

1. INTRODUCTION

These General Terms and Conditions – Subscription Agreement (“General Terms and Conditions”) apply between Barium AB (“Barium”) and Barium’s customer (“the Customer”), and govern the Customer’s use of Barium Live, (“the Service”).

The Customer accepts and is bound by the General Terms and Conditions through signing an Order or by accepting the General Terms and Conditions in some other way in connection with the utilisation of the Service.

2. DEFINITIONS

In this Agreement, the definitions given below have the following meanings:

“*Agreement*” means an Order as well as these General Terms and Conditions including appendices.

“*Controller*” means the entity which determines the purposes and means of the processing of personal data as defined in the GDPR.

“*Data Protection Laws and Regulations*” means all laws and regulations applicable on the Agreement, including but not limited to the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, (General Data Protection Regulation, “GDPR”).

“*Documentation*” means information which describes the Service in various media, including on the Website.

“*DPA*” means the Data Processing Agreement between Customer as Controller and Barium as Processor as set out at <https://www.barium.se/en/terms>

“*Intellectual Property Rights*” means all forms of intellectual property and industrial rights such as copyright, database rights, source code, patents and patentable inventions, registered and unregistered trademarks, know-how (irrespective of whether this can in itself constitute a patentable invention or not), and registered and unregistered designs.

“*Order*” means the order document or equivalent in which, inter alia, the number of Users, prices and other Customer-specific terms and conditions are set out.

“*Period of the Agreement*” shall have the meaning shown in section 12.

“*Processor*” means the entity which processes personal data on behalf of the Controller as defined in the GDPR.

“*The Service*” means the cloud service available at any time and the associated software which is provided to the Customer within the framework of the Agreement. The Service is provided through various forms of subscription, the details of which are given on the Website.

“*User*” means a private individual, or a technical systems user, who utilises the Service directly or indirectly via another system or application.

“*Website*” means www.barium.se/

3. SERVICE SUBSCRIPTION TERMS AND CONDITIONS

3.1 Barium hereby grants the Customer, on receipt of the subscription fee in accordance with the Agreement, a non-exclusive, non-transferable right to use the Service to the extent and for the period (“Period of the Agreement”) set out in the Agreement. Barium reserves the right during the Period of the Agreement to supply new and updated versions of the Service, with respect both to functionality and appearance.

3.2 Barium hereby gives the Customer a right to permit the agreed number of Users to utilise the Service, and to the agreed storage space. The Customer has the right at any time to expand the number of Users or add additional functionality and storage space within the framework for the Service on the terms and conditions set out in the Agreement. It is not permitted to reduce the number of Users during the Period of the Agreement. If the Customer should exceed the permitted utilisation of the Service as set out in the Agreement, Barium has the right to charge a special fee for such over-utilisation. This charge amounts to 125 percent of the standard fee per User and per unit of storage space.

3.3 Barium has the right to amend these General Terms and Conditions. The Customer shall be informed of any such amendments through a notification via e-mail or via the Website. The Customer shall be regarded as having received the notification at the latest two (2) weeks from the date on which the notification was sent by e-mail or announced on the Website. If the change has an appreciable adverse effect on the Customer, the Customer has the right to terminate the Agreement within thirty (30) days of the date on which the notification was regarded as having been received in accordance with the above. If the Customer does not terminate the Agreement within the period stipulated above, the Customer shall be regarded as having accepted the new General Terms and Conditions.

3.3 Barium has the right to use subcontractors to provide the Service. Barium is responsible for the subcontractor to the same extent as if the work had been carried out by Barium itself.

4. USE OF LOG-ON INFORMATION

4.1 The user information, passwords and API keys used to obtain access to the Service are to be regarded as valuable documents, and, if they are noted down, must be stored in a secure manner so that unauthorised individuals cannot gain access to the Service. The Customer's right to use the Service presupposes that, at all times, the Customer has registered valid e-mail addresses which belong to the Customer.

4.2 The Customer is responsible for all use of the Service attributable to the Customer's subscription. Barium has the right to treat all use of the Service with the Customer's User information as authorised use by the Customer or by a person with the Customer's consent, irrespective of whether such use leads to expense for the Customer. The Customer shall inform Barium in writing without delay if the Customer suspects that an unauthorised person has obtained access to the Service or the Customer's password.

5. AVAILABILITY

5.1 Barium shall use its best endeavours to ensure that the Service is free from malware and is accessible for the Customer's use 24 hours a day on every day of the year. Barium has the right to take whatever action it deems appropriate and which may affect the above availability, whenever such measures are necessary for technical, maintenance or security reasons. Barium shall, as far as possible, inform the Customer when a shut-down of this type is to take place. The Customer does not have the right to compensation in the event of lack of access as a result of any such measures taken. Nor is Barium liable for lack of access as a result of interruptions or communication problems on the Internet or other private and public networks, or problems with the Customer's own equipment which is used to obtain access to the Service.

6. RESTRICTIONS

6.1 The Customer's right to use the Service includes no rights other than those specified in the Agreement.

6.2 The Customer is not entitled to;

- a. use the Service for purposes other than those intended in accordance with the Documentation;
- b. transfer, sub-licence or in any other way provide, permit or utilise the Service for use by a third party, e.g. through time-sharing, as a service or otherwise;
- c. assert that the Service is the Customer's property; or carry out, cause, permit or authorise modification, translation, reverse engineering, decompiling, deconstructing or hacking of the Service, introduce viruses, Trojan horses or other damaging or undesired codes (malware) into the Service. In addition, the Customer does not have the right to generate a disproportionately large number of calls to the Service, relative to the Customer's normal use over a three-month period, or relative to the agreed number of calls, or otherwise take or fail to take action which may impede or limit the use of the Service by third parties or exceed the technical limits which apply to the Service.

7. SUPPORT AND MAINTENANCE

7.1 Barium updates and takes continuing fault rectification measures in respect of the Service.

7.2 Barium provides a helpdesk for the Service by telephone or e-mail through Barium's Customer Centre to deal with questions relating to the day-to-day use of the Service.

7.3 The helpdesk is staffed to handle questions during ordinary business days and during Barium's normal office hours in Sweden. Contact details and further information are provided on the Website.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights and all other rights in or in respect of the Service and the software incorporated therein belong to Barium or, where appropriate, Barium's licensor.

8.2 Nothing in the Agreement shall constitute an assignment or transfer of any Intellectual Property Rights or other rights in the Service and the software incorporated therein to the Customer. The data which the Customer processes and which is generated by the Service as a consequence of the Customer's use of the Service, shall, however, be owned by the Customer without restriction. It is the obligation of the Customer to ensure that it possesses the necessary back-up copies of data belonging to Customer. Barium has the right to use the Customer's data only to the extent required to fulfil its obligations under the Agreement. Barium also has the right to use, without limitation, information in aggregated level relating to the processes functions, performance, capacity and other statistics or similar information based on the processing of the Customer's data on the Service.

8.3 Barium guarantees that the use of the Service in accordance with the Agreement does not constitute an infringement of any other party's Intellectual Property Rights. If the Customer receives a claim from a third party asserting that the Service constitutes an infringement of that third party's Intellectual Property Rights, Barium shall indemnify the Customer, provided that (i) the Customer informs Barium immediately that a claim has been received, (ii) that Barium is given full control and decision-making rights in respect of the defence against or negotiation of the claim, (iii) that the Customer has not given any form of consent, entered into any form of agreement or otherwise affected Barium's ability to defend or negotiate an arrangement in respect of the claim, and (iv) that the Customer provides reasonable assistance in Barium's defence or negotiation in respect of the claim.

8.4 In the event that a claim in accordance with section 8.3 arises, or if Barium considers that there is a risk that such a claim may arise, Barium has the right (i) to obtain a licence or other right for the Customer to continue to use the Service, (ii) to change the Service in such a way that the Service can no longer be regarded as constituting an infringement, or, if neither (i) nor (ii) can be achieved on terms which Barium considers reasonable, (iii) to terminate the Agreement with immediate effect and to prevent the Customer from using the Service. In that case, the Customer does not have a right to any special compensation as a result of the termination of the Agreement. In the event that the Agreement is terminated in accordance with (iii) above, the Customer has the right to receive part of the pre-paid subscription fee or, if appropriate, support fee in respect of the period during which it will not be possible to utilise the Service.

