



BOTIUM SOFTWARE LICENSE AGREEMENT

January 2020

Please read this Software license agreement before purchasing or using the products, documentation or services. By using or purchasing the products, documentation or services, customer signifies its assent to this agreement. If you are acting on behalf of an entity, then you represent that you have the authority to enter into this agreement on behalf of that entity. If customer does not accept the terms of this agreement, then it must not purchase or use the products, documentation or services.

This Software license agreement (“agreement”) is by and between Botium GmbH (“Botium”), with its principal place of business at Gerasdorfer Strasse 141/8, Vienna, Austria 1210 and a customer (“customer”) and is effective as of the date the customer finishes the checkout process for a Botium Box plan (the “effective date”).

1. GRANT OF LICENSE.

1.1 License.

Subject to the terms of this agreement, Botium grants to customer a personal, non-transferable, internal license to install on computers owned or leased by customer the products and documentation for a period of twelve months. The products and documentation may not be used for any other purpose. At the end of the usage period, the products may cease to function.

1.2 License Conditions.

Except as otherwise expressly permitted in this agreement, customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party:

- (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part, any products or the documentation to a third party other than members of the customer;
- (b) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the products;
- (c) allow access or permit use of the products or documentation by any third party except authorized third-party contractors solely to provide services to customer, provided that customer shall be liable for all acts and omissions of such authorized third-party contractors;
- (d) modify or create derivative works based upon the products or documentation;
- (e) disclose the results of any benchmark test of the products to any third party; or
- (f) change any proprietary rights notices which appear in the products or documentation.

1.3 Copies.

Customer may not make any copy of the products or documentation. This includes all data generated by and within the product such as datasets, reports, transcripts or log files.

1.4 Open Source Products.

The products may include individual open source products components, each of which has its own copyright and its own applicable license conditions. The open source products are

licensed to customer under the terms of the applicable open source license conditions and/or copyright notices accompanying the products.

2. SERVICES.

2.1 Services.

Botium will provide customer with the services (“services”) specified during checkout process. Services are provided to customer solely for customer’s internal use, and customer may not use the services to supply any consulting, support or training services to any third party. In the event that in the future customer desires to obtain from Botium additional services, the parties may execute one or more additional order forms, setting forth the additional services to be provided by Botium to customer, along with the applicable additional fees to be paid by customer to Botium.

2.2 Cooperation.

Customer agrees to provide Botium with such cooperation, materials, information, access and support which Botium deems to be reasonably required to allow Botium to successfully provide the services, including, without limitation, as may be set forth during the checkout process. Customer understands and agrees that Botium obligations hereunder are expressly conditioned upon customer providing such cooperation, materials, information, access and support.

3. PAYMENT.

Customer agrees to pay Botium the fees stated during checkout process. Payments are nonrefundable and will be made without right of set-off or charge back.

4. OWNERSHIP.

4.1 Products.

Notwithstanding anything to the contrary, except for the limited license rights expressly provided in this agreement, Botium has and will retain all rights, title and interest in and to the products and documentation (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) and all copies, modifications and derivative works. Customer acknowledges that it is obtaining only a limited license right to the products and documentation and that irrespective of any use of the words “purchase,” “sale,” or like terms hereunder no ownership rights are being conveyed to customer under this agreement or otherwise.

4.2 Deliverables.

Customer acknowledges that in the course of performing any services, Botium may create software or other works of authorship delivered to customer pursuant to or in connection with the performance of services (a “deliverable”). Subject to customer’s rights in the customer confidential information, Botium shall own all right, title and interest in such deliverables, including all intellectual property rights therein and thereto. Botium hereby grants to customer an irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, distribute (internally and externally), transfer, exploit and make derivative works of any such deliverables in conjunction with the products.

4.3 Other Materials.

Customer agrees and acknowledges that customer is not obtaining any intellectual property right in or to any materials provided by Botium to customer in connection with the provision to customer of services (“materials”), other than the rights of use specifically granted in this agreement. Customer will be titled to keep and use all materials provided by Botium to customer, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Botium. In particular and without limitation, materials may not be, modified, re-distributed, disclosed to third parties, lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. All Botium trademarks, trade names, logos and notices present on the materials will be preserved and not defaced, modified or obliterated.

5. LIMITED WARRANTY AND DISCLAIMER.

5.1 Limited Warranty.

Botium warrants that all services provided under this agreement will be performed in a professional manner in accordance with the terms and conditions in this agreement and any applicable order forms. If the services are not performed as set forth above, Botium shall re-perform the applicable services.

5.2 Disclaimer.

THE PRODUCTS, DELIVERABLES, DOCUMENTATION AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, QUIET ENJOYMENT, ACCURACY OF DATA, SYSTEM INTEGRATION, COURSE OF PERFORMANCE AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT TO THE EXTENT THAT THESE DISCLAIMERS ARE HELD TO BE LEGALLY INVALID. BOTIUM DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE PRODUCTS, DOCUMENTATION, SERVICES OR ANY MATERIALS PROVIDED TO CUSTOMER BY BOTIUM WILL BE UNINTERRUPTED OR ERROR FREE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, THE PRODUCTS, SERVICES, DELIVERABLES AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL, OR DIRECT OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, CONTROL OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, OR DIRECT LIFE SUPPORT SYSTEMS.

CUSTOMER ACKNOWLEDGES THAT BOTIUM HAS NO RESPONSIBILITY FOR ANY HARDWARE ON WHICH CUSTOMER INSTALLS OR EVALUATES THE PRODUCTS.

6. LIMITATION OF LIABILITY.

IN NO EVENT WILL BOTIUM OR ITS LICENSORS BE LIABLE FOR ANY CLAIM BASED UPON A THIRD PARTY CLAIM, ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF BOTIUM OR

ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. TERