

Barkpass SaaS Agreement

This Software as a Service (SaaS) agreement (the "Agreement") is dated this 1st day of June, 2023 (the "Effective Date") by and between Barkpass, LLC, an Iowa limited liability company ("Barkpass") and the City of Ankeny, a municipal organization (the "City").

By signing up for a Barkpass account or by using any Barkpass services, you are agreeing to be bound by the following terms and conditions (the "Terms of Service").

1. Software as a Service (SaaS)

1. After signing up with a valid email address, Barkpass shall grant you a subscription to use the Software.
 1. The subscription ("Term") shall begin on the day you create an account for your city or organization.
2. Use of the software is for business activity and not for personal use.
3. Title, copyright, codebase, distribution rights and intellectual property of the Software remain exclusively with Barkpass. You shall receive no ownership of the Software.
4. The Software is cloud-based and can be accessed through an Internet connection.
5. The subscription rights of the Software are granted to you only. You shall not transfer or assign any of the rights or obligations granted under this Agreement to any other person, organization or legal entity.
6. The Software shall not be modified, reverse-engineered or de-compiled in any manner through current or future available technologies.
7. Failure to comply with any of the terms under this section will be considered a material breach of this Agreement and Barkpass may terminate the Agreement and the associated account.

2. Fees

1. You agree to pay the applicable fees related to your online subscription ("Subscription Fees"), including fees related to the value of sales made through Barkpass ("Transaction Fees") and any other fees related to purchasing products or third-party services.
 1. Transaction fees are 5% of the transaction plus \$0.30.
2. Recurring fees can be paid through a valid payment method kept on file (a credit card) or an invoice can be sent to you for payment via check.
3. Subscription fees can be billed monthly or annually from the start of the Term. Transaction fees are processed at the time of the sale.

4. Failure to pay your fees on-time may result in termination of your account. Barkpass will notify you if we cannot process your payment.
5. Barkpass does not offer refunds.
6. There is an optional setup fee of \$1,000 if you would like additional assistance with setting up your account.

3. Warranties

1. Barkpass does not warrant that use of the Software will be uninterrupted or error-free. You accept that software in general is prone to bugs and flaws within an acceptable level as determined in the industry.
2. Barkpass makes no warranty, express or implied, regarding the fitness of the Software for a particular purpose or that the Software will be suitable or appropriate for your specific requirements.

4. Covenants Regarding Data

1. Barkpass agrees that it will not, without your consent, use personal data, including but not limited to personally identifiable information, confidential information, and payment information, collected on behalf of you other than for performance of the Software or other uses permitted by this Agreement or under applicable law. Barkpass agrees to abide by State of Iowa Law requiring veterinary records to remain privileged and confidential and not released without an order of a Court of competent jurisdiction, a public health emergency, or consent of the user.
2. Barkpass agrees that it will not sell, intentionally transfer or otherwise release to any third party personal data, including but not limited to personally identifiable information, confidential information, and payment information that Barkpass has collected in performing this Agreement, except to our third-party payment processor, Stripe.
3. Barkpass agrees that any data, including but not limited to personal data, confidential data, payment data collected on behalf of you shall be shared with as few people, including but not limited to Barkpass's agents, employees, and officers, within Barkpass's organization as necessary to perform this Agreement.
4. Barkpass agrees that any data collected on behalf of you in connection with this Agreement and shared within Barkpass's organization, including but not limited to its agents, employees and officers, shall adhere to all of the provisions herein with respect to data handling and information security requirements.
5. Any breach of confidentiality or data security by Barkpass's agents, employees, or officers shall be the same as a breach by Barkpass.

6. Barkpass agrees that any data collected, sent, or otherwise transmitted on behalf of you shall be stored and/or transmitted using industry accepted best practices. Barkpass acknowledges that industry best practices for data security and information security may change from time to time and Barkpass shall update its practices accordingly.
7. Barkpass uses a third-party payment processor called Stripe following Payment Card Industry Security Standards ("PCI-DSS"). Any and all payment collected, sent, or otherwise transmitted, including but not limited to credit card numbers, bank routing numbers, names, addresses, social security numbers, birthdates, security questions and answers, and all other personally identifiable information shall be collected, sent, and transmitted following the most current PCI-DSS requirements.
8. Barkpass acknowledges that Users (your customers) own their data, including personally identifiable information and veterinary records, when signing up for a Barkpass account, and Users may grant other Barkpass clients access to their data when purchasing more than one dog park permit.

5. Restrictions

1. Your agreement to these Terms means you will not:
 1. Upload or distribute any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Software,
 2. Modify, disassemble, decompile or reverse engineer the Software,
 3. Probe, scan, test the vulnerability of, or circumvent any security mechanisms used by, the sites, servers, or networks connected to the Software,
 4. Take any action that imposes an unreasonably or disproportionately large load on the sites, servers, or networks connected to the Software,
 5. Copy or reproduce the Software,
 6. Maliciously reduce or impair the accessibility of the Software,
 7. Use the service to post, promote, or transmit any unlawful, harassing, libelous, abusive, threatening, harmful, hateful, or otherwise objectionable material, or
 8. Transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability.

6. Support

1. Barkpass will provide technical support to you for use of the Software, but will not provide support directly to Users (your customers).

2. It is your responsibility to provide support and customer service to Users as needed.

7. Cancellation and Termination

1. You may cancel your account at any time from the Barkpass administrator dashboard. You may also email your cancellation request to Support@Barkpass.com.
2. Barkpass reserves the right to modify or terminate the Barkpass service at any time, with or without notice.
3. Barkpass may terminate this Agreement with immediate effect if you violate any part of this Agreement.
4. Upon cancellation or termination of your account, Barkpass will cease providing you access and your account will be taken offline.
5. Any outstanding balance owed to Barkpass will be immediately due. Fees will not be prorated or refunded.

8. Indemnity

1. Subject to the limitations on Barkpass's liability set forth elsewhere in this Agreement, Barkpass agrees to indemnify and hold harmless you and your officers and employees from and against any and all claims, lawsuits, judgments, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, arising out of Barkpass's negligence, gross negligence or willful misconduct, or breach in the performance of services under this Agreement. In the event of joint and concurring responsibility of Barkpass and you, responsibility and indemnity, if any, shall be apportioned comparatively. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, in or to any other person or entity.

9. Force Majeure

1. Barkpass will be free of liability to you where Barkpass is prevented from executing its obligations under this Agreement in whole or in part due to Force Majeure, such as earthquake, tornado, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where Barkpass has taken any and all appropriate action to mitigate such an event.

10. Service Level Commitments, Disclaimers and Limitations

1. Barkpass will send a notification 48 hours in advance of maintenance windows that could cause downtime to the Software.

2. Barkpass does not guarantee network availability between you and the Barkpass hosting servers, as such availability can involve numerous third parties and is beyond the control of Barkpass.
3. Barkpass will not be liable for nor provide any service credits hereunder for any downtime caused in whole or part by a third party data center provider nor for any downtime that you experience as a result of you or your customer's own network connectivity issues.
4. If you experience a system or service outage and are unable to access the Software, you may contact Support@Barkpass.com, providing any/all necessary information that may assist Barkpass in determining the cause of the outage.

11. Governing Law

1. The parties to this Agreement submit to the jurisdiction of the courts of the State of Iowa for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement. This Agreement will be enforced or construed according to the laws of the State of Iowa.

12. Amendment

1. Barkpass may amend the terms and conditions of this Agreement at any time by reasonable notice.

13. Severability

1. If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.

14. Definitions

1. "Agreement" means all terms and information contained in this document.
2. "Authorized Users" means the list of persons selected by you to interact with the Software under this Agreement.
3. "Business Day" means a day other than Saturday, Sunday, or bank holidays.
4. "Data" means all of the data submitted by your customers to use the Software as a Service.
5. "Intellectual Property" means any and all of the following in any jurisdiction through the world:
 1. Trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
 2. Copyrights, including all applications and registrations related to the foregoing,
 3. Trade secrets and confidential know-how,

4. Patents and patent applications,
 5. Websites and internet domain name registrations, and
 6. Other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present and future infringement, and any other rights relating to any of the foregoing).
6. "Law" means:
1. Any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgement, and
 2. Any official directive, protocol, code, guideline, notice, approval, order, policy or other requirement of any Governmental Authority having the force of law.
7. "Setup fee" means the optional fee to utilize Barkpass administrators support during account setup.
8. "Software" means the software created by Barkpass to provide dog park management, registration and pet licensing.
9. "Subscription Fees" means the cost of the software you are responsible to pay for monthly.
10. "Term" means the duration the subscription to the software will be in effect.
11. "Terms of Service" means the terms and conditions in this agreement.
12. "Transaction Fees" means the fees charged to you as the result of sales. They are a percentage of the sale.
13. "User" means your customer, also known as a buyer in the Barkpass interface.

This agreement is approved by the parties.

Barkpass, LLC

By: 

Name: Brianne Larson

Title: Co-founder

Date: 4/25/23

By: 

Name: Joshua Larson

Title: Co-founder

Date: 4/25/23

City of Ankeny

By:

Name:

Title:

Date: