The Organisation shall not, without BarnOwl's prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms and Conditions of Use.
- 28.2. BarnOwl may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms and Conditions of Use.

29. NOTICES

- 29.1. The Organisation chooses the Email address provided in the registration process, as its address to which it shall receive any notices, communications, correspondence or other notifications in terms of these Terms and Conditions of Use and its use of the Services and/or Software.
- 29.2. BarnOwl's email address for any notices, communications, correspondence or other notifications in terms of these Terms and Conditions of Use and its use of the Services and/or Software shall be support@barnowl.co.za

30. GOVERNING LAW AND JURISDICTION

- 30.1. These Terms and Conditions of Use and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of South Africa.
- 30.2. The Parties irrevocably agree that the High Court of South Africa has exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms and Conditions of Use or its subject matter or formation (including non-contractual disputes or claims).

31. EXECUTION IN COUNTERPARTS

- 31.1. By clicking "Accept" and by its continued use of the Services and/or Software, the Organisation shall validly execute these Terms and Conditions of Use and shall indicate their acceptance of and intention to be bound by the terms and conditions of these Terms and Conditions of Use.