



Barrett Technology, LLC Terms and Conditions of Purchase

Barrett's quotation, together with these terms and conditions, and any Statements of Work, attachments and exhibits, specifications, drawings, notes, instructions, and other information, whether physically attached or incorporated by reference (collectively the "Agreement"), constitutes the entire and exclusive agreement between Barrett Technology, LLC ("Barrett") and the customer (the "Customer") identified in the quotation. Barrett's submission of the Agreement is conditioned on Customer's agreement that any terms different from or in addition to the terms of the Agreement, whether communicated orally or contained in any confirmation, invoice, acknowledgement, release, acceptance, or other written correspondence, irrespective of the timing, shall not form a part of the Agreement, even if Supplier purports to condition its acceptance of the Agreement on Barrett's agreement to such different or additional terms. Customer's signature or electronic acceptance of the Agreement constitutes Customer's acceptance of these terms and conditions.

Notwithstanding the foregoing, if Barrett and Customer have previously entered into a signed agreement covering procurement of the Products or Services described in the Agreement, or any aspect thereof (such as payment terms), the terms of such agreement shall prevail over any inconsistent terms herein.

1. DEFINED TERMS.

Capitalized terms shall have the following meanings or, if not defined in this Section 1, the meanings assigned to them in the other sections of the Agreement:

"Activation" unless otherwise indicated in an Order Form, means when Barrett enables Customer's operational use of Barrett Equipment through installation and training. The "Activation Date", shall mean the date of such Activation.

"Activities" means therapeutic Game or Assessment programs that provide a patient with a scene and/or goal designed to facilitate therapy using Barrett Equipment. Activities are a specific type of Software and treated as Software under this Agreement and the Service Terms.

"Activity Data" mean the raw data relating to a Patient's use of the Burt® Platform, including the Activities offered thereon, provided, however, that Activity Data shall not include Patient Data.

"Analytics" refers to analysis programs, calculations or algorithms designed to assess, analyze, evaluate, report, and understand data and metrics gathered through the use of Barrett Equipment. Data may include Barrett Data and Customer Data derived from interaction with patients. Analytics are a specific type of Software and treated as Software under the Agreement and the ST.

"Assessment(s)" means a program intended to measure a patient's performance of specific metrics.

"Authorized Customer Affiliate(s)" or **"Affiliate(s)"** means affiliates, subsidiaries, divisions, operating units of Customer that are authorized to purchase from Barrett under this Agreement. Any affiliate, subsidiary, division, or operating unit at least fifty-one percent (51%) owned or controlled by Customer.

"Barrett Data" shall mean any data or information, including any Activity Data or performance or other usage data collected or created as a result of the use of the Burt® Platform and/or made available by Barrett to Customer through a Service, excluding any Patient Data.

"Barrett Equipment" means Barrett proprietary equipment and/or accessories manufactured, assembled or otherwise provided by Barrett, inclusive of its subcontractors or agents. Barrett Equipment may include any equipment purchased directly from Barrett or purchased through an authorized reseller or leasing/rental agent. Barrett Equipment does not include any Customer Equipment.

"Burt® Platform" means the Barrett Equipment and/or Third Party Equipment included with it or provided separately, and/or any other personal property described in an Order or otherwise provided to Customer by Barrett hereunder being delivered by Barrett to Customer, any Barrett Data or other data collected through the use of the Platform (but not including any Customer Data), any Software (including software loaded on the Barrett Equipment, or included in a cloud-based platform offered by Barrett), and in all cases, any modifications, enhancements, additions or updates as provided by Barrett from time to time in connection with and/or through any Maintenance Services or other Service(s).



"Business Day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. Eastern Standard/Daylight Time, excluding United States Federal holidays. Business Hours are the hours comprising a Business Day.

"Customer Data" means any Patient Data or any Confidential Information of the Customer made available to Barrett.

"Customer Equipment" means any Customer Provided Equipment and/or Customer Purchased Equipment used in conjunction with, or to facilitate, Customer's use of the Service(s) provided by Barrett under this Agreement. Customer Equipment may include Third Party Equipment directly purchased, leased, or otherwise obtained by Customer from Barrett or a party other than Barrett. All Barrett proprietary software provided for use on Customer Equipment is and shall be treated as Software under the Agreement and subject to all terms and conditions in the Agreement applicable thereto.

"Customer Provided Equipment" means any equipment owned, leased, or otherwise controlled by Customer, other than Barrett Equipment, that is deployed by Customer for use with a Service provided under this Agreement.

"Customer Purchased Equipment" means any equipment purchased by Customer from Barrett under this Agreement which may include Barrett Equipment and/or Third-Party Equipment. This includes equipment purchased directly but does not include equipment where the purchase is financed by a rental lease or other financing arrangement via a third party as agreed to by Barrett.

"Department" means a specifically identified operating unit or other applicable business unit or entity of Customer as indicated on an applicable Order Form.

"Documentation" means Barrett's then-current User Manual and/or any other guides and/or written specifications for the Burt® Platform, as made available from time to time by Barrett.

"Equipment" shall mean any Barrett Equipment, and any Customer Equipment, used in conjunction with the Barrett Platform provided by Barrett to Customer under this Agreement.

"Field Service" means any one or combination of professional or administrative services provided by Barrett employees, consultants, contractors or agents and other persons expressly permitted by Barrett in connection with a Service provided under this Agreement for Customer including but not limited to Activation, on-site implementation, Maintenance Services, training, set-up of Services, consulting, advisory, or any other similar services.

