General terms of use and licence conditions of Brixxbox GmbH

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Brixxbox GmbH – Husarenstraße 34a – 41836 Hückelhoven

Preamble

Brixxbox GmbH (hereinafter referred to as licensor) is the manufacturer and originator of the business application platform brixxbox (hereinafter referred to as brixxbox) and solutions based on it. With the business application platform brixxbox, the licensor provides a technology with which applications can be configured in a resource-saving manner.

With brixxbox, business processes can be mapped in a consistent and user-friendly manner. The advantage is that applications can be configured easily rather than programmed individually. Existing application templates can be used as a starting point and adapted to individual requirements at any time. Whether desktop, smartphone, tablet or wearables, the sustainable adaptability of the applications and the rapid implementation made possible by web technologies guarantee added value and ensure that IT once again becomes an innovation driver.

The granting of license rights to use brixxbox and the provision of the use are exclusively subject to the following General Terms of Use and License Conditions (hereinafter referred to as GTCL) in their respective version.

§ 1 Applicability

(1) These GTCSD shall apply in their respective version to all future agreements between the Licensor and the Licensee, insofar as these agreements concern the transfer of license rights. The Licensor reserves the right to amend these GTCL at any time in the case of continuing obligations, provided that this is necessary for good reasons, in particular due to a change in the legal situation or in the case of jurisdiction of the highest courts, technical changes or further developments, new organisational requirements of mass transport, regulatory gaps in the GTCL, changes in market conditions or for other equivalent reasons and provided that this does not unreasonably disadvantage the Licensee. The Licensee shall be notified of any changes to the GCSD in writing or by e-mail at least six (6) weeks before they take effect. The amendments shall become effective if Licensee does not object in writing or by e-mail within this period of six (6) weeks (beginning upon receipt of the written notification of amendment) and Licensor has informed Licensee of this legal consequence in the notification of amendment. In the case of services provided free of charge, the Licensor is entitled at any time to change, cancel or replace the GTCL by other GTCLs and to make new services available free of charge or against payment.

(2) They apply exclusively to companies and legal entities under public law (universities, foundations under public law, etc.), not to consumers.

(3) The ANLB apply accordingly for the provision of updates, upgrades, extensions and other changes to brixxbox.

(4) The ANLB apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Licensee shall only become part of the contract if and insofar as the Licensor has expressly agreed to their validity in writing. This requirement of consent shall apply in any case, for example, even if the Licensor, being aware of the Licensee's General Terms and Conditions of Business, begins to provide services to the Licensee without reservation.

(5) Individual agreements made with Licensee in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTCB. The content of such agreements shall be governed by a written agreement or written confirmation by the Licensor.

(6) The contractual agreements are in the following order of priority:

a) License Agreement or individual amendments and/or supplements to the License Agreement after conclusion of the Agreement

b) the general terms and conditions of use and license of the licensor including attachments

c) Standards and norms

d) legal regulations

(7) Gaps shall be filled by the respective subordinate provisions. In the case of agreements in chronological order, the younger one shall take precedence over the older one.

§ 2 Granting of licenses

(1) All rights to brixxbox belong exclusively to the licenser.

(2) The rights to the applications created by the licensee on the basis of brixxbox are owned by the licensee.

(3) In return for a fee for the respective term of the agreement, the licensor grants the licensee the non-exclusive and non-transferable right to use brixxbox and the licensed rights in accordance with the provisions and restrictions set out in these GTCL as well as the license agreement and other terms of use.

(4) The licensee is prohibited from reverse engineering, disassembling and/or decompiling the contractual software or having it done.

(5) The licensee shall not be entitled to grant sub-licenses to third parties.

§ 3 Conclusion of the contract

The license agreement is concluded upon acceptance of the offer, at the latest upon provision of the products and related services by the licensor, unless a separate agreement to the contrary has been made. Offer in the sense of contract law is the order of the licensee.

§ 4 Obligations of the Licensor

(1) During the term of the agreement, Licensor will provide updates and upgrades for brixxbox, unless this service is unreasonable. The updates may contain additional functionalities, but Licensee shall have no claim to the realization of certain functionalities within the scope of the updates. In this respect, Licensor alone decides on the scope and frequency of updates.

§ 5 Changes/Extensions/ System measurement

(1) The Licensor is entitled to make ongoing extensions and optimizations to the system that arise due to technical developments or with regard to the extension of the platform.

(2) The Licensor shall be entitled to temporarily restrict services if this is necessary for reasons of public security, security of network operation, data protection or to carry out operationally or technically necessary work.

(3) The licensee is aware that the licensor does not monitor content transmitted by him nor can he assume responsibility for content transmitted via brixxbox. Only the licensee is responsible for the texts, graphics, data and other information published by him. In particular, the licenser declines any responsibility for the accuracy or quality of the information that has been accessed using the service.

(4) The Licensor is entitled to carry out a survey of the Licensee's systems at any time and on a regular basis to ensure that the systems are used in accordance with the License Agreement. This procedure is used to check whether Licensee complies with Licensor's General Terms and Conditions of Use and Licensing, it also serves in particular to verify that the systems are being used in accordance with the order and contract and to calculate the contract value in accordance with the terms and conditions applicable at the time. In addition, this examination serves to avoid ambiguities regarding the scope of the rights of use and license. If the measurement or in any other way shows that the licensee's use of the Business Application Platform brixxbox exceeds the contractual agreements, the licensor is entitled to re-license the amount accrued through the unauthorized use.

§ 6 Obligations of the licensee

The licensee is obliged to use the licensor's products properly, within the scope of these GTC, the applicable law and the performance specification. He is especially obliged,

a) to pay the agreed fees

b) to comply with the terms of use of brixxbox

c) to enable the Licensor to install technical equipment if and to the extent necessary for the use of the services offered and the installation is not carried out by the Licensee himself

d) not to misuse the access to the services of the Licensor and to refrain from illegal actions

e) to ensure the fulfilment of legal regulations and official requirements and to ensure the granting of official permissions, insofar as these are or will be necessary for participation in the services offered by the Licensor

f) to take into account recognized principles of data security, in particular to keep passwords secret, or to change them immediately or arrange for changes to be made if there is a suspicion that unauthorized third parties may gain knowledge of them

g) immediately report visible defects or damage (fault report)

h) to take all reasonable measures to enable the defects or damage and their causes to be identified or to facilitate or accelerate the elimination of the fault

i) to reimburse the Licensor for any expenses incurred by the Licensor in checking the equipment after a fault report has been submitted, if and to the extent that the check reveals that a fault was within the area of responsibility of the Licensee

j) not to use the Internet or access to it in an illegal manner, in particular not to introduce any content that violates statutory provisions, the personal rights and property rights of third parties or is immoral

k) to ensure that his scripts and programs used on the Licensor's server are not afflicted with errors that could interfere with the Licensor's performance.

§ 7 Force majeure

The licensor is released from the obligation to perform in cases of force majeure. All unforeseeable events as well as events whose effects on the performance of the contract are beyond the control of either party shall be considered force majeure. Such events include, for example, natural disasters, industrial action, interruption of power, telecommunications and Internet supply.

§ 8 Market Place

(1) Licensor plans to expand brixxbox in order to manage applications developed by himself or by the licensee or third parties and/or to offer them to other licensees and customers of Licensor against payment of a fee or to mediate the possibility of using them against payment or to make them available in any other way against payment. Further details on the possible uses of the Market Place are regulated separately in the "Market Place Terms of Use".

(2) To the extent that Licensee wishes to place applications developed by him on the Market Place, he undertakes to ensure that these applications comply with the quality requirements of the Terms of Use of the Market Place. Compliance with the quality specifications is necessary in order to ensure technically flawless use of the provided Applications and to ensure that the services offered by Licensee comply with the quality specifications applicable to Licensor and other Licensees.

(3) Licensor shall be entitled to monitor compliance with the agreed quality. If Licensor determines that the services offered do not comply with the agreed quality, Licensor shall be entitled to refuse to place the services in the Market Place or to remove the services created by Licensee from the Market Place.

(4) Licensee hereby grants Licensor a worldwide, free of charge, perpetual and non-exclusive license to use and market the Materials submitted by Licensee in connection with the use of the Market Place.

(5) The following may not be discontinued

a) Content for which the licensee has no permission, right or license to use

b) illegal, misleading content

c) personal, private or confidential content of third parties

d) unsolicited or unauthorized advertising, promotional materials or informational announcements

(6) The Licensee or the respective third party is responsible for the applications posted by him on the Market Place.

responsible, especially for their contents, warranties and maintenance and support services.

§ 9 Remuneration

(1) The licensee owes the licensor a fee for the granting of the rights of use. The remuneration to be paid by the Licensee and the individual billing modalities are set out in the price lists valid at the time, depending on the content and scope of the contractually agreed service. All prices are exclusive of the respective statutory value added tax. Monthly fees are due monthly at the end of the individual billing period.

(2) Depending on the service package, a limit of 100 e-mails per month (free trial) or 5,000 e-mails per month (basic, standard, enterprise) is defined. If more than 5,000 e-mails per month are required, an additional fee of 0.001 € per e-mail is due.

(3) The Licensor is entitled to change the amount of the fees as well as the pricing model at his own reasonable discretion within the meaning of § 315 BGB.

(4) The Licensor shall notify the Licensee of the change in fees with a notice period of at least two months. The Licensee shall be entitled to terminate this Agreement in writing with effect from the time the change in fees takes effect, subject to a notice period of two weeks. The change in fee shall come into force if the Licensee does not object within the period of notice.

(5) The Licensor shall issue an invoice for the agreed service. Payment must be received within 14 days of the invoice date. The payment of the license fees shall be made in Euro plus the applicable value added tax in the respective applicable amount to the account of the Licensor, stating the intended purpose.

If the licensee does not pay an invoice within the payment period, he is in default by operation of law and the licensor is entitled to charge interest on the claim at a rate of 12 % p.a. The licensee agrees to receive all invoices in electronic form, including e-mail.

§ 10 Offsetting / Right of Retention

Licensee may only offset any claims against Licensor against claims of Licensor for royalties pursuant to § 12 if Licensee's claims are acknowledged or have been legally established.

§ 11 Liability

(1) Unless otherwise provided for in the following § 14 (2), the Licensor shall not be liable for damages, regardless of the legal basis. Subject to the following Section 14 (2), Licensor shall in particular not be liable for the slightly negligent breach of insignificant obligations arising from the contractual relationship, for damages due to loss or faulty processing of data if the damage would not have occurred had the data been properly backed up and Licensee had been properly instructed in how to back up the data, for loss of profit, failure to make savings, damages arising from third-party claims, loss of production and/or business interruptions and other indirect and consequential damages.

(2) The exclusions and limitations of liability according to § 14 para. 1 do not apply to bodily injury, damage to health and life as well as personal injury and damage to property according to the Product Liability Act and for damages for which the Licensor is responsible intentionally or through gross negligence. Furthermore, they shall not apply in the case of fraudulent concealment of a defect or the assumption of a guarantee of quality and/or for damages that have arisen as a result of a slightly negligent breach of essential contractual obligations. In these cases the following applies:

a) The Licensor shall be liable for injury to life, body or health and/or for personal injury and/or damage to property under the Product Liability Act in accordance with the statutory provisions.

b) The licensee shall also be liable in accordance with the statutory provisions for his own intentional or grossly negligent conduct and for the corresponding conduct of his vicarious agents.

c) In the event of fraudulent concealment of a defect or the assumption of a guarantee of quality and/or for damages resulting from a slightly negligent violation of essential contractual obligations, the Licensor shall be liable in accordance with the statutory provisions, but in the latter case only to the amount of the damage typically foreseeable at the time of conclusion of the contract.

§ 12 Copyright and industrial property rights/defense of the licensed rights

(1) All rights to the platform and other documents and programs provided within the scope of the license agreement are the exclusive property of the Licensor.

(2) The parties shall inform each other immediately in writing of all infringements of the Licensed Rights of which they become aware during the term of the Agreement.

(3) The judicial and extrajudicial action against violations, including settlement discussions, due to a violation or other unauthorized use of the Licensed Rights is generally reserved to Licensor.

Licensee shall not be entitled to take any action regarding infringement or unauthorized use of the Licensed Rights without the prior written consent of Licensor. However, upon request and at Licensor's expense, Licensee will provide Licensor with reasonable assistance in connection with any action against an infringer.

§ 13 Term, termination

(1) The license agreement shall become effective upon its entry into force and shall be concluded for the duration of the respective agreed term of contract. It shall be extended by a further month in each case if it is not terminated before the end of the contract period.

The right of termination for good cause shall remain unaffected. The right to use the brixxbox platform expires at the end of the contract period or upon termination.

(2) If one of the parties ("Violating Party") violates an essential contractual obligation or defaults on one of its obligations under these GTC or the License Agreement, the other party ("Non Violating Party") shall notify the Violating Party of the violation or default in writing and demand that the violation or default be remedied immediately. If the Non-Infringing Party does not cure the breach or default within thirty (30) days after receipt of the written notice from the Non-Infringing Party, the Non-Infringing Party shall be entitled to terminate this Agreement in writing.

(3) A material breach of contract on the part of Licensee that entitles Licensor to terminate this Agreement for good cause shall be deemed to exist in the following cases in particular:

a) the licensee's default in invoicing and/or payment of royalties

b) if the licensee infringes the licensor's intellectual property rights

(4) Licensee shall be entitled to terminate the Agreement for good cause if a Licensed Right essential to the contractual products ceases to exist or if the use of the Licensed Rights is opposed by industrial property rights of third parties.

(5) Further and in addition to the extraordinary right of termination according to the above § 17 para. 3, each party is entitled to terminate this Agreement without notice in writing to the other party if the other party gets into considerable financial difficulties and it must be expected that within the next few weeks an application for the opening of insolvency proceedings regarding the assets of the other party will be filed or if an application for insolvency has been filed.

(6) Brixxbox has the right to provide users with usage or licence-related information in the form of emails, phone calls and the like at any time without prior notice.

§ 14 Data protection

The licensee is hereby informed in accordance with the provisions of data protection law (EU-DSGVO) that the personal data provided in the context of order processing or registration will be stored, processed and used exclusively for this purpose in machine-readable form.

The Licensor is entitled to collect, store and use this personal data to the extent necessary to process the order and to invoice the orders.

The data will not be passed on to third parties, unless this has been explicitly stated and the licensee has agreed to it. The licensee may also revoke his consent to the transfer of data at any time vis-à-vis the licensor.

§ 15 Consent to use data

The Licensee agrees that the Licensor may collect and use the above-mentioned data within the meaning of § 18 as well as technical data and associated information, in particular technical information on the hardware and software environment for the contractual objects as well as their application software and peripheral devices, which is regularly

Intervals are recorded to facilitate the provision of software updates, product support and other services provided in connection with the license. Licensor may use this information to improve its information or provide services or technology to Licensee, so long as it is done in a form that does not reveal Licensee's identity. Licensee may, at any time and free of charge, request information.

§ 16 Severability Clause

If any provision of these GTC or the License Agreement is found to be invalid, the validity of the remaining provisions of these GTC or the License Agreement shall not be affected. The invalid clause shall be replaced by a clause that comes closest to the economic intention of the invalid clause. The same applies to any existing loopholes in the contract.

§ 17 Requirement of written form, agreement on jurisdiction

(1) We reserve the right to amend or supplement these license and use conditions if this becomes necessary as a result of changes in the relevant laws, official complaints or for other compelling reasons.

(2) Amendments and supplements to the terms and conditions of license and use as well as the license agreements based on them must be made in writing. The same applies to the waiver of the written form requirement.

(3) The law of the Federal Republic of Germany shall apply to these ALNB as well as to all legal relationships between the Licensor and the Licensee in connection therewith. The application of the UN Sales Convention is excluded.

(4) For all legal disputes between the Licensor and the Licensee, Hückelhoven is agreed as the place of jurisdiction, unless the Licensee is a legal entity under public law, a special fund under public law or has no place of jurisdiction in Germany. Each party to the contract is also entitled to sue the other party to the contract at his general place of jurisdiction.