

General Terms and Conditions for the Use of bNear („bNear-GTC“)

1. General

- 1.1 bNear is operated and developed by bNear GmbH, Vitalisstr. 67, 50827 Köln („bNear“).
- 1.2 These bNear-GTC govern the use of bNear by the "Client" as authorized by bNear GmbH (Client together with bNear GmbH also "Parties" and individually "Party").
- 1.3 Prerequisite for the authorization and the use of bNear is the conclusion of a license agreement with bNear GmbH in written form using the "Order Form", of which these bNear-GTC are essential parts of. If bNear is downloaded from a third-party marketplace (e.g. Microsoft® Store) the acceptance of the terms referred to in the download process is considered as Order Form.
- 1.4 Entitlement to the use of bNear is exclusively given to entrepreneurs in the sense of § 14 German Civil Code (*Bürgerliches Gesetzbuch, BGB*), i.e. natural or legal persons or partnerships with legal capacity exercising their commercial or independent professional activity (as well as their personnel).
- 1.5 Any Client's terms and conditions deviating or supplementing these bNear-GTC shall not apply, unless the Parties have agreed explicitly otherwise in written form (email not sufficient).

2. Subject of the License Agreement; Scope of Services

- 2.1 bNear is a software application for the use in connection with Microsoft® Teams. The exact scope and bNear's functionalities, services and interfaces can be found in the Order Form and in the descriptions on the website under www.bnear.io ("bNear Website"). The access to bNear is exclusively online.
- 2.2 bNear GmbH provides bNear with the functionalities and services in place at the point in time of the conclusion of the Order Form. bNear GmbH reserves the right to further develop the functionalities and services in the future and to introduce additional functionalities and or services. Unless agreed otherwise Completed upgrades and/or supplements shall be provided to the Client in the framework of bNear without separate remuneration.
- 2.3 The right of the Client to the use of bNear is limited to the term of the Order Form, and is non-exclusive, not sublicensable and non-transferable ("Right of Use").
- 2.4 The right of use of bNear only exists within the scope of the current technical standards. bNear is available for a 97% monthly average (maintenance works and improvements excluded). Due to the performance of necessary maintenance works and improvements, it is possible that bNear or individual functionalities may be unavailable for short periods of time. bNear GmbH herewith considers the justified interests of the Client, in particular, by way of advance communication in a timely manner.

3. Access and Access Data; System Integrity

- 3.1 Access to bNear is protected by passwords and may also be protected by further technical measures (e.g. SMS-Tan). In order to obtain access, the Client must request access for each User. bNear GmbH shall then submit to the User access data and grant access after activation by the Client.
- 3.2 The Client and/or the Users shall keep the password confidential and duly secure the access data. The Client shall be responsible and liable for the Client's Users. The Client is obliged to inform bNear GmbH immediately in the event of evidence of the abuse of the Client's and/or any of the Client's Users' access to bNear by third parties. bNear GmbH shall not disclose the password of a Client

and/or a User to third parties and shall never request the password from the Client and/or the User via email or telephone. The Client shall be in general liable for any and all activities carried out using his access data to the extent the Client is responsible for the abuse of the Client's or the User's access data.

- 3.3 Activities intended to make bNear inoperable or to impede its use are not permitted. The Client and the Users shall not take any measures that could result in inappropriate or excessive use of the infrastructure of bNear.

4. System Requirements and Client's Obligation

The Client is responsible for compliance with the system requirements necessary for the use of bNear in particular with regard to a sufficient internet connection, operating system and the Microsoft® Teams software ("System Requirements"). bNear GmbH will provide recommendations regarding the System Requirements upon request.

5. Blocking of Access and Other Measures

- 5.1 bNear GmbH has the right to block bNear temporarily for the Client in the event that specific evidence is given that a Client and/or Users has violated statutory provisions or these bNear-GTC seriously or repeatedly, or the Client is in arrears with the payment of amounts in total exceeding two monthly fees.
- 5.2 bNear GmbH shall, in making the decision to block access, consider the justified interests of the affected Client, in particular, whether there is evidence that the Client and/or the Users are not culpable for the violation. bNear GmbH shall remove the block immediately once the violation ceases.

6. Fees, Accounting, Offsetting

- 6.1 bNear GmbH shall invoice the fees as agreed in the Order Form and any further fees for additional services in accordance with the respective applicable price list. All amounts mentioned are net plus value added tax at the statutory rate.
- 6.2 Unless agreed otherwise, the fees shall be paid monthly in advance. bNear shall issue a digital invoice per email to the Client on a monthly basis regarding the incurred fees. The final amount shown in the invoice is due for payment immediately. All payments shall be made to the bNear Account stated in the invoice. Further payment methods may be available as stated in the bNear Quote or on the bNear Website.
- 6.3 Clients are only entitled to set off due and/or future claims against payment requests by bNear GmbH where these claims are legally established or undisputed.

7. Term and Termination

- 7.1** Unless agreed otherwise in the License Agreement, the term of the License Agreement shall be 3 months ("**Initial Term**") and shall be extended for a further 3 months period in each case unless one of the Parties terminates the Order Form with written one month's notice before the end of the respective term (email sufficient).
- 7.2** The right of each of the Parties to terminate for good cause with immediate effect remains unaffected. Good cause shall be deemed to exist, if (i) an insolvency proceeding over the assets of the Client is rejected due to the lack of assets, or an out-of-court conciliation procedure takes place, (ii) claims of the other Party are pledged and the pledge is not lifted within two weeks, or (iii) the other party seriously or repeatedly violates its duties under the License Agreement.
- 7.3** Termination must be issued in written form (email sufficient).

Warranties

- 7.4** bNear GmbH warrants that bNear is available to the Client within the scope and the availability according to Clause 2. Beyond this, bNear GmbH does not grant any warranties and gives no independent guarantee. In the event of any defects, bNear GmbH will undertake the necessary measures to remove the defect within appropriate time.
- 7.5** bNear GmbH is exempted from the duty to perform in the event of force majeure. Force majeure are all unforeseeable incidents as well as such incidents where the impact on the performance of the contract is not within the control of either Party. These incidents include, in particular, legal industrial actions, also in respect of third-party operations, public measures, breakdown of communication networks and gateways of other operators, disruptions in the area of line providers, other technical disturbances, including if these circumstances occur in the sphere of subcontractors, sub-suppliers or their subcontractors. No claims for the Client result from such breakdowns that bNear GmbH is not responsible for.

8. Limitation of Liability

- 8.1** bNear GmbH shall only be liable for damages, with the exception of a violation of material contractual duties, where and to the extent that bNear GmbH, its legal representatives, executive employees or other vicarious agents have acted intentionally or with gross negligence. In the event of a violation of material contractual duties, bNear GmbH shall be liable for any culpable behavior by its legal representatives, executive employees or other vicarious agents, whereas the term "material contractual duties" refers to those duties whose fulfillment is a prerequisite for enabling the proper fulfillment of the Order Form in the first place, the fulfillment of which the Client may normally rely on, and whose breach jeopardizes the achievement of the purpose of the contract.
- 8.2** Except for intentional or grossly negligent behavior by bNear GmbH, bNear GmbH's legal representatives, executive employees or other vicarious agents, liability of bNear GmbH is limited to the amount of the damage typically foreseeable at the point in time of the conclusion of the contract.
- 8.3** In cases of liability according to section 8.2, the liability of bNear GmbH is also limited to the amount of fees payable by the Client in the contractual year the damage occurred bNear.
- 8.4** Any further liability of bNear GmbH is excluded. To the extent liability of bNear GmbH is excluded or limited, the same shall apply for the personal liability of the legal representatives, executive employees or other vicarious agents of bNear GmbH.

- 8.5** The abovementioned limit of liabilities shall not apply in the event of the assumption of express guarantees by bNear GmbH and in respect of damages arising from injury to life, body or health as well as in the event of mandatory statutory provisions.

9. Copyright and Rights of Use

The Client acknowledges that any and all rights existing in respect of bNear, including any and all intellectual property rights such as copyrights, trademark rights, patents and any and all other protective rights are exclusively and completely vested in bNear GmbH or, as applicable, third-party licensors of bNear GmbH. The Client is not entitled to copy, modify, decompile bNear or part thereof, prepare derivative works or reverse engineer, disassemble, translate it or in any other way try to change the source code. This shall apply only to the extent that such activity is not expressly permitted in accordance with Sec. 69d and 69e German Copyright Law (*Urheberrechtsgesetz, UrhG*).