9. SUBSCRIPTION FEE

9.1 For the use of the Service by the Customer, the Customer shall pay the subscription fee specified in the Order.

9.2 The subscription fee shall be paid in advance against invoice, or by a secure Internet payment service for credit cards. Payment must be received by Barium no later than thirty (30) days from the invoice date.

9.3 In the event that payment is delayed, interest on overdue payments will be payable under the provisions of the Interest Act (1975:635) on outstanding amounts until full payment is received. In the event that the payment is delayed by more than thirty (30) days, Barium has, in addition, the right to block the use of the Service by the Customer, five (5) days after notifying the Customer, until full payment is received, or to terminate the Agreement with immediate effect.

9.4 All prices and fees are ex VAT and exclude other additional taxes and charges.

9.5 Barium has the right, (i) at the expiry of each twelve (12) month period, to adjust the agreed prices upwards by a maximum of two (2) percent, and (ii) at each renewal of the Period of the Agreement in accordance with section 12.2, to adjust the agreed prices upwards by a maximum of five (5) percent.

10. LIABILITY AND LIMITATION OF LIABILITY

10.1 Barium guarantees that the Service will, on the whole, function in accordance with the documentation and what has been specified in the Agreement.

10.2 If the Customer wishes to claim that there are defects or deficiencies in the Service, the Customer must inform Barium of this in writing as soon as the defect or deficiency is discovered. Barium's liability for defects which cannot be regarded as insignificant is limited to carrying out corrective action so that the Service is brought back into conformity with the Agreement within a reasonable period of time.

10.3 In the event that Barium is in material breach of the Agreement, the Customer has the right to compensation for direct losses suffered by the Customer in connection with the breach of the Agreement. Barium's liability under the Agreement is limited to an amount equal to the annual fee paid for the Service immediately prior to the action which caused the damage. Indirect losses, such as loss of profits or loss of savings, consequential losses, data losses or similar losses are not compensated, provided that the loss did not arise as a result of gross negligence or intent on Barium's part.

10.4 The Customer shall indemnify Barium against every claim directed against Barium from third parties as a result of the Customer's utilisation of the Service.

11. PERSONAL DATA PROCESSING

11.1 In order for the Customer to be able to use the Services, the Customer and Users must provide certain data to Barium regarding the Customer's representatives, including but not limited to full name, e-mail address, contact details and type of organisation. Following receipt of such data, Barium will process the same using automatic data processing in order to enable Barium to administer and otherwise perform its obligations within the scope of the Services. In addition, in order for the Customer to be able to use the Services, the Customer must also allow Barium to store and retrieve session information on the Customer's representatives' and User's end terminal equipment, through the use of "cookies".

11.2 Customer shall when considered to be the Controller, in its use of the Services, process personal data in accordance with the requirements of Data Protection Laws and Regulations. Customer shall in such event has the sole responsibility for the accuracy, quality, and legality of personal data and the means by which Customer acquired personal data.

11.3 If Barium is considered to be a Processor to Customer, Barium shall fulfil its obligations as a Processor in accordance with the Swedish Personal Data Act and, as from May 25, 2018 the GDPR, and will furthermore accept such assignment based on the instructions, terms and conditions in the DPA (<https://www.barium.se/en/terms>) which hereby forms an integrated part of this Agreement.

11.4 Barium's information gathering and dissemination practices in addition to what is set out above are set forth in the Privacy Statement applicable from time to time, which is available on the Web Site.

12. PERIOD OF THE AGREEMENT AND NOTICE OF TERMINATION

12.1 The Agreement comes into force (i) when the Customer logs-on to the Service for the first time, (ii) when the Customer pays the Service fee, using a credit card, or (iii) when the Customer signs an Order. The Agreement runs thereafter for the period specified in the Order or otherwise or, if no period is specified, until further notice.

12.2 Each Party has the right to give written notice of termination of the Agreement on the expiry of the Period of the Agreement. Such notice of termination must be given no later than thirty (30) days before the expiry of the Period of the Agreement. In the event that no notice of termination is given, the Agreement is extended, without further action, by twelve (12) months at a time. Notice of termination must be given no later than thirty (30) days before the expiry of each extended period.

