

Software handover and end user licence agreement

BSCW server software

January 2025

OrbiTeam Software GmbH & Co. KG
Willy-Brandt-Allee 16
53113 Bonn
Germany

(Referred to hereinafter as 'OrbiTeam')

The following translation is for information only. The original and legally binding version is the German version.

Section 1 General

(1) The subject of the contract is the "BSCW server software". OrbiTeam is the owner of the rights to the BSCW server software. The software is intended for operation on local servers or on servers on the Internet and/or corresponding webspace, and provides functions for the server-based organisation of data exchange within various participant groups as part of a shared workspace system. The condition of the application provided by OrbiTeam shall be determined by the description of services (Appendix A).

(2) The program is available for download on the Internet site of OrbiTeam. The version provided for download permits the use of the program as a restricted test version for a period of three months (ninety days). The following conditions apply for the testing of the trial version. The handover of the software as envisaged in this contract is affected by the transmission by OrbiTeam to the licensee of a licence code, which following installation by the licensee will permit full use of the software in accordance with the provisions of this contract. A user manual and installation instructions will also be provided by OrbiTeam on its Internet site for download.

Section 2 Conclusion of the contract, prerequisites for use, special conditions, evaluation

(1) In order to use the software it is necessary to download and install the software and to purchase a licence code. For use of the free trial version, the contract becomes effective when the software is downloaded; in other cases, the usage contract becomes effective when a request is made for the code by the licensee (offer) and subsequently accepted by OrbiTeam. The provision of a licence code by OrbiTeam constitutes acceptance. The licence code can be requested from OrbiTeam via the BSCW server installed at the licensee's premises from the web pages of OrbiTeam, or can be requested in writing from OrbiTeam. OrbiTeam reserves the right to reject an offer.

(2) When requesting a licence code the licensee must select one of the licence models offered by OrbiTeam. In addition to these general conditions, special conditions shall apply to each of the licence models. A contract will only be concluded by OrbiTeam if the licensee agrees to these special conditions. If the general conditions and the special conditions contain conflicting provisions, the provisions of the special conditions shall have priority.

(3) The installation and use of the software for free, without installation of a licence code, is permissible only for evaluation purposes. The scope of use of the software without a licence code is limited for technical reasons relating to the program.

(4) OrbiTeam will save the wording of the contract following conclusion of the contract.

Section 3 Duration of the contract

(1) The provision period shall begin upon provision of the licence code (which makes the commissioning and use of the software as envisaged in this contract possible) by OrbiTeam. By way of derogation from this provision, the usage period for use without a licence code as per Section 1 Paragraph 3 shall begin with the installation of

the software.

(2) The provision contract shall end after the period agreed at the time when the licence code is issued, which starts as of the beginning of the provision period as per Paragraph 1. Upon the expiry of this period or an agreed extension in the subscription, the validity of the licence code ends, so that any further use of the full functional scope of the software is only possible via the purchase of a new licence and the provision of a new licence code. In the event of use of the software without a licence code, as per Section 1 Paragraph 3, the provision contract shall expire after ninety days.

(3) Premature termination is excluded. The right to extraordinary termination for cause, and to termination without notice for cause, shall be unaffected.

Section 4 Payment

The amount and due dates of payment shall be determined by the provisions of the relevant licence model. Unless expressly otherwise stated, the payment amounts set out are net amounts; in this case, statutory sales tax must be paid in addition to the agreed payment.

Section 5 Offsetting/retention, reduction, assignment

(1) Offsetting against other uncontested or legally binding claims is prohibited.

(2) Exercising a right of retention which is not based on a right arising from this contract is prohibited.

(3) The assignment of any of the customer's claims arising from this contract to third parties is excluded. Assignments agreed in breach of this provision shall be ineffective.

Section 6 Rights of use and reproduction rights

(1) OrbiTeam grants the licensee a basic, non-exclusive right to use the software, limited to the duration of the term of the contract.

(2) The licensee may reproduce the supplied software provided that such reproduction is necessary for the use of the software. Necessary reproduction includes in particular the installation of the software on the bulk memory of the hardware item used, and the loading of the software into the internal memory. Unless anything to the contrary is stipulated by these provisions or the special provisions of the usage model in question, the licensee is only entitled to install the software on one piece of hardware and to use the software on the server side. If the licensee replaces its hardware, it must delete the software from the previously used hardware.

(3) The abovementioned rights and obligations also apply for updates, upgrades, newer versions and other changes to the software supplied by OrbiTeam during the term of the contract.

(4) In addition to this, the licensee may make a copy for backup purposes. Only one backup copy may be created and stored, however. The backup copy must be labelled as a copy of the provided program.

(5) If regular backup of the entire data stock including the computer programs used is essential, for reasons of data security or in order to ensure a rapid reactivation of the computer system following total failure, the user may make backup copies in the required numbers. The data carriers used must be marked appropriately. The backup copies may only be used for purely archiving purposes.

(6) The licensee may not make any further reproductions; this includes the printing of the program code.

Section 7 Transfer to third parties

(1) Unless the special conditions of the selected licence model stipulate otherwise, the licensee may not sell the software, including the user handbook and licence code, to third parties, nor permit temporary use of the software by third parties, nor allow third parties access to the software, and in particular may not rent or lease the software to third parties.

(2) However, the licensee is entitled to allow use of the software by third parties who have not been granted any autonomous rights of use and who are obliged to comply with the wishes of the licensee in relation to the way in which the software is used (e.g. employees of the licensee). The prohibition on multiple use as stipulated by these provisions and the special provisions of the relevant licence model must also be observed in these cases.

(3) In particular, the granting of access to the functions of the BSCW server software in accordance with the intended use is permissible if this is done in such a way that the licensee enables third parties to use the functions of the program, by setting up user groups and registering users within the scope of use granted, and on the basis of the software installation on the licensee's server.

(4) In the event of unauthorised provision for use, the licensee must send to OrbiTeam, at its request and without delay, all the information required to assert a claim against the user, in particular the user's name and address.

Section 8 Source code, decompiling and program changes

(1) OrbiTeam is not obligated to provide the source code, unless otherwise agreed. If OrbiTeam does provide the licensee with the source code of the program, the licensee may not share this source code with third parties.

(2) Any change made to the software by the licensee is not permitted if it does not serve to repair a defect and OrbiTeam is in delay with the repair of this defect, or if it does not serve to make minor amendments to the external appearance in the sense of (5) below, for example by changes to the Style Sheets or configuration files. In the event of delay on the part of OrbiTeam in the repair of a defect, the licensee may only instruct a commercially operating third party to repair the fault if the third party in question is not in a potentially competitive relationship with OrbiTeam, if any disclosure of important program functions and methods is likely to arise as a result of the repair being undertaken.

(3) The recompilation of the program code into other code forms (decompiling), and other types of reverse engineering of various stages in the production of the software, are only permitted if undertaken in order to obtain information which is necessary in order to achieve the interoperability of an independently created computer program, and if this information cannot be obtained in any other way. The licensee must first request the necessary information from OrbiTeam, in return for payment of compensation for expenditure of time and effort.

(4) A further precondition for the permissibility of any decompiling is that the reverse engineering or program observation only arises as a result of actions which the licensee is entitled to undertake in accordance with Sections 5–6 of this contract. In particular, the program code may not have been issued on any printer or made known to third parties.

(5) Copyright marks, serial numbers and other characteristic features used to identify the program may not under any circumstances be removed or altered. The licensee is entitled to insert its logo into the HTML pages of the BSCW server or to make minor changes to the Style Sheets in order to adjust the external appearance provided that the general appearance is maintained and copyright marks, logos and other characteristic features used by OrbiTeam to identify the program are not removed or altered.

Section 9 Claims for defects

(1) Defects in the supplied software, including the handbooks and other documents, shall be rectified by OrbiTeam within a reasonable time following due notification of the defect by the licensee. Defects will be rectified by repairs which will be carried out free of charge. Alternatively, OrbiTeam may rectify defects by supplying a replacement, provided that the licensee can be reasonably expected to agree to the time this will take.

(2) For the purposes of checking for and eliminating defects, the licensee shall permit OrbiTeam to access the software via telecommunication. The necessary connections shall be set up by the licensee in accordance with OrbiTeam's instructions. The licensee shall appoint a contact partner for OrbiTeam. This contact partner shall be responsible for any consultation and cooperation necessary for the rectifying of defects.

(3) If the licensee is a entrepreneur, it may not reduce the regular payments of the remuneration amount in the event of defects. Any existing right to recover overpaid amounts shall be unaffected.

(4) The licensee's right to terminate the contract on the grounds of failure to grant use as per Section 543 Paragraph 2 Sentence 1 No. 1 BGB (German Civil Code) is excluded, provided that the repair or replacement is not deemed to have failed.

(5) OrbiTeam will not provide any warranty in the event that the product is used for evaluation purposes without a licence code having been purchased (Section 1 Paragraph 3).

Section 10 Liability

(1) OrbiTeam shall be liable to the licensee without restriction in the event of intent or gross negligence for all damages caused by OrbiTeam or its legal representatives or agents.

(2) In the event of minor negligence OrbiTeam shall be liable without restriction for loss of life, bodily injury or damage to health. No other liability shall be assumed by OrbiTeam, provided that it has not violated a major obligation (an obligation which must be fulfilled in order for this contract to be properly executed and which the licensee can generally expect to be complied with). In these cases, OrbiTeam's liability shall be limited to compensation for foreseeable, typically occurring damage.

(3) Liability for loss of data shall be limited to the typical restoration costs which would have been incurred had backup copies been created regularly, commensurate with risk.

(4) Notwithstanding the above provisions, the provider's strict liability for compensation (Section 536a BGB) for defects existing at the time of conclusion of the contract is excluded.

(4) Liability based on the provisions of product liability law remains unaffected.

(5) In the event that the product is used for evaluation purposes without a licence code having been purchased (Section 1 Paragraph 3), OrbiTeam shall only be liable for intent and gross negligence (by way of derogation from the provision in Paragraph 2).

Section 11 Duty to exercise proper care

(1) The licensee must take appropriate measures to prevent unauthorised access by third parties to the program, the licence code and the documentation.

(2) The licensee shall make it very clear to users that they must comply with the terms of this contract and with the special conditions of the licence model in question. In particular, the licensee shall request that users do not make any unauthorised copies of the user handbook and shall forbid them from making unauthorised use of the licence code.

(3) If a user violates the copyright of OrbiTeam, the licensee must use its best endeavours to co-operate in the investigation of the violation, and in particular must immediately inform OrbiTeam of the acts of violation in question. This shall also apply after the term of the contract has expired.

Section 12 Use following expiry of the contract, deletion obligations

(1) After the term of the contract has expired, the licensee may only access the BSCW server in read-only mode. It will no longer be possible to change the data on the BSCW server or to store new data.

(2) By way of derogation from Paragraph 1, in the event that the product is used for evaluation purposes without a licence code having been purchased (Section 1 Paragraph 3), the licensee must fully and permanently delete all copies of the program, including the user handbook.

Section 13 Written form

With the exception of the designation and identification of the licence model set out in these conditions, and the incorporation of the relevant special provisions of the licence model in question, amendments and additions to these conditions, including this clause, must be in writing. If they are stated by representatives or auxiliaries of OrbiTeam, they shall be binding only with the written consent of OrbiTeam.

Section 14 Conflict with other terms and conditions

(1) If the licensee also uses General Terms and Conditions, the contract shall enter into force even in the absence of express agreement on the inclusion of General Terms and Conditions. Insofar as the different General Terms and Conditions coincide, they shall be deemed to be agreed. In place of conflicting individual terms, the provisions of standard contract law shall apply. The same shall apply in the event that the licensee's Terms and Conditions contain provisions which are not included in these Terms and Conditions. If the present Terms and Conditions contain provisions which are not included in the licensee's Terms and Conditions, the present Terms and Conditions shall apply.

(2) The above Paragraph shall apply accordingly to the special conditions of the relevant licence model.

Section 15 Choice of law, contract language

(1) The parties agree that all legal relationships arising from this contract shall be governed by the laws of the Federal Republic of Germany, to the exclusion of the UN Sales Convention.

(2) The original and legally binding version of this contract is the German version.

Section 16 Place of jurisdiction

If the licensee is a businessman, a legal entity in public law or a special fund under public law, the place of jurisdiction for all disputes in connection with the execution of this contractual relationship is agreed as the place where the registered office of OrbiTeam is situated.

Section 17 Final provisions

In the event that one or more of the provisions in this contract should prove invalid, the rest of the contract shall be unaffected. In this case the legal provisions shall additionally apply.