10. Confidentiality

- 10.1** The Parties undertake to keep all confidential information of the other Party, and of the entities that are affiliated with it in the sense of Sec. 15 ff. German Stock Corporation Act (*Aktiengesetz, AktG*), confidential which the Parties become aware of in connection with or during the implementation of the Order Form, and to use them solely for the purposes set forth in the Order Form. Such information may still be disclosed to those employees and external advisors who are directly involved in the implementation of the agreement ("need to know" principle) and who are bound by law or contract - to the extent legally permissible also for the period after they leave the company - to maintain confidentiality. Information may also be disclosed if the other Party has agreed to disclosure. bNear shall be entitled to forward confidential information on a need-to-know-basis to potential software providers in order to collect offers of such providers for the Client. Confidential information within the meaning of this section shall be trade secrets within the meaning of Sec. 2 No. 1 of German Law on the Protection of Trade Secrets and all other confidential information of an economic, legal, financial, technical or fiscal nature which relates to the business activities, customers or employees of the Parties and which is indicated as such or is by its nature to be regarded as confidential, irrespective of whether and how it is documented or embodied ("**Confidential Information**").
- 10.2** The term Confidential Information does not include such information which (i) is or becomes available in the public domain or generally (except by reason of any breach of this agreement by informed Party or its Representatives); (ii) was already legitimately in the possession of the informed Party and not subject to a duty of confidentiality, before the informed Party received the information from the informing Party or (iii) was received from a third party who was entitled to disclose this information without restriction. The Party claiming one of the above exceptions must prove the applicability of such exception.
- 10.3** Each Party may disclose confidential information to a public authority if the Party is required to such disclosure according to applicable laws or an official order. The extent of disclosure shall be kept as small as possible; the other Party shall be informed without delay and – if possible – prior to the disclosure to the public authority.
- 10.4** Upon termination of the Order Form, the Party which has received Confidential Information of the other Party shall, upon written request of the other Party, either return or destroy, at the other Party's option, all Confidential Information (including all embodiments, data carriers and copies) immediately and at its own expense, to the extent reasonably practicable, and confirm this to the other Party. This shall not apply if and insofar as the Party

obliged to return or destroy is legally obliged to retain Confidential information.

10.5 The rights and obligations in this Clause 11 shall be not be affected by the termination of the Order Form.

11. Choice of Law, Place of Performance, Place of Jurisdiction

11.1 The License Agreement including these bNear-GTC are, in respect of application and interpretation, exclusively subject to the laws of the Federal Republic of Germany with the exception of the UN Convention on the International Sale of Goods of 11 April 1980.

11.2 Place of performance shall be Cologne. In respect of all claims under or due to the use of bNear Cologne is agreed as the exclusive place of jurisdiction. Irrespective of this, bNear may also sue the Client at the Client's place of jurisdiction.

Miscellaneous

11.3 The Order Form including these bNear-GTC and its further annexes represent the entire agreement and understanding in respect of the subject of agreement, and replace any and all oral or written agreements and understandings in place between the Parties with

respect to the subject of agreement, unless expressly agreed otherwise in the Order Form.

11.4 Amendments or supplements to the Order Form or these bNear-GTC - including this written form requirement - and its attachments must be made in written form in order to be effective (email not sufficient). All other notifications in the framework of this agreement may, unless expressly agreed otherwise, be transmitted to the email addresses specified by the Parties for this purpose. Oral communication or communication by telephone are not sufficient.

11.5 bNear GmbH may propose to amend these bNear-GTC to Client at any time ("**Amendments**"). Amendments will be offered to the Client in text form (e.g. by email) no later than 30 days before the proposed effective date. Client's consent shall be deemed given if the refusal is not announced to bNear GmbH in text form (e.g. by email) before the proposed effective date of the Amendments. If the Client refuses the offered Amendments before the proposed effective date of the Amendments, these bNear-GTC shall continue to apply without the Amendments. In the message in which the Amendments are offered, bNear GmbH will especially notify the Client about the right of refusal, the relevant term for it and the possibility to terminate the License Agreement. In addition, bNear GmbH will make public the Amendments on the bNear Website.