

# Brixos

## Terms of Service

Revised: 24-08-2020

### 1. ACCEPTANCE OF TERMS

Brixos, Inc. (“Brixos”) provides technology-enabled services, including the Software as a Service offering branded as Brixos, the website at <https://www.brixos.com>, any Mobile Apps (as defined below), and other related software, content, and services, including all versions and upgrades thereto (collectively, the “Services”). Your use of the Services is subject to and governed by the terms and conditions in this Terms of Service (“TOS”). Brixos may, at its discretion, update this TOS at any time. You can access and review the most current version of this TOS at the URL for this page or by clicking on the “Terms of Service” link within the Services, or as otherwise made available by Brixos.

PLEASE REVIEW THIS TOS CAREFULLY. BY REGISTERING FOR AN ACCOUNT OR OTHERWISE ACCESSING OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THIS TOS, INCLUDING ANY UPDATES OR REVISIONS POSTED HERE OR OTHERWISE COMMUNICATED TO YOU. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS TOS, YOU MAY NOT ACCESS OR USE THE SERVICES.

YOU MUST, FOR A PERIOD OF TWELVE (12) MONTHS AFTER THE COMPLETION DATE OF THE LAST PROFESSIONAL SERVICES PROJECT WHICH WAS INITIATED USING THE SERVICES, USE THE SERVICES TO CONNECT WITH ANY PROFESSIONAL SERVICE PROVIDER WITH WHICH YOU HAVE CONNECTED PREVIOUSLY USING THE BRIXOS SERVICES AND PAY BRIXOS THE FEES WITH RESPECT TO ANY PROFESSIONAL SERVICES PROVIDED DURING SUCH TWELVE (12) MONTHS PERIOD. .

THIS TOS REQUIRES FINAL AND BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS TOS, OR YOUR ACCESS TO

OR USE OF THE SERVICES, INCLUDING THE VALIDITY, APPLICABILITY OR INTERPRETATION OF THIS TOS, AND YOU AGREE THAT ANY SUCH CLAIM WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION, ARBITRATION OR OTHER SIMILAR PROCESS. PLEASE REVIEW SECTION 14 CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE RESOLUTION OF ANY CLAIM.

You represent and warrant that you: (a) are of legal age to form a binding contract; (b) have the right, authority, and capacity to agree to and abide by this TOS; and (c) are not a person barred from using the Services under the laws of any applicable jurisdiction. THE SERVICES ARE NOT INTENDED FOR USERS UNDER THE AGE OF 13, AND SUCH USERS ARE EXPRESSLY PROHIBITED FROM SUBMITTING ANY PERSONAL DATA OR USING ANY ASPECT OF THE SERVICES, AND BY TAKING SUCH ACTIONS YOU AGREE, REPRESENT, AND WARRANT THAT YOU ARE 13 YEARS OF AGE OR OLDER.

## 2. RIGHTS

- (a) **Grant.** Subject to and conditioned on your compliance with this TOS, Brixos hereby grants you a personal, non-exclusive, non-transferable, non-sublicensable, revocable license solely to use the Services only for your personal, non-commercial use to connect with service providers for your home improvement or maintenance needs. Your access to and use of the Services must further comply in all material respects with all usage guidelines posted by Brixos.
- (b) **Mobile Apps.** Brixos may make available mobile software applications for access to and use of certain components of the Services (collectively, "Mobile Apps"). Your access to and use of Mobile Apps is subject to and governed by this TOS. If any Mobile App is downloaded by you from the iTunes App Store (each, an "iOS Mobile App"), your use of such iOS Mobile App is further subject to your compliance in all material respects with the terms and conditions of the Usage Rules set forth in the iTunes App Store Terms of Service. This TOS is between you and BRIXOS only, and not with Apple Inc. ("Apple") or any other app store provider, and Apple is not responsible for iOS Mobile Apps and the contents thereof; however, Apple and Apple's subsidiaries are third-party beneficiaries of this TOS with respect to iOS Mobile Apps.
- (c) **Trademarks.** You may not use the Brixos or any of its names, brands, trademarks, service marks and logos that Brixos makes available on the Services ("Marks"). Brixos claims trademark protection over all such Marks and you will not use the Marks except as expressly authorized herein. You will not remove or alter the Marks or any proprietary notices on the Services. The Marks may not be included in or as part of any registered corporate name, any other logo, or service or product name. You may not create any derivative works of the Marks or use the Marks in a manner that creates or reasonably

implies an inaccurate sense of endorsement, sponsorship, or association with Brixos. You will not otherwise use business names or logos in a manner that can mislead, confuse, or deceive any third party. All use of the Marks and all goodwill arising out of such use, will inure to Brixos' benefit.

