

## Definitions

<b>BarnData</b>	BarnData Ltd, a company registered in England No 5893579, whose registered address is Well End Barn, Friday Bridge, Wisbech PE14 0HQ, United Kingdom
<b>FormsFly</b>	A brand belonging to BarnData and covering mobile forms applications
<b>FormsFly Mobile App</b>	an application available for iOS and Android mobile devices and supplied by BarnData.
<b>FormsFly Web Admin Platform</b>	a web-based administration platform, available online via the Account Login button on the FormsFly.com website, or via <a href="http://secure.FormsFly.com">http://secure.FormsFly.com</a>
<b>The Client</b>	Any company or organisation which makes use of the FormsFly Mobile App or the FormsFly Web Admin Platform.
<b>Start Date</b>	The date, mutually agreed in writing between The Client and BarnData, on which The Client may begin to use the the FormsFly Mobile App or the FormsFly Web Admin Platform on a non-trial basis.
<b>Termination Date</b>	The date, supplied to The Client by BarnData, on which The Client's licenced use of the FormsFly Mobile App or the FormsFly Web Admin Platform will cease. This date will be determined as per section 7 of these terms and conditions.

## Summary

**These terms and conditions are supplied to every Client in advance of the **Start Date**. Use of the **FormsFly Mobile App** or the **FormsFly Web Admin Platform** will be construed as acceptance of these terms and conditions.**

### 1. Licenses; Resale; Ownership

#### (a) FormsFly Web Admin Platform License Grant.

Subject to these terms and conditions, including payment of all monthly fees by **The Client** and until Termination as set out in section 7, **BarnData** grants to **The Client** a worldwide, nonexclusive, non-transferable license to use the **FormsFly Web Admin Platform**, in object code form only, for **The Client's** own business purposes, but excludes any sublicensing, uploading or otherwise transferring **FormsFly Web Admin Platform** access to any other third party without **BarnData's** prior written consent, including access by any third party to the **FormsFly Web Admin Platform**.

#### (b) FormsFly Mobile App Runtime License Grant.

Subject to these terms and conditions, including payment of all monthly fees by **The Client** and until Termination as set out in section 7, **BarnData** grants to **The Client** a worldwide, nonexclusive, non-transferable license to use the **FormsFly Mobile App**, in object code form only, for **The Client's** own business purposes, but excludes any sublicensing, uploading or otherwise transferring **FormsFly Mobile App** access to any other third party without **BarnData's** prior written consent, including access by any third party to the **FormsFly Mobile App**.

#### (c) Resale Exclusion.

No resale rights are granted herein and **The Client** may NOT further resell the **FormsFly Web Admin Platform**, nor the **FormsFly Mobile App Runtime**.

(d) Ownership.

BarnData reserves all rights in and pertaining to the [FormsFly Web Admin Platform](#) and [FormsFly Mobile App Runtime](#), except those expressly and explicitly granted in these terms and conditions.

(i) Without limiting the generality of the foregoing, except as expressly provided for in paragraph 1(a),1(b) and 1(c), [The Client](#) may not directly or indirectly or through any third party (a) transfer or sublicense, in whole or part, any copies of the [FormsFly Web Admin Platform](#) or [FormsFly Mobile App Runtime](#) to any third party; (b) modify, decompile, reverse engineer, or otherwise attempt to access the source code of the [FormsFly Web Admin Platform](#) or [FormsFly Mobile App Runtime](#); or (c) copy the [FormsFly Web Admin Platform](#), except such copies as necessary for reasonable and customary back-up and disaster recovery purposes. [The Client](#) will not delete or alter the copyright, trademark or other proprietary rights notices of [BarnData](#) included with the [FormsFly Web Admin Platform](#) or [FormsFly Mobile App Runtime](#) as delivered to [The Client](#), and will reproduce such notices on all copies of the [FormsFly Web Admin Platform](#). If derivative works of the [FormsFly Web Admin Platform](#) or [FormsFly Mobile App Runtime](#) are prepared by or on behalf of [BarnData](#) based on suggestions and/or requests by [The Client](#), [BarnData](#) will solely own such modifications.

(ii) [BarnData](#) acknowledges that [The Client](#) may develop software components, documentation and other artefacts that interface with or are otherwise intended for use with the [FormsFly Web Admin Platform](#) and [FormsFly Mobile App Runtime](#). Insofar as such works do not infringe any intellectual property rights of [BarnData](#), [BarnData](#) acknowledges that it shall have no rights in any such components, documents or artefacts unless otherwise agreed in writing between the two parties.

## 2. Fees

(a) User License Fees.

Each user of the [FormsFly Mobile App Runtime](#) will need to be registered under the [The Client's](#) account on the [FormsFly Web Admin Platform](#). Each such user shall be subject to a [BarnData](#) user licence fee. User license fees will be charged at the rates and terms set forth in Appendix B.

(i) Monthly Licences

Monthly licences may be purchase online or by contacting [BarnData](#). Additional licences may be purchased at any time in the same manner. The number of "active" user licenses is calculated by summing the highest number of users that were registered to [The Client's](#) account during the calendar month. These users must have been in an "active" status at least once during the calendar month. [The Client](#) may, if paying monthly, activate and deactivate users via the [FormsFly Web Admin Platform](#), by viewing the user account in question and clicking on the "Activate" or "Deactivate" button as required.

(ii) Annual Licences

Where [The Client](#) is contracted for annual payment, those licences are purchased in advance and further additional annual user licences may be purchased at any time by contacting [BarnData](#). Users on an annual licence may be deactivated by the client at any time, or replaced with an alternative user for the remaining duration of the agreement. However, no partial refunds will be offered by [BarnData](#) to annually licenced [Clients](#) for unused periods.

(b) Invoicing and Payment.

(i) Monthly Licences

Monthly licences are payable monthly in advance. [BarnData](#) will promptly submit monthly invoices for fees to [The Client](#). Under normal circumstances, payment will be collected from [The Client](#) by [BarnData](#) by either Direct Debit or Recurring Credit/Debit Card Charge. Where such payment methods fail, [The Client](#) shall pay [BarnData](#) by other means, no later than the due date of the invoice. Any discrepancy between what was billed at the start of a month and the actual number of “active” users in that month will be rectified by [BarnData](#) submitting either a credit note and refund or a supplementary invoice, as appropriate.

(ii) Annual Licences

Annual licences are payable annually in advance. [BarnData](#) will promptly submit annual invoices for fees to [The Client](#). [The Client](#) shall pay [BarnData](#) by a mutually agreed payment method, no later than the due date of the invoice.

(c) Fee Review.

The fees and rates outlined in Appendix B shall apply as at the date shown in that Appendix. On or around the 1st of April each year, [BarnData](#) may at its discretion amend the fees defined in Appendix B, by giving not less than 30 days written notice to [The Client](#). Any resulting increases to fees will not exceed ten percent (10%) of the current fee at time of review.

### **3. Support**

(a) Maintenance and Support Services.

[BarnData](#) will perform the maintenance and support services described in Appendix A. Any additional support services required by [The Client](#) must be agreed separately.

(i) Support issues that are directly related to a defect in the [FormsFly](#) software that prevents it from functioning in substantial conformity with its documentation will not be chargeable by [BarnData](#).

(ii) Support issues that are directly related to a function or feature in the [FormsFly](#) software that is not as described in its documentation will not be chargeable by [BarnData](#).

(iii) [BarnData](#) will respond to any request by [The Client](#) for maintenance and support services within one business day. [BarnData](#)'s business hours are 9:00am to 5:00pm (United Kingdom time), Monday to Friday, excluding UK recognized public holidays ("Standard Business Hours"). [BarnData](#) does not guarantee support outside of these hours, but on request may negotiate additional support cover with [The Client](#) on a case-by-case basis.

(iv) Maintenance and support services are at all times offered on a “Best Endeavours” basis and no warranty or guarantee can be made or given that all maintenance and support issues advised by [The Client](#) shall be capable of total remedy. Failure to remedy any such maintenance or support issue shall not reduce or otherwise offset the liability of [The Client](#) to pay any charges relating to such maintenance and support services.

## 4. Relationship

### (a) Relationship.

The Client and BarnData are independent entities and use of the FormsFly software will not establish any relationship of partnership, joint venture, employment, franchise, or agency between them. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Both parties agree to act reasonably and with good faith towards each other in accordance with The Client's use of the FormsFly software.

## 5. Warranty

### (a) Limited Warranty.

BarnData warrants that the FormsFly Web Admin Platform and FormsFly Mobile App Runtime will function in all material respects in compliance with its accompanying documentation. If the FormsFly Web Admin Platform or FormsFly Mobile App Runtime exhibits a defect that breaches this warranty, BarnData will use reasonable commercial efforts to correct, cure, replace or otherwise remedy, at BarnData's option, such defect without additional charge to The Client within 30 days after written notification of such defect, provided that such notice is furnished to BarnData during the Warranty Period. The Client agrees to cooperate and work closely with BarnData in a prompt and reasonable manner in connection with BarnData's correction efforts. If despite BarnData's reasonable commercial efforts to cure, replace, or otherwise remedy such warranty-breaching defect, BarnData is unable to resolve the defect at the end of such 30-day period, The Client may immediately terminate their use of the FormsFly as outlined in section 7. The Client's sole remedy for any breach of warranty under this section will be to have BarnData use its reasonable commercial efforts to cure such breach as provided herein.

### (b) Disclaimer.

Except as expressly provided above, BarnData makes no representations or warranties, written, oral, express, implied or statutory, regarding the licensed product, including without limitation warranties of merchantability, non-infringement, fitness for a particular purpose, or that the FormsFly Web Admin Platform and FormsFly Mobile App Runtime will be error-free, timely, secure or uninterrupted. No oral advice or written information given by BarnData, its employees, licensors or agents will create a warranty; nor may you rely on any such information or advice.

## 6. Limitation of Liability

### (a) General Limitation of Liability.

Except as to the confidentiality obligations under section 8, each party will be not liable to the other party under any theory of liability for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the FormsFly Web Admin Platform or FormsFly Mobile App Runtime, including but not limited to reliance on any information obtained on the FormsFly Web Admin Platform or FormsFly Mobile App Runtime; or that result from mistakes, omissions, interruptions, deletion of files or e-mail, loss of or damage to data, errors, defects, viruses, delays in operation or transmission, or any failure of performance, whether or not limited to acts of god, communication failure, theft, destruction or unauthorized access to BarnData records, programs or services. The Client hereby acknowledges that this provision will apply whether or not BarnData is given notice of the possibility of such damages and that this provision will apply to all services available from BarnData and its affiliates. Under no circumstances shall damages include loss of business, or loss of profits, whether based on breach of warranty, product liability, or otherwise, to The Client, BarnData or any third party. The terms of this section shall survive the termination under section 7.

(b) Use in Life Critical Applications.

The Client explicitly acknowledges that the FormsFly Web Admin Platform and FormsFly Mobile App Runtime are not designed or intended for use in Life Critical applications and that BarnData shall not be liable for any direct or indirect loss or damages arising from the use of the FormsFly Web Admin Platform or FormsFly Mobile App Runtime in any Life Critical application(s) and that any use by The Client of the FormsFly Web Admin Platform or FormsFly Mobile App Runtime in Life Critical applications shall be at the sole risk of The Client.

## 7. Termination

(a) Term.

(i) Monthly Licences

For monthly licences, The Client's use of the FormsFly software will be licenced in periods of 1 calendar month, starting from the 1st day of the calendar month in which the Start Date falls. Until and unless terminated as per this section 7, the licence will automatically be renewed on a continual basis, in terms of 1 calendar month.

(ii) Annual Licences

For annual licences, The Client's use of the FormsFly software will be licenced in periods of 1 year, starting from a mutually agreed Start Date. Until and unless terminated as per this section 7, the licence will automatically be renewed on a continual basis, in terms of 1 year.

(b) Licence Termination by The Client.

(i) Monthly Licences

For monthly licences, The Client may initiate termination of their licence to use the FormsFly software at any time by giving 30 days written notice to BarnData. BarnData will acknowledge the request in writing, including the Termination Date.

(ii) Annual Licences

For each annual licence, The Client may initiate termination of their licence to use the FormsFly software at the end of that licence's contracted year by giving 30 days written notice to BarnData. BarnData will acknowledge the request in writing, including the Termination Date.

(c) Licence Termination by BarnData.

(i) Monthly Licences

For monthly licences, BarnData may terminate The Client's licence to use the FormsFly software at any time by supplying 30 days written notice to The Client. Such notice will include the actual Termination Date.

(ii) Annual Licences

For annual licences, BarnData may terminate The Client's licence to use the FormsFly software at the end of the contracted licence year, by supplying 60 days written notice to The Client. Such notice will include the actual Termination Date.

(d) Effect of Termination.

After the **Termination Date**, **The Client** will no longer have access (via any of its user logins) to **FormsFly Mobile App Runtime** and **FormsFly Web Admin Platform**. On such termination, Sections 2, 6, 7(d), 8 and 9 will survive in accordance with their respective terms. **The Client** acknowledges that in the event of such termination, it remains liable for any amounts incurred under Section 2 up to, but not for any time after, the date of termination.

(e) Client's Data at Termination

After the **Termination Date**, and in all circumstances by one calendar month after the **Termination Date**, **BarnData** will delete from its system any and all data held on behalf of **The Client** in the **FormsFly Web Admin Platform**. **The Client** may request and **BarnData** agrees to provide, in advance of the **Termination Date**, an electronic copy of any data held on the account.

## 8. Confidentiality

"Confidential Information" means information that (i) is designated as such in writing by one party ("Disclosing Party") before or when disclosed to the other party ("Recipient") or (ii) Recipient may reasonably be expected to know, based on its nature or the circumstances of its disclosure, is provided in confidence by Disclosing Party for competitive advantage or other benefit. Recipient will not use Disclosing Party's Confidential Information except to perform obligations under these terms and conditions, and will not disclose such Confidential Information to any third party. This Section does not apply to Confidential Information that (a) is or becomes publicly known through no act of Recipient, (b) is in Recipient's possession when disclosed without breach of any legal obligation, (c) is received by Recipient from a third party without that party's breach of any legal obligation, (d) is developed by Recipient without use of Disclosing Party's other Confidential Information, or (e) is disclosed to comply with applicable law or government order; provided Disclosing Party is allowed the opportunity, within law, to contest such disclosure.

## 9. General

(a) Assignment.

Neither party may assign its rights or obligations hereunder without the other party's prior written consent, which will not be unreasonably withheld, delayed or conditioned, and any assignment without such consent shall be void. Notwithstanding the foregoing, either party may assign their rights and obligations under the **FormsFly** software licence without consent to any entity that controls, is controlled by, or is under common control with, the assigning party; provided the assignee is not a competitor of the non-assigning party and agrees in writing to be bound by these terms and conditions. "Control" of an entity means power to elect a majority of such entity's board of directors or other similar governing body.

(b) Governing Law and Jurisdiction.

These terms and conditions will be governed by English Law. Any legal action or proceeding arising from them will be brought exclusively in the English courts and the parties hereby consent to the jurisdiction and venue of such courts.

(c) Severability.

If for any reason any one of these terms and conditions is unenforceable, then that term or condition will be enforced to the maximum extent permissible and the other terms and conditions will remain in full force and effect.

(d) Waiver.

The failure by either party to enforce any one of these terms and conditions will not constitute a waiver of future enforcement of that or any other term or condition.

(e) Notices.

All notices required or permitted under these terms and conditions will be in writing and will be deemed given when delivered in person, delivered by electronic mail or three business days after being mailed by Royal Mail or International certified air mail, first class, postage prepaid (or by reputable courier service with package tracking ability, such as Fed Ex, UPS, DHL, etc.), to such party at the latest address supplied by that party to the other. Each party may change such address by notice to the other party in compliance with this Section.

(f) Force Majeure.

Neither party will be responsible for any failure or delay in its performance under these terms and conditions due to causes beyond its reasonable control, including but not limited to, labour disputes, strikes, lockouts, shortages of or inability to obtain labour, energy, raw materials or supplies, war, riot, act of God or governmental action.

(g) Equitable Relief.

Each party acknowledges that a breach of Section 8 or the scope of the licenses granted under these terms and conditions will cause the other party irreparable injury for which there are inadequate remedies at law, and therefore the non-breaching party will be entitled to seek equitable relief in addition to all other remedies provided herein.

(i) Monitoring of Service.

The Client agrees that BarnData has the right to monitor the FormsFly Web Admin Platform and FormsFly Mobile App Runtime electronically at any time and to disclose any information as necessary to satisfy the law, or to protect itself or its subscribers.

(j) Data and Data Privacy.

The Client authorizes BarnData to hold and process relevant information on The Client for the purpose of administering FormsFly Web Admin Platform accounts. All personal information held by BarnData will be held in compliance with prevailing data privacy legislation.

(k) Entire Agreement.

These terms and conditions, together with the appendices attached hereto, constitute the entire terms and conditions under which BarnData provides its licence to The Client for the FormsFly software, and supersede all prior or contemporaneous agreements or statements relating to such subject matter.

(l) Variation of Terms.

These Terms and conditions may be varied from time to time by BarnData. Any such variation will be communicated to The Client in writing, providing at least two calendar month's notice. If The Client does not agree a particular variation, then The Client must indicate this in writing to BarnData and an attempt will be made to agree a mutually acceptable way forward. If agreement cannot be reached on the matter, then The Client's only remedy will be to terminate their licence according to section 7 above, and to cease use of the FormsFly software before the variation comes into effect.

## **Appendix A – Maintenance and Support Services**

The following terms are defined as follows for purposes of this Appendix:

"ERROR" means a defect in the FormsFly software that prevents it from functioning in substantial conformity with its documentation.

"VERSION" means any commercially released modifications or enhancements to the FormsFly Web Admin Platform or FormsFly Mobile App Runtime which corrects Errors, improves the efficiency or effectiveness of, or adds new functionality to, the FormsFly Web Admin Platform or FormsFly Mobile App Runtime.

### **Maintenance Services**

BarnData will provide the following maintenance services for the most current Version of the FormsFly Web Admin Platform and FormsFly Mobile App Runtime:

- (a) supply a temporary fix or make a diligent effort attempt to make an emergency bypass of a malfunction of the FormsFly Web Admin Platform or FormsFly Mobile App Runtime in accordance with this Section if BarnData diagnoses the problem as a defect in the FormsFly Web Admin Platform or FormsFly Mobile App Runtime that prevents it from functioning in substantial conformity with its documentation;
- (b) provide The Client with any known problem solutions relating to the FormsFly Web Admin Platform or FormsFly Mobile App Runtime as delivered to The Client as such solutions become known to BarnData;
- (c) provide The Client with new Versions of the FormsFly Web Admin Platform and FormsFly Mobile App Runtime as Errors are resolved and new functions or features are developed;

### **Support Services**

BarnData will provide the following support services for the most current Version of the FormsFly Web Admin Platform and FormsFly Mobile App Runtime:

- (a) provide email and voice access to BarnData support resources to assist in resolving FormsFly Web Admin Platform or FormsFly Mobile App Runtime problems.



## Appendix B – Fees

All fees are quoted in **British Pound Sterling (GBP)**, exclusive of UK VAT, chargeable currently at 20%, and any banking or transaction fees where applicable.

These fees are correct as at 1 April 2020.

	Monthly Billing	Annual Billing
<b>“Meal” subscription per user</b>	£9.99 pcm	£110.00 pa
<b>“Feast” subscription per user</b>	£14.99 pcm	£165.00 pa

Discretionary discounts for volume users and charitable or educational establishments may be available. Please contact BarnData direct for details.