"Finance Company" means an independent third-party entity that is not owned, managed or affiliated with Barrett, nor is Barrett an agent of the Finance Company. Should the Customer choose to use a Finance Company, they are entering into an independent agreement negotiated solely between the Customer and the Finance Company. A Finance Company may be used to rent or lease a Burt® Platform, Services, and/or Software of Barrett.

"Game(s)" means a program intended to challenge and encourage active motion and engagement for therapy.

"Maintenance Service" refers to one or all in the subscription maintenance services offered by Barrett, which may be purchased via an Order, including but not limited to the Covered Services (as defined in the ST).

"Order", "Order Form", or "Service Order Form" means the quotation or order form mutually executed by the Parties under the terms of this Agreement. The parties agree to use the Barrett standard order form or quotation form, as amended from time to time. To the extent required to facilitate Customer internal processes, Customer purchase orders may be used in addition to a Barrett Order to facilitate such processes; provided, however, that the Parties agree that any terms or conditions included on such purchase order that are inconsistent with, or in addition to, this Agreement are null and void and are superseded by the terms of the Agreement.

"Patients" shall mean those individuals who use the Barrett Equipment for treatment or for research purposes.

"Patient Data" shall mean the "Protected Health Information", as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and related regulations as may be amended from time to time ("**HIPAA**"), that may be stored on the Burt® Platform.

"Platform Data" means any and all data (outside of Activity Data) developed regarding the performance of the Burt® platform, including how often used, the performance of any Barrett Equipment or Software, any bugs, etc.

"Reports" means reports or other information provided or made available to the Users relating to their use of the Burt® Platform, which may include, without limitation, Activity Data, Platform Data and Analytics. Reports may also include Patient Data.



“**Service Terms**”, “**Support Service**” or “**ST**” means the technical support, operating service, maintenance service, and limited warranties provided by Barrett for the Burt® Platform as described in the Order.

“**Service(s)**” means the service(s) identified on an Order Form purchased by Customer hereunder.

“**Site**” or “**Location**” means the physical location(s) where the Equipment is placed as defined in the applicable Order(s).

“**Software**” means any Barrett proprietary operating and/or application software (including but not limited to therapeutic Activities, analytical tools and dashboards, reporting tools, system interfaces, and application program interfaces, “APIs”) or any Third Party Software, that is made available by Barrett to Customer for use with the Burt® Platform under this Agreement, in object code format only, together with any related Documentation provided by Barrett.

“**Third Party Equipment**” means any non-Barrett equipment or hardware manufactured and/or branded by a third party independent of Barrett.

“**Third Party Service**” means any service (e.g., cell phone carrier, internet service provider, etc.) made available by a third party to Customer outside of this Agreement that is used in conjunction with, or to facilitate Customer’s use of, a Service provided by Barrett under this Agreement.

“**Third Party Software**” means any software owned by a third party and made available by Barrett for Customer’s use hereunder; or independently obtained by Customer for its use in conjunction with the Services provided under this Agreement.

“**Update**” shall be as defined in the Service Terms.

“**User**” means one of Customer’s employees or independent contractors expressly permitted by Customer in connection with Customer’s business affairs who are authorized to use Barrett Equipment and/or a Service provided by Barrett under this Agreement and have been supplied User identification and/or passwords by Customer (or by Barrett at Customer’s request), but not including Patients.

2. CUSTOMER USE OF THE BURT® PLATFORM, DELIVERY AND ACTIVATION

2.1. **License to Access and Use.** Subject to the terms and conditions of this Agreement, upon Delivery (as provided below) Barrett hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to access and use the Burt® Platform, including any Software (in object code form only), solely for treating Patients of the Customer (the “**Purpose**”). In the event that the Burt Equipment is rented or leased, the license set forth herein shall expire automatically upon the termination or cancellation of the applicable lease or rental agreement. Barrett reserves the right to make changes and updates to the functionality and/or documentation of the Software and/or Service(s) from time to time consistent with the Service Terms. Further restrictions relating to such license are set forth in Section 6 below or in the Order.

2.2. **Authorized Departments and Number of Authorized Users.** Customer is authorized to permit use by the authorized Department, Site, and/or number of Users as indicated on an applicable Order, or if not indicated, any User authorized by Customer. Customer may expand the number of Authorized Users through the execution of a mutually agreed Order Form under this Agreement to add Departments, Sites, or Users. In connection with its use of the Services, Customer shall be responsible for (x) password security and maintenance, (y) ensuring that Customer’s use of the Burt® Platform is consistent with the use authorized herein, and (z) ensuring that Barrett Data and any Reports are used by Customer only in accordance with the terms and conditions of this Agreement.

2.3. **Activation.** Activation for any applicable Burt® Platform and/or Service occurs when Barrett has provided an notification to Customer which includes (i) confirmation that Barrett has fulfilled its obligations required to activate the Burt® Platform and/or Service as set forth in the applicable Order, and (ii) information required for Customer to access and use the Burt® Platform and/or Service (e.g., passwords, access codes), provided, however, in the event that Barrett is **unable** to complete all such necessary steps due to Customer’s failure to timely perform all of its obligations as set forth in the applicable Order, the Activation date will be deemed to have occurred on the fifth (5th) Business Day following Barrett’s notice to Customer of Customer’s failure to fulfill such obligations. All Field Services will be provided to Customer on a time and materials basis unless otherwise provided for in an Order.

2.4. **Shipping and Handling, Insurance.** Unless otherwise indicated herein or in an Order Form, Customer is responsible for all shipping and handling costs (“**S&H**”) and insurance for shipment of Equipment used in conjunction with a Service, including but not limited to any returns of Customer Purchased Equipment to Barrett or a third party manufacturer, and for the same costs to return repaired or replaced Equipment to Customer.



2.5. **Field Service Travel and Business Expenses.** Unless otherwise indicated in an Order or explicitly included as part of a package Service, Customer is responsible for all associated travel and business expenses ("T&E Expense") for all Field Service technician ST visits (excluding those visits which arise from breaches of Barrett's performance warranty hereunder) which shall be invoiced to Customer by Barrett monthly as incurred and are payable per the terms of this Agreement.

2.6. **Relocation and Resale.** In the event that the Burt® Platform is relocated to a new site, Customer is responsible for all reactivation, training, travel and business expenses associated with relocation. Customer may not resell the Burt® Platform.

3. TERM

3.1. **Agreement Term.** This Agreement begins on the Effective Date specified on the Order Form and shall continue in full force and effect thereafter unless and until terminated in accordance with the provisions of this Agreement and for Services until the expiration of all Service Terms hereunder.

3.2. **Service Term.** The service term for each Service shall be set forth in the applicable Order (the "Initial Service Term") unless earlier terminated pursuant to the terms of this Agreement or the applicable Order. As a Service Term is renewed for successive terms such term is a "Renewal Service Term", and together with the Initial Service Term, a "Service Term".

3.3. **Automatic Renewal.** Each Service Term shall automatically renew for subsequent periods of the same length as the Initial Service Term unless either party gives the other written notice of termination at least ninety (90) days prior to expiration of the then-current Service Term.

4. RESPONSIBILITIES

4.1. **Barrett Responsibilities** During each applicable Service Term, in consideration for the fees set forth on the Order Form, and subject to the terms of this Agreement, Barrett shall perform the Services on the particular Order.

4.2. **Customer Responsibilities** While any applicable Barrett Equipment is located at a Site, Customer shall provide at each applicable Site (a) sufficient electricity to power such Equipment, (b) adequate space for such Barrett Equipment, (c) appropriate staff to be trained while Barrett personnel are on-site completing installation, activation and start-up training, (d) provide safe access for Barrett, or its authorized representatives, agents, or contractors to permit Barrett to fulfill its obligations under this Agreement and to access applicable Customer Data, (e) remove carton(s) from pallet(s) and move the Barrett Equipment to the designated location for its use at the Site. Customer complete all required actions prior to any implementation and/or Activation Services that the Order provides that Barrett shall perform in connection with the delivery of the Barrett Equipment at the Customer's Site. Further, although Updates may often be done via Field Services, the Maintenance Services of the Barrett Equipment and proper operation of the Burt® Platform may also require Customer to upload Updates or download of data from the Barrett Equipment to data storage devices provided by Barrett from time to time. Customer agrees to provide reasonable assistance (based upon written instructions by Barrett) relating to completing such Updates and returning the storage devices to Barrett.

5. PAYMENTS

5.1. **Payments.** Customer agrees to pay the fees specified in the applicable Order within thirty (30) days of the applicable Barrett invoice date. The fees specified in the Order are exclusive of, and Customer agrees to pay any sales, use or other tax related to this transaction, however designated (except taxes based on net income), unless it provides Barrett with applicable and appropriate government recognized exemption certificates. Barrett reserves the right to charge a late fee of up to 1.5% per month (or, if less, the maximum rate allowable by law) on any balance due remaining unpaid for more than thirty (30) days. Customer shall also reimburse Barrett for any attorneys' fees and other costs or expenses incurred as a result of Barrett's efforts to collect late payments. Except as otherwise provided for within this Agreement, all fees paid under this Agreement are non-refundable. Through the execution of an amendment to this Agreement or through terms included in an Order executed under this Agreement, the Parties may agree that Customer may choose to rent equipment or finance its purchase and payment obligations via a rental, lease or some other financing vehicle with a third party agreeable to Barrett. In such a case Customer acknowledges and agrees that it may need to enter into a written agreement with such third party.

6. OWNERSHIP AND RESTRICTIONS

6.1. **Burt® Platform & Software Ownership.** With respect to the Burt® Platform (other than any Customer Purchased Equipment that is purchased by the Customer), including without limitation, the Software, and all trademarks, patent rights, copyrights, and all other intellectual property associated with such Barrett Equipment and Software, are, and shall at all times be and remain, the sole and exclusive property of Barrett or Barrett's licensors. Except for the license granted in Section 2.1 above, Barrett reserves all right, title and interest in and to the Burt® Platform.



Customer acknowledges and agrees that its use of any Third-Party Software or documentation provided by Barrett or otherwise made available to Customer in connection with the Burt® Platform is subject to the terms and conditions of separate license agreements supplied by the applicable third party licensor of such Third Party Software. Barrett shall provide Customer upon written request with a copy of any such third-party license agreements to the extent that Customer is expected to comply therewith and such compliance requires conduct by Customer other than or in addition to that specified in this Agreement.

6.2. **Burt® Platform Restrictions.** Customer shall not make any alterations, modifications, additions or improvements to the Burt® Platform or any Software included therein or permit or cause any third party to do so. Customer shall not intentionally or knowingly cause any harm to the Burt® Platform and Customer shall promptly inform Barrett of any problems relating to the Burt® Platform. Customer shall not (a) copy, or permit a third party to copy any Burt® Platform; (b) alter, or permit a third party to alter, any part of any Burt® Platform; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from any Software contained in the Burt® Platform or permit a third party to do any of the foregoing; or (d) time-share, license or re-license, sell, transfer or lease the Burt® Platform or otherwise use as a service bureau. Customer further acknowledges that it is responsible for any damage to or loss of the Barrett Equipment while deployed at its Site and will use commercially reasonable efforts to ensure that the Barrett Equipment is treated with reasonable care if under an active Maintenance Service.

6.3. **Customer Purchased Equipment Ownership and Delivery.** Customer agrees to buy, and Barrett agrees to sell, subject to the terms and conditions of this Agreement and the terms of the applicable Order, the Customer Purchased Equipment set forth and described in such Order. Customer Purchased Equipment shall be shipped on an FOB Origin basis ("Delivery") with Customer responsible for all shipping and handling ("S&H") costs which shall be invoiced upon shipment at Barrett's then current S&H rates. Title and risk of loss pass to Customer upon delivery to carrier. Customer is responsible for insuring all such shipments at its option. Unless otherwise indicated on an Order, Customer Purchased Equipment shall be shipped uninsured.

Notwithstanding the foregoing paragraph, if Customer finances its purchase and payment obligations of any Barrett Equipment via a rental, lease or some other financing vehicle, the passing of title for any such financed equipment, if any, shall be as governed in the applicable Order or amendment regarding such financing, and if not so stated, FOB Origin.

To the extent the Customer Purchased Equipment includes any Barrett trademarks, patent rights, copyrights, and other intellectual property, any such property associated with such Barrett Equipment and Software, are, and shall at all times be and remain, the sole and exclusive property of Barrett or Barrett's licensors, notwithstanding that the Barrett Equipment may, from time to time, become affixed to real property.

6.4. **Barrett's Use of Customer Data.** Notwithstanding any other terms or conditions of this Agreement, Customer shall own all right, title and interest to any Customer Data. Barrett is hereby granted the right to use, copy and modify Customer Data to operate the Burt® Platform and to create Reports or other derivative works from the Customer Data in connection with Customer's use of the Burt® Platform. For clarity, Barrett shall not use or disclose any Customer Data or any Activity Data in a manner that would identify Customer or any Patient except as may be necessary to provide the Services to Customer hereunder.

6.5. **Customer's Use of Barrett Data.** Notwithstanding any other terms or conditions of this Agreement, Barrett shall own all right, title and interest to any Barrett Data created from or otherwise made available to Customer that are included in any Reports provided in connection with an Authorized User's use of the Burt® Platform. Subject to the terms and conditions hereof, Customer shall have a right to use the Barrett Data and any Reports solely for the Purpose. Unless otherwise agreed by Barrett, Customer shall not otherwise use Barrett Data or any Reports, or disclose Barrett Data or any Reports to any third party, other than to a Patient or medical professional in connection with the treatment of such Patient or to third parties assisting in such Patient's care.

7. CONFIDENTIALITY

7.1. **Confidential Information.** "Confidential Information" means the terms of this Agreement and (subject to the exceptions set forth in Section 7.3) any information, regardless of whether it is in tangible form, disclosed by either Party (the "Disclosing Party") that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party (the "Receiving Party"); provided, however, that information related to or regarding a Disclosing Party's business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services shall be deemed Confidential Information of the Disclosing Party, even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in Section 7.3.

7.2. **Use and Disclosure of Confidential Information.** The Receiving Party acknowledges that it may have access to the Disclosing Party's Confidential Information. The Receiving Party agrees that it will not (i) use any such Confidential Information in any way, for its own account or the account of any third party, except for the exercise of its rights and performance of its obligations under this Agreement, or (ii) disclose any such Confidential Information to any party, other than



furnishing such Confidential Information to (a) its employees who are required to have access to the Confidential Information in connection with the exercise of its rights and performance of its obligations under this Agreement and (b) professional advisers; provided that such employees and professional advisers are bound by written agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this section. The Receiving Party agrees that it will not allow any unauthorized person access to the Disclosing Party's Confidential Information, and that the Receiving Party will take all action reasonably necessary to protect the confidentiality of such Confidential Information, including implementing and enforcing procedures to minimize the possibility of unauthorized use or copying of such Confidential Information. In the event that the Receiving Party is required by law to make any disclosure of any of Disclosing Party's Confidential Information, by subpoena, judicial or administrative order or otherwise, the Receiving Party shall first give written notice of such requirement to the Disclosing Party, and shall permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to the Disclosing Party in seeking to obtain such protection.

7.3. **Exceptions.** Information will not be deemed Confidential Information hereunder if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (d) is independently developed by the Receiving Party.

7.4. **Patient Data.** The Parties do not anticipate that any Patient Data will be disclosed, used or exchanged in connection with the exercise of their rights and performance of their obligations under this Agreement. However, should this occur, all such information shall remain confidential and be treated in accordance with a HIPAA Business Associates Agreement to the extent such agreement is executed between the Parties as may be mutually agreed.

8. INDEMNITY

8.1. **Infringement Indemnity of Barrett.** Barrett shall defend and indemnify Customer against any third party claim, suit or proceeding (each, a "Claim") brought against Customer by any third party in the United States to the extent such Claim is based upon a claim that the Software or Barrett Equipment infringes such third party's valid United States patent rights, and Barrett shall pay all losses, liabilities, costs and damages incurred by or awarded against Customer as a result of such Claim; provided, however, that Customer (i) promptly notifies Barrett in writing of such Claim; (ii) promptly gives Barrett the right to control and direct the investigation, preparation, defense and settlement of such Claim, with counsel of Barrett's own choosing (provided that Customer shall have the right to reasonably participate, at its own expense, in the defense or settlement of any such Claim); and (iii) gives assistance and cooperation for the defense of same. If the Software or Barrett Equipment is, or in Barrett's opinion, might be held to infringe as set forth above, Barrett may, at its option, (i) replace or modify the Software or Barrett Equipment so as to avoid infringement, (ii) procure the right for Customer to continue the use of the Software or Barrett Equipment or (iii) terminate the applicable Order Forms without liability; provided, that Barrett will be obligated to continue to indemnify Customer under this Section 8.1 and return that portion of the unused annual fee paid but for which Customer is no longer receiving value as a result of the early termination of any such Order Forms. For purposes of this Section 8.1, the Software or, Barrett Equipment, as applicable, shall not include any Third Party Equipment or Third Party Software.

8.2. **Infringement Indemnity Terms and Conditions.** The foregoing indemnity shall not apply to any Claim based upon or arising from (i) use of the Burt® Platform in a manner for which it was not intended as set forth herein, or not in accordance with applicable Documentation, (ii) the combination, operation or use of the Burt® Platform in combination with equipment or software not supplied or approved by Barrett where the Burt® Platform would not itself be infringing, or (iii) modifications of the Burt® Platform by anyone other than Barrett where the unmodified version of the Burt® Platform would not be infringing.

8.3. **Infringement Indemnity of Customer.** Customer agrees to defend and indemnify Barrett against any Claim brought against Barrett by a third party in the United States to the extent that such Claim is based upon on a claim that such third party's rights have been infringed by Customer's use of the Services or the Burt® Platform outside of the scope or contrary to the terms of this Agreement (except to the extent covered by Barrett's indemnification of Customer pursuant to Section 8.1, subject to the limitations contained in Section 8.2), and Customer shall pay all losses, liabilities, costs and damages incurred by or awarded against Barrett as a result of such Claim; provided, however, that Barrett (i) promptly notifies Customer in writing of such Claim; (ii) promptly gives Customer the right to control and direct the investigation, preparation, defense and settlement of such Claim, with counsel of Customer's own choosing (provided that Barrett shall have the right to reasonably participate, at its own expense, in the defense or settlement of any such Claim); and (iii) gives assistance and cooperation for the defense of same. This Section 8.3 represents the sole and exclusive remedy of Barrett and the entire liability and obligation of Customer with respect to infringement or claims of infringement of any intellectual property right by a third party regarding the Equipment or its use.



8.4. **Indemnification Procedure.** If any event shall give rise to an assertion by a Party hereto that the other Party should indemnify it, the Party claiming indemnity shall promptly give written notice to the other, setting forth the basis of the claim. If a Party against which a claim for indemnity is asserted commences the defense of such matter, it shall not be deemed to have waived its right to indemnity. A Party asserting a claim for indemnity may not settle or compromise any indemnity-related matter with third parties without the express, prior written consent of the Party against which the claim for indemnity is asserted, such consent not to be unreasonably withheld. The right to obtain indemnity hereunder shall survive any termination of this Agreement.

8.5. **Limitation on Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND EXCEPT FOR LIABILITY RESULTING FROM A BREACH BY EITHER PARTY OF SECTION 7 (CONFIDENTIALITY) OR ARISING UNDER SECTION 8 (INDEMNITY): (I) NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, OR LOSS OF PROFITS OR REVENUE) ARISING OUT OF THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PRODUCTS, EVEN IF SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES AND (II) IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY BE IN CONTRACT, STRICT LIABILITY, PRODUCTS LIABILITY OR TORT (INCLUDING NEGLIGENCE), EXCEED THE AMOUNT PAID TO BARRETT BY THE CUSTOMER UNDER THE APPLICABLE ORDER OVER THE TWELVE-MONTH PERIOD PRIOR TO THE DATE SUCH CLAIM AROSE.

8.6. **Responsibility for Own Acts.** Except as otherwise specifically set forth in this Agreement, each Party shall be responsible for its own acts and omissions that result from or arise out of (i) any breach of this Agreement by such Party, and/or (ii) any negligence, misrepresentation, or error or omission on the part of such Party or any employee, agent, representative of such Party. In the event that a claim is made against both Parties, the Parties agree to cooperate with one another in the defense of said claim, at each Party's own cost, and shall endeavor to cause their insurers to do likewise; provided, however, each Party reserves the right to take any and all actions it deems necessary to protect its interests. Section 8 represents the sole and exclusive remedy of the indemnified party and the entire liability and obligation of the indemnifying party with respect to infringement or claims of infringement of any intellectual property right under this Agreement.

8.7. **Finance Company Limitations.** The Customer understands and agrees that should they chose to use a Finance Company that the Finance Company (i) is not an party to this Agreement, (ii) is not undertaking any obligations under this Agreement, (iii) only Barrett is solely obligated for all obligations under the Agreement. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT SHOULD THEY ASSERT ANY CLAIMS AGAINST BARRETT UNDER THE AGREEMENT, SUCH CLAIMS SHALL BE MADE SOLELY AGAINST BARRETT AND NOT THE FINANCE COMPANY AND ANY CUSTOMER OBLIGATIONS DUE TO THE FINANCE COMPANY OR ITS SUCCESSORS OR ASSIGNS UNDER ANY SEPARATE AGREEMENT BETWEEN THE FINACE COMPANY AND THE CUSTOMER SHALL NOT BE SUBJECT TO ANY DISPUTES, CLAIMS, DAMAGES, LIABILITIES, OR OFFSETS CUSTOMER MAY HAVE OR ASSERT AGAINST BARRETT UNDER THIS AGREEMENT FOR ANY REASON WHATSOEVER. CUSTOMER AGREES NOT TO INCLUDE THE FINANCE COMPANY IN ANY DISPUTE OR LAWSUIT WITH BARRETT.

9. WARRANTIES; SUPPORT

9.1. **Reciprocal.** Each Party represents and warrants to the other that: (i) it has the power and authority and the legal right to enter into the Agreement and to perform its obligations under the Agreement; (ii) it has taken all necessary action on its part to authorize the execution and delivery of the Agreement; and, (iii) the execution and delivery of the Agreement and to the best of each Party's knowledge the performance of its obligations hereunder do not conflict with or violate applicable laws or regulations, and do not conflict with or constitute a default under its charter documents.

9.2. **Barrett Service Warranty.** Barrett further warrants and represents to Customer that the Services, including any Field Services provided, shall be performed in a professional, competent and timely manner by appropriately qualified personnel in compliance with industry standards and practices.

9.3. **Customer Purchased Equipment Warranty.** This Section 9.3 is applicable for Customer Purchased Equipment only (the "Covered Equipment") and during the period that is ninety (90) days after Activation, unless otherwise extended per the Order (the "Equipment Warranty Period"). During the Equipment Warranty Period, Barrett warrants that the Covered Equipment shall operate in accordance with the applicable specifications relating to such Covered Equipment. In the event that Customer reports to Barrett that the Covered Equipment does not conform to such specifications, Barrett shall provide the Services set forth in the Support Terms. Further, to the extent that the Company makes generally available to customers during the Equipment Warranty Period any alterations, modifications, additions or improvements (the "Equipment Updates") to the version of the Covered Equipment purchased by the Customer, Barrett shall provide such Equipment Updates as part of its routine Maintenance Services processes. Barrett, or its designated representative, shall have the right to enter into and upon any Site upon reasonable notice and during the Site's regular business hours for the purposes of inspecting, repairing or making alterations required by law or contract to the Covered Equipment or for observing its use. In the event of loss or damage to any Covered Equipment while located at any Site, Customer shall (i) permit Barrett to enter such Site and place the Covered Equipment in good repair, condition and working order, or replace the same with like Covered Equipment in good repair, condition and working order; or (ii) permit Barrett to timely remove the Covered Equipment from such Site and repair



or replace the same so that it is in good repair, condition and working order. The foregoing warranty does not cover damage to the Barrett Equipment (or any part thereof) due to problems caused by Customer's negligence, abuse or misapplication, other external causes (including without limitation, Third Party Equipment or Third Party Software, accident, abuse, misuse, problems with electrical power, servicing or modifications not authorized by Barrett) or usage not in accordance with the Documentation (collectively, "**Warranty Exclusions**"). Except as otherwise set forth in the Service Terms, Customer's sole and exclusive remedy and Barrett's sole and exclusive obligation for breach of the foregoing warranty is to require Barrett to, at Barrett's option, repair or replace the Barrett Equipment (or any part thereof) in accordance with the Service Terms.

9.4. **Pass Through of Warranties for Third Party Equipment and Third-Party Software.** Except as otherwise expressly set forth in the Service Level Agreement, (i) Third Party Equipment and Third Party Software is provided by Barrett on an "AS IS", pass-through basis, (ii) warranties, indemnification, and support obligations with respect to any Third Party Software and Third Party Equipment is provided by the applicable third party licensor or supplier, and (iii) Barrett does not provide any warranty, indemnification or support with respect to any Third Party Equipment or Third Party Software.

9.5. **Support.** In the event Customer elects to purchase and subscribe, through a duly executed Order, to Maintenance Services relating to the Burt® Platform, such service shall be provided as described in Exhibit A.

9.6. **Limits on Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, BARRETT MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, TITLE, NON-INFRINGEMENT, THE QUALITY OR CONDITION OF THE SERVICE EQUIPMENT, CUSTOMER PURCHASED EQUIPMENT, SERVICES, SOFTWARE OR THIRD PARTY SOFTWARE, OR THEIR MERCHANTABILITY, OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.** Customer acknowledges that there are risks inherent in Internet connectivity that could result in the loss of Customer's privacy, Confidential Information or property. The Parties acknowledge that use of the Burt® Platform hereunder is subject to interruption for a variety of reasons outside of Barrett's control, including any of the following: (i) removal, deactivation or tampering with the Equipment by persons not employed by Barrett, (ii) Customer's or Barrett's Internet connection being down or inoperable, (iii) the Barrett Equipment experiencing an outage due to equipment functional issues Third Party Software bugs or errors, or Internet interruptions, (iv) an event out of Barrett's reasonable control, as described in Section 22, and failure of the Burt® Platform to conform to the applicable Documentation for any of the foregoing reasons shall not be deemed a breach of the warranty set forth herein. Barrett does not warrant that the Barrett Data is accurate or complete or any protocols, courses of treatment, etc. shall result in a certain outcome. The Reports should not be deemed medical advice. Customer will be solely responsible to providing medical advice and shall perform such verifications and checks as it may deem necessary to confirm the accuracy and completeness of the Reports prior to Customer's reliance on it. Except as otherwise set forth in the Service Terms, for any breach by Barrett of the warranties set forth in this Section 9, Customer's sole and exclusive remedy, and Barrett's entire liability and obligation, will be (i) to correct, re-perform or replace the Services or the Documentation, whichever is reasonably appropriate in Barrett's discretion, within a reasonable period of time, provided that no change may be made hereunder to the Documentation which deletes any material feature or functionality of the Services, or (ii) set forth in the Service Terms, if such Services are covered by a Service Terms.

10. CONCURRENT REMEDIES.

Except as otherwise stated herein, no right or remedy herein conferred upon or reserved to either Party is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or, hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

11. TERMINATION.

11.1. **With Cause; Customer** The Agreement may be terminated by Customer prior to the expiration of any Service Term without liability (except for amounts due for Services through the effective date of termination) if Barrett fails in a material way to perform its obligations (including those stated in the ST) under this Agreement and does not cure such failure within sixty (60) days of Barrett's receipt of Customer's written notice describing the failure in reasonable detail.

11.2. **With Cause; Barrett** The Agreement may be terminated by Barrett prior to the expiration of any Service Term without liability as follows: (i) upon fifteen (15) Business Days notice if Customer is overdue on the payment of any amount due under the Agreement; (ii) Customer fails in a material way to perform its other obligations under this Agreement, and does not cure such failure within sixty (60) days of its receipt of written notice from Barrett describing the failure in reasonable detail; or (iii) upon two (2) Business Days notice if Customer's use of Barrett Data or any Reports is in material violation of the restrictions set forth in Section 6.5. Upon termination by Barrett under this Section 11.2, all amounts due as of the date of termination shall become immediately payable by Customer.



11.3. **Effect.** The termination of this Agreement shall not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve the Customer's obligation to pay all fees that accrued prior to such termination.

11.4. **Survival.** Upon any termination or expiration of this Agreement, those provisions contained in Sections 1, 5.1, 6, 7, 8, 9.6, 10, 11.3, 11.4, and Sections 12-27 shall survive any such termination or expiration.

12. DISCLAIMER; LIMITATION OF LIABILITY

12.1. **Waiver of Consequential Damages.** EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, OR FOR AMOUNTS OWING UNDER SECTION 8 (INDEMNITY), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM THE NEGOTIATION OR PERFORMANCE OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DAMAGES WHICH REFLECT LOST REVENUES OR BUSINESS, LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF GOODWILL, OR THE COSTS OF RECONSTRUCTING CUSTOMER DATA, WHETHER DAMAGES OF THIS NATURE WERE FORESEEABLE OR NOT, AND EVEN IF THAT PARTY HAD BEEN ADVISED THAT DAMAGES OF THIS NATURE WERE POSSIBLE.

12.2. **Limitation of Liability.** EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, OR FOR AMOUNTS OWING UNDER SECTION 8 (INDEMNITY), (I) NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, OR LOSS OF PROFITS OR REVENUE) ARISING OUT OF THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PRODUCTS, EVEN IF SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES AND (II) NEITHER PARTY'S CUMULATIVE LIABILITY FOR DAMAGES ARISING UNDER THE NEGOTIATION OR PERFORMANCE OF THIS AGREEMENT SHALL EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE PRIOR YEAR FOR THE SERVICE WHICH CAUSED THE DAMAGE OR WHICH IS THE SUBJECT MATTER OF THE CLAIM. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL ONLY APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. THE LIMITATIONS SET FORTH IN THIS SECTION 12 OR ELSEWHERE IN THIS AGREEMENT SHALL SURVIVE THE FAILURE OF AN EXCLUSIVE REMEDY. THE LIMITATIONS OF LIABILITY AND DISCLAIMERS OF WARRANTY STATED HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND APPLY REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREUNDER FAILS ITS ESSENTIAL PURPOSE.

13. ASSIGNMENT

Neither Party may assign this Agreement in whole or in part without the prior written consent of the other Party, except that either party (the "**Assigning Party**") may assign this Agreement without the written consent of the other Party (the "**Non-Assigning Party**") to a corporation or other business entity (i) succeeding to all or substantially all the assets and business of the Assigning Party by merger or purchase or (ii) that is a wholly owned subsidiary of the Assigning Party, in each case of (i) and (ii), provided that such corporation or other business entity passes Barrett's credit approval process and that such corporation or other business entity shall expressly assume, in a writing delivered to the Non-Assigning Party, all of the Assigning Party's obligations under this Agreement. Any attempted assignment, delegation or transfer by an Assigning Party in violation hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on the Parties and their successors and assignees. Notwithstanding the foregoing provisions of this Section 13, Barrett may assign its rights relating to Customer payments (including but not limited to assigning such rights to a third-party leasing or financing entity).

14. RECORD RETENTION

Until the expiration of four (4) years after the furnishing of the Services provided pursuant to this Agreement, Barrett shall make available, upon written request of the Secretary of Health and Human Services, or upon written request of the United States Comptroller General, or any of their duly authorized representatives, the contract and books, documents, and records of Barrett that are necessary to certify the nature and extent of the costs to Customer of this Agreement. Further, if Barrett carries out any of its duties under the Agreement through a further subcontract, excluding production material suppliers, having a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such further subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available upon written request of the Secretary, or upon written request of the Comptroller General, or any of their duly authorized representatives, the subcontract and books, and records of such organization that are necessary to verify the nature of such costs.

15. WAIVER

No covenant or condition of this Agreement can be waived except by the mutual written consent of Barrett and Customer.



16. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the Parties with respect to the provisions of Services by Barrett to Customer, and it supersedes and merges all prior and contemporary understandings between the Parties with respect to such Services. This Agreement may be amended only by a written instrument duly executed by all Parties.

17. NOTICES

All notices, offers, requests, demands and other communications made pursuant to this Agreement shall be sent to the Parties at the following address:

If to Customer, to the address indicated in the Information Sheet to the attention of the Customer Contact indicated therein, unless otherwise stated in the Information Sheet.

If to Barrett:

Barrett Technology, LLC
320 Nevada Street
Ground Floor, Building Rear
Newton, MA 02460
Attention: CEO

With a copy via email to:
Barrett Legal Department
steve@companycounsel.biz
Attn: Steve Cagnetta, Esq.

or to such other address as any Party may have furnished to the other in writing in accordance herewith.

18. HEADINGS

The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretations of this Agreement.

19. GOVERNING LAW AND LANGUAGE

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, United States of America. This Agreement is written and governed by American English and shall control over any translations into any other languages.

20. SEVERABILITY

The invalidity of any term or terms of this Agreement shall not affect any other term of this Agreement, which shall remain in full force and effect.

21. THIRD-PARTY BENEFIT

This Agreement does not convey any rights to any third parties.

22. CERTAIN EVENTS; FORCE MAJEURE.

Except for Customer's obligation to pay, in the event that either Party is rendered unable to carry out its obligations under this Agreement, due to conditions beyond its reasonable control (which includes, but is not limited to acts of God, acts of terrorism, fire, natural disaster, labor strike, government restraint), then such Party shall give the other Party notice of the condition; thereafter, the obligations of the Party giving notice, so far as they may be affected by the condition, shall be suspended. The Initial Service Term or Renewal Service Term of this Agreement or the Service Term of an Order Form, as appropriate, shall be deemed automatically extended by a period of time equal to any period during which the Services provided there under are not available due to the condition. The affected Party shall use all reasonable diligence to resume its obligations as quickly as possible to the extent the same is within such Party's reasonable control.



23. DISPUTE RESOLUTION

23.1. **Arbitration.** If any controversy should arise between the Parties in the performance, interpretation and application of this Agreement, the Parties agree to meet and enter into good faith discussions in order to resolve the matter within thirty (30) days of such controversy. In the event a resolution cannot be reached thereby within thirty (30) days after the commencement of such discussions, except with respect to a dispute relating to intellectual property, the matter shall be submitted to arbitration. Either Party may commence arbitration by giving a written notice to the other Party demanding arbitration. There shall be one (1) impartial arbitrator, who shall be experienced in mediation and arbitration and knowledgeable regarding the health care industries. If the Parties cannot agree within fifteen (15) days from the service of such notice upon the selection of such an arbitrator, the arbitrator shall be selected by the American Arbitration Association upon the written request of either Party hereto. Arbitration of such controversy, disagreement or dispute shall be conducted in accordance with the rules then in force of the American Arbitration Association in the city of Boston, Massachusetts, and the decision and award of the arbitrator so selected shall be binding upon the Parties.

23.2. **Injunctive Relief.** Notwithstanding anything in Section 23.1 to the contrary, any Party may seek injunctive relief against the other Party at any court of proper jurisdiction with respect to any and all preliminary injunctive or restraining procedures pertaining to this Agreement or the breach thereof.

24. PERFORMANCE STANDARDS

Barrett shall perform its obligations under this Agreement in accordance with the regulatory and accreditation standards applicable to Customer and the obligations due from Barrett under this Agreement, including without limitation, those requirements imposed by the Joint Commission on Accreditation of Healthcare Organizations, the Medicare/Medicaid conditions of participation and any amendments thereto.

25. COMPLIANCE WITH LAW

The Parties shall comply with all federal and state laws, rules and regulations of all governmental authorities having jurisdiction over the Parties and/or this Agreement. To the knowledge of Barrett, it is not precluded by applicable law from providing the Services, nor has Barrett been sanctioned, excluded or debarred by or from any government or regulatory body or program.

26. INDEPENDENT CONTRACTORS

Notwithstanding anything to the contrary contained herein, the relationship between the Parties is that of independent contractors, and neither shall be considered an agent or representative of the other for any purpose.



EXHIBIT A

SERVICE TERMS

PROVIDED AT web.barrett.com/medical/serviceterms.pdf, AND INCORPORATED HEREIN BY REFERENCE