12.3 Either Party has the right to terminate the Agreement with immediate effect if:

1. the other Party is guilty of material breach of the Agreement, in which context a breach of section 6.2 must always be regarded as a material breach of the Agreement, and the breach of the Agreement is not fully rectified within thirty (30) days from the date on which the Party in breach receives written notice from the other Party with a request that corrective action is taken;
2. the other Party suspends payments, resolves on voluntary or involuntary liquidation, applies for a company reorganisation or bankruptcy (or if a third party applies for that Party to be declared bankrupt) or if the Party can otherwise be regarded as insolvent.

12.4 In the event of a breach of section 6.2, Barium has the right, in addition to other sanctions, to block or limit the Customer's access to the Service until this is rectified, or, if it is not rectified, until the termination of the Agreement.

12.5 On the termination of the Agreement, all parts of the Customer's right to utilise the Service also terminates.

13. FORCE MAJEURE

13.1 A Party is exempt from sanctions for failure to fulfil certain obligations under the Agreement if the failure is due to any circumstance which is outside the Party's control and which the Party could not reasonably have foreseen or avoided, such as war, actions by the authorities, new or amended legislation, industrial action, restrictions on trade or currencies, blockade, fire, flood or similar circumstance, as well as defects or delays in deliveries from subcontractors.

13.2 It is incumbent upon the Party who wishes to cite grounds for exemption under this section to inform the other Party without delay that such a circumstance has arisen, and when it ceases.

13.3 Irrespective of the provisions on exemption from sanctions in this section, a Party has the right, without sanction, to terminate this Agreement with immediate effect in writing to the other Party if the fulfilment of a significant obligation under this Agreement is delayed by more than three months.

14. GENERAL

14.1 Neither of the Parties has the right, in whole or in part, to transfer or pledge its rights and/or obligations under the Agreement without the written consent of the other Party. Barium, however, has the right to transfer its receivables from the Customer to a third party.

14.2 All communications under the Agreement shall be sent by courier or registered letter to the recipient Party's last known address, and by telefax or e-mail. Communications shall be regarded as having been received by the recipient

1. if delivered by courier: on delivery;
2. if sent by registered letter: two days after being handed in for forwarding by post;
3. if sent by telefax: on transmission if receipt is duly confirmed by the recipient; and
4. if sent by e-mail: on transmission if receipt is duly confirmed by the recipient.

14.3 Barium undertakes not to disclose to any third party, or otherwise make available, information received by Barium from the Customer within the scope of the Agreement. Furthermore, any other information received by a party that in any way relates to the other party, including but not limited to any business, financial, scientific, intellectual property, customer or potential customer related, technical or operational information shall be considered confidential and shall not be disclosed to any third party. The above confidentiality obligations shall not apply to such information as a party can demonstrate became known to that party other than pursuant to this Agreement or which is in the public domain. Nor shall

the duty of confidentiality apply where a party is obligated to provide information pursuant to legal provisions, public authority regulations or court orders.

14.4 The contact person specified for the Customer in the Order is authorised to represent the Customer in all matters concerning the Agreement including agreeing on changes and amendments to the Agreement.

14.5 If any provision in the Agreement or part thereof should be found to be invalid, this shall not mean that the Agreement in its entirety is invalid, but that, if such a case does arise, to the extent that the invalidity significantly affects a Party's benefit from or performance under the Agreement, a reasonable adjustment of the Agreement shall be carried out.

14.6 Barium has the right, for marketing purposes, to mention the Customer as a reference.

15. DISPUTES AND APPLICABLE LAW

15.1 Swedish law shall apply to the Agreement.

15.2 Disputes arising from the Agreement shall be finally settled through arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). The Institute's Rules for Expedited Arbitration shall apply unless SCC, in consideration of the degree of complexity of the case, the value of the matter at issue and other circumstances decides that the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply to the proceedings. In this last-named case, SCC shall also determine whether the arbitral tribunal shall consist of one arbitrator or three arbitrators.

15.3 Notwithstanding section 15.2, Barium shall have the right at all times to enforce the payment of overdue receivables through a Court of general jurisdiction.