### **3. INFORMATION YOU PROVIDE**

- (a) In addition to this TOS, the Brixos Privacy Policy at <http://www.brixos.com/privacy> ("Privacy Policy") applies to how Brixos may process information provided as part of the Services. You acknowledge and agree that by accessing or using the Services, Brixos may receive certain information about you, including personal data, as set forth in the Privacy Policy, and Brixos may collect, use, disclose, store, share, and process such personal data in accordance with such Privacy Policy.
- (b) By completing a service request, you are requesting and you expressly consent to being contacted by Brixos and by our service providers or Professional Service Providers (as hereinafter defined) via phone, email, mail or other reasonable means, at any of your contact numbers or addresses, notwithstanding the fact that you may be listed on a federal, state or other applicable "Do Not Call" list, to enable Brixos to provide the Services and any applicable support functions. In addition to the foregoing and notwithstanding any current or prior election to opt in or opt out of In addition to the foregoing and notwithstanding any current or prior election to opt in or opt out of receiving automated telephone calls, SMS messages or other messaging from Brixos, our agents, representatives, affiliates, anyone calling on our behalf or the service providers regarding the Service or Professional Service Providers, you expressly consents to be contacted by Brixos, our agents, representatives, affiliates, anyone calling on our behalf or the service providers or a Professional Service Providers for any and all purposes arising out of or relating to the Service, at any telephone number you provide, or physical or electronic address you provide or at which you may be reached. You agree Brixos may contact you in any way, including SMS messages (including text messages), calls using prerecorded messages or artificial voice, and calls and messages delivered using auto telephone dialing system or an automatic texting system. Automated messages may be played when the telephone is answered, whether by you or someone else. In the event that an agent or representative calls, he or she may also leave a message on your answering machine, voice mail, or send one via text. You consent to receive SMS messages (including text messages), calls, messages (including prerecorded and artificial voice and autodialed) or other messaging from us, our agents, representatives, affiliates, anyone calling on our behalf or the service providers or Professional Service Providers at the specific number(s) you have provided to Brixos, or numbers Brixos can reasonably associate with your account (through skip trace, caller ID capture or other means), with information or questions about the Service. You certify, warrant and represent that the telephone numbers that you have provided to Brixos are

your contact numbers. You represent that you are permitted to receive calls at each of the telephone numbers you have provided to Brixos. You agree to promptly alert Brixos whenever you stop using a particular telephone number. Your cellular or mobile telephone provider will charge you according to the type of plan you carry. Brixos may listen to and/or record phone calls between you and Brixos' representatives without notice to you as permitted by applicable law. For example, Brixos listens to and records calls for quality monitoring purposes. "Professional Service Provider" means a user (person or entity) of the Service who is registered to send quotes for Professional Services, sends quotes for Professional Services, or otherwise uses the Services to offer, provide, receive payment for, or facilitate the provision of Professional Services. "Professional Services" means the services listed, quoted, scheduled, offered or provided by Professional Service Providers, or sought, scheduled or received by a Professional Service Customer, through the Service. "Professional Service Customer" means any user who is registered to receive or request quotes for Professional Services or otherwise use the Services to receive, pay for, review or facilitate the receipt of Professional Services.

## 4. PROPRIETARY RIGHTS

- (a) You grant Brixos and its service providers a perpetual, irrevocable, worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made all content (in any form and any medium, whether now known or later developed) that you provide in connection with the Services. You acknowledge and agree that the technical processing and transmission of data associated with the Services, may require: (i) transmissions over various networks and across borders; and (ii) modifications to conform, connect, and adapt to technical requirements of networks or devices.
- (b) The Services provided to you hereunder or available to you through the Services are licensed, not sold, and BRIXOS retains and reserves all rights not expressly granted in this TOS. You acknowledge and agree that, as between you and Brixos, Brixos and its licensors owns all rights, title and interest (including all intellectual property rights) in the Services and all data, content, and other materials within the Services. The Services are protected by U.S. and international copyright and other intellectual property laws and treaties. Brixos reserves all rights not expressly granted to you in this TOS.
- (c) You may not share your account or password with anyone. You are fully responsible for all activities that occur under your account. You agree to notify BRIXOS immediately of any unauthorized use of your account or password or any other similar breach of security. If your account remains inactive for three months or longer, BRIXOS reserves

the right to suspend or terminate your account, with or without notice to you, and delete your content all without liability.

## 5. USER CONDUCT AND RESTRICTIONS

- (a) In your use of the Services, you will not:
- (i) use, reproduce, modify, adapt, create derivative works from, sublicense, publicly perform, publicly display, distribute, sell, lease, rent, make, have made, assign, pledge, transfer or otherwise grant rights to the Services, except as expressly permitted under this TOS;
  - (ii) reverse engineer, disassemble, decompile, translate, or otherwise attempt to derive trade secrets, algorithms, or the source code, architectural framework, or data records, within or associated with the Services;
  - (iii) interfere with or disrupt the integrity or performance of the Services, including by disrupting the ability of any other person to use or enjoy the Services;
  - (iv) provide use of the Services on a service bureau, rental or managed services basis, provide or permit other individuals or entities to create Internet "links" to the Services or "frame" or "mirror" the Services on any other server, or wireless or Internet-based device;
  - (v) access the Services for the purpose of developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Services;
  - (vi) violate any applicable local, state, provincial, federal or international law or regulation, or use the Services for any illegal, unauthorized or otherwise improper purposes, including to store or transmit malicious code, or to store or transmit material in violation of third-party privacy rights;
  - (vii) remove or obscure any proprietary notice that appears within the Services;
  - (viii) impersonate any person or entity, including BRIXOS personnel or third-party service providers, or falsely state or otherwise misrepresent your affiliation with BRIXOS, or any other entity or person;
  - (ix) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Services;
  - (x) take any action that imposes an unreasonable or disproportionately heavy load on the Services or its infrastructure;
  - (xi) use spiders, crawlers, robots, scrapers, automated tools or any other similar means to access the Services; or download, reproduce, or archive any substantial portion of the Services;
  - (xii) sign up for, negotiate a price for, use, or otherwise solicit a Professional Service with no intention of following through with your use of or payment for the Professional Service; or
  - (xiii) attempt to indirectly undertake any of the foregoing.

- (b) You will not: upload, post, email, store, transmit, or otherwise make available any content that:
- (i) is illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or otherwise objectionable;
  - (ii) may not be made available under any law or under contractual or fiduciary relationships (such as confidential or proprietary information learned as part of an employment relationship or under a non-disclosure agreement);
  - (iii) infringes any patent, trademark, trade secret, copyright, or other proprietary right of any party;
  - (iv) consists of unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, commercial electronic messages, or any other form of solicitation;
  - (v) contains software viruses or any other code, files or programs designed to interrupt, destroy or limit the functionality of any software or hardware;
  - (vi) contains infringing, libelous, or otherwise unlawful or tortious material; or
  - (vii) consists of information that you know or have reason to know is false or inaccurate.
- (c) Brixos' failure to enforce any of these restrictions or guidelines shall not act as a waiver for any future enforcement, will not be considered a breach of this TOS by Brixos, and does not create a private right of action for any other party.
- (d) **Payment.** Individuals and entities that register to use the Services for the purpose of connecting with service providers to complete various tasks and projects ("Homeowners") shall pay fifty percent (50%) of the costs of a service or project prior to the commencement of the applicable service or project and the remaining costs upon the completion of the applicable service or project (the "Fees"). Brixos may in its sole and absolute discretion change its Fees at any time, including after a Homeowner receives or requests quotes for a service or project. Brixos may charge and/or retain Fees if you do not fulfill your contractual obligations under this TOS. All payments will be made in United States dollars via (i) electric funds transfer, or (ii) as otherwise required by Brixos, as per the instructions of Brixos. Brixos may elect to use Stripe for payment, analytics and other business services. In the event that Brixos uses Stripe for payment, analytics or other business services, Stripe will collect identifying information about the devices that connect to its services. Stripe uses this information to operate and improve the services it provides to Brixos, including for fraud detection. You can learn more about Stripe and read its privacy policy at <https://stripe.com/privacy> .

## 6. FEEDBACK

If you elect to provide or make available to Brixos any suggestions, comments, ideas, improvements or other feedback relating to the Services ("Feedback"), Brixos shall own and be

free to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights in your Feedback in any form and any medium (whether now known or later developed), without credit or compensation to you.

## **7. DEALINGS WITH ADVERTISERS AND OTHER THIRD PARTIES**

The Services may include or provide access to Professional Service Providers, third party products, services, content, or offerings, including advertising for such (“Third Party Services”). You acknowledge that different terms of use and privacy policies may apply to your use of such Third Party Services and that terms and policies are solely between you and the advertiser or other third party. You agree that does not endorse and is not responsible or liable for any issues related to Third Party Services.

## **8. INDEMNIFICATION**

You shall indemnify and hold BRIXOS and its affiliates, and each of their officers, directors, employees, agents, partners and licensors (collectively, “Brixos Parties”) harmless from and against all losses, damages, costs, liabilities, and expenses, including reasonable attorneys’ fees, to extent resulting from or arising out of any third party claim, demand, or action due to (a) content you provide to Brixos; (b) your violation of this TOS, any law or regulation, or any rights (including intellectual property rights) of another party; (c) your use of the Services, except as expressly permitted in this TOS; (d) your interaction with any other user or (e) the request or receipt or offer or provision of Professional Services by you, including but not limited to any injuries, losses, or damages (compensatory, direct, incidental, exemplary, punitive, consequential or otherwise) of any kind arising in connection with such Professional Services.

## **9. NO GUARANTEES OR ENDORSEMENTS; DISPUTES BETWEEN OR AMONG USERS**

- a) Brixos does not guarantee that your service needs will be matched with a Professional Service Provider or that there are Professional Service Providers in your area who are able or willing to complete your needs. Brixos makes no representations or guarantees regarding the skills, quality or pricing of any Professional Service Providers. Brixos does not endorse or recommend any particular Professional Service Provider and it is entirely your decision whether to enter into an agreement with a Professional Service Providers. Brixos does not warrant Professional Service Provider performance or guarantee the outcome or quality of the service performed. Your rights under the contracts you enter into with the Professional Service Providers are governed by the terms of such contracts

and by applicable laws. Brixos is not a party to any agreements between or among users, Professional Services Providers, or third parties. Should you have a dispute with any Professional Service Provider, you must address such dispute with the Professional Service Provider directly. No agency, partnership, joint venture, or employment is created as a result of this TOS or any user's or Professional Service Provider's use of any part of the Services, including but not limited to any scheduling or other services. Neither Brixos nor any Professional Service Provider or users of the Services may direct or control the day-to-day activities of the other, or create or assume any obligation on behalf of the other. User and Professional Service Providers are required by this TOS to provide accurate information, and although Brixos may undertake additional checks and processes designed to help verify or check the identities or backgrounds of users, we do not make any representations about, confirm, or endorse any user or their purported identity or background, regardless of the specific Brixos services they are using or any involvement by Brixos personnel in providing or scheduling those services.

Any reference on the Service to a user being licensed or credentialed in some manner, or "best of," "top," "background checked" (or similar language) designations indicates only that the user has completed a relevant account process or met user review standards, and does not represent anything else. Any such description is not an endorsement, certification or guarantee by Brixos and is not verification of their identity and whether they or their Professional Services are licensed, insured, trustworthy, safe or suitable. Instead, any such description is intended to be useful information for you to evaluate when you make your own decisions about the identity and suitability of others whom you contact or interact with via the Services. You should always exercise responsibility, due diligence and care when deciding whether to have any interaction with any other user. Brixos has no responsibility for any damage or harm resulting from for your interactions with other users.

By using the Services, you understand and agree that any legal remedy or liability that you seek to obtain for actions or omissions of other users or other third parties will be limited to a claim against those particular users or other third parties. You agree not to attempt to impose liability on or seek any legal remedy from Brixos with respect to such actions or omissions

- b) Brixos does not review or verify the information or representations set forth in service provider profiles and bids. Brixos does not make any representations or warranties that the service providers are appropriately licensed, free of significant state-level civil legal judgments, or carry appropriate general liability insurance or bonding at any time. Brixos does not represent or warrant that information received from state or other government agencies or from third-party sources is accurate, error free or up to date.



## 10. DISCLAIMER OF WARRANTIES

- (a) YOUR USE OF THE SERVICES AND PROFESSIONAL SERVICES ARE AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BRIXOS PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.
- (b) BRIXOS PARTIES MAKE NO WARRANTY, REPRESENTATION OR GUARANTEES THAT: (i) THE SERVICES OR PROFESSIONAL SERVICES WILL MEET YOUR REQUIREMENTS; (ii) ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE, OR ERROR-FREE; OR (iii) THE INFORMATION AND ANY RESULTS THAT MAY BE OBTAINED FROM ACCESS TO OR USE OF THE SERVICES WILL BE ACCURATE, RELIABLE, CURRENT, OR COMPLETE.
- (c) BRIXOS MAKES NOT WARRANTY, REPRESENTATION OR GUARANTEE WITH RESPECT TO SERVICES OFFERED BY THIRD-PARTY SERVICE PROVIDERS OR PROFESSIONAL SERVICE PROVIDERS AND BRIXOS SPECIFICALLY DISCLAIMS ANY WARRANTY, REPRESENTATION OR GUARANTEE WITH RESPECT TO THE QUALITY, SAFETY, LEGALITY OR OTHER CHARACTERISTICS OF SUCH SERVICES AND THE CONDUCT OF ANY THIRD-PARTY SERVICE PROVIDER OR PROFESSIONAL SERVICE PROVIDERS.
- (d) BRIXOS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED RELATING TO ANY PRESCREENING PROCESS, CRITERIA, PROCEDURES OR INFORMATION OBTAINED OR PRESENTED IN ANY PRESCEEING PROCESS OR DISCLOSURES INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR THAT ANY SCREENIGN OR VERIFICATION PROCEDURES OR STANDARDS ARE SUFFICIENT OR THAT THE INFORMATION RECEIVED IN ANY SCREENING OR VERIFICATION PROCEDURES IS ACCURATE, TIMELY OR ERROR FREE.
- (e) ALL CONTENT MADE AVAILABLE THROUGH THE SERVICES IS MADE AVAILABLE FOR INFORMATIONAL PURPOSES ONLY. YOU ARE SOLELY RESPONSIBLE FOR CONFIRMING THE ACCURACY OF ALL CONTENT BEFORE TAKING OR OMITTING ANY ACTION.
- (f) (f) THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND YOU MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED. ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE EFFECTIVE DATE OF THIS AGREEMENT (UNLESS SUCH LAW PROVIDES OTHERWISE).

## 11. LIMITATION OF LIABILITY

- (a) YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ENTIRE RISK ARISING OUT OF YOUR ACCESS TO AND USE OF THE SERVICES AND CONTENT, YOUR OFFERING OR PROVIDING PROFESSIONAL SERVICES OR REQUESTING OR RECEIVING PROFESSIONAL SERVICES THROUGH THE SERVICE, AND ANY CONTACT YOU HAVE WITH OTHER USERS OF BRIXOS OR THIRD PARTIES, WHETHER IN PERSON OR ONLINE, REMAINS WITH YOU. BRIXOS PARTIES SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA OR GOODWILL, OR COST OF COVER, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS, OR FINANCIAL LOSS, EVEN IF BRIXOS PARTIES HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL BRIXOS PARTIES' TOTAL LIABILITY TO YOU FOR ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS TOS OR YOUR ACCESS TO OR USE OF (OR INABILITY TO ACCESS OR USE) THE SERVICES, PROFESSIONAL SERVICES OR CONTENT OR YOUR OFFERING OR PROVIDING PROFESSIONAL SERVICES OR REQUESTING OR RECEIVING PROFESSIONAL SERVICES THROUGH THE SERVICE EXCEED THE AMOUNT PAID BY YOU TO BRIXOS FOR ACCESS TO THE SERVICES WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM(S) AROSE.
- (b) THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITIES SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 12. SUSPENSION AND TERMINATION

- (a) Either party may terminate this TOS at any time.

- (b) If you violate this TOS, Brixos may, with or without notice to you, immediately suspend or terminate your access and use of the Services.
- (c) BRIXOS reserves the right at any time to modify, suspend, or discontinue the Services (or any portion thereof) with or without notice, and BRIXOS shall not be liable to you or any third party for any such modification or discontinuance;
- (d) Upon termination of this TOS for any reason: (i) Brixos, in its sole discretion, may remove and discard your content and information; (ii) you will immediately cease your use of the Services; and (iii) any provision that, by its terms, is intended to survive the expiration or termination of this TOS shall survive such expiration or termination. Further, you agree that that Brixos shall not be liable to you or any third party for any termination of your account or access to the Services.

### **13. GOVERNING LAW**

This TOS shall be governed by and construed and enforced in accordance with the United States Federal Arbitration Act, other applicable federal laws and the laws of the State of Texas, without regard to conflict of laws principles. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this TOS, regardless of the states in which the parties do business or are incorporated.

### **14. BINDING ARBITRATION AND CLASS ACTION WAIVER**

- (a) ALL CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT (DEFINED FOR THE PURPOSES OF THIS TOS AS A COURT OF LIMITED JURISDICTION THAT MAY ONLY HEAR CLAIMS NOT EXCEEDING \$5,000) IF YOUR CLAIMS ARE WITHIN THE COURT'S JURISDICTION. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.
- (b) The arbitration shall be conducted by the American Arbitration Association (AAA) under its then-applicable Commercial Arbitration Rules or, as appropriate, its Consumer Arbitration Rules. The AAA's rules are available at <http://www.adr.org/>. Payment of all filing, administration and arbitrator fees shall be governed by the AAA's rules. The arbitration shall be conducted in the English language by a single independent and neutral arbitrator. For any hearing conducted in person as part of the arbitration, you agree that such hearing shall be conducted in Houston, Texas or, if the Consumer Arbitration Rules apply, another location reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances, as determined by the arbitrator. The decision of the arbitrator shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.

- (c) WE EACH AGREE THAT ALL CLAIMS SHALL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR OTHER SIMILAR PROCESS (INCLUDING ARBITRATION). IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM SHALL BE BROUGHT ONLY IN A COURT OF COMPETENT JURISDICTION IN HOUSTON, TEXAS. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH CLAIM.
- (d) Notwithstanding anything to the contrary, you and BRIXOS may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect its intellectual property rights, whether in aid of, pending, or independently of the resolution of any dispute pursuant to the arbitration procedures set forth in this Section 14.
- (e) If Brixos implements any material change to this Section 14, such change shall not apply to any Claim for which you provided written notice to Brixos before the implementation of the change.

## **15. LEGAL COMPLIANCE**

You represent and warrant that you will comply with all applicable foreign, federal, state, and local laws, rules and regulations, including without limitation, U.S. export laws and import and use laws of the country where Licensed Material is delivered or used and you are not: (a) located in a country that is subject to a U.S. Government embargo, or designated by the U.S. Government as a “terrorist supporting” country; and (b) listed on any U.S. Government list of prohibited or restricted parties, including the Specially Designated Nationals List.

## **16. U.S. GOVERNMENT ENTITIES**

This section applies to access to or use of the Services by a branch or agency of the United States Government. The Services includes “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and qualifies as “commercial items” as defined in 48 C.F.R. 2.101. Such items are provided to the United States Government: (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The United States Government shall acquire only those rights set forth in this TOS with respect to the such items, and any access to or use of the Services by the United States Government constitutes: (i) agreement by the United States Government that that such items are

“commercial computer software” and “commercial computer software documentation” as defined in this section; and (ii) acceptance of the rights and obligations herein.

## **17. PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT**

If you believe that your work has been made available through the Services in a way that constitutes copyright infringement, please provide Brixos' Agent for Notice of Copyright Claims the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) a description of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) a description of the material that you claim is infringing and where that material may be accessed within the Services; (d) your address, telephone number and email address; (e) a statement by you that you have a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement from you that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, please contact BRIXOS's Agent for Notice of Copyright Claims. Brixos' Agent for Notice of Copyright Claims can be reached as follows:

Agent for Notice of Copyright Claims  
17 West Ln.  
Houston, TX 77119  
Email: [legal@brixos.com](mailto:legal@brixos.com)

## **18. CALIFORNIA USERS & RESIDENTS**

In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting such unit in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

## **19. GENERAL PROVISIONS**

This TOS constitutes the entire agreement between you and Brixos concerning your access to and use of the Services. It supersedes all prior and contemporaneous oral or written negotiations and agreements between you and Brixos with respect to such subject matter. In the event of any conflict between or among this TOS and any end user license agreement,

privacy policy or usage guidelines to which this TOS refers, the terms and conditions of this TOS shall take precedence and govern. This TOS may not be amended by you except in a writing executed by you and an authorized representative of Brixos. Except as otherwise expressly provided in this TOS, there shall be no third-party beneficiaries to this TOS. For the purposes of this TOS, the words "such as," "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." You may not assign or delegate any right or obligation under this TOS without the prior written consent of Brixos. The failure of Brixos to exercise or enforce any right or provision of this TOS shall not constitute a waiver of such right or provision. If any provision of this TOS is held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this TOS. Any prevention of or delay in performance by Brixos hereunder due to labor disputes, acts of god, failure of the Internet, governmental restrictions, enemy or hostile governmental action, fire or other casualty or other causes beyond its reasonable control shall excuse the performance of its obligations for a period equal to the duration of any such prevention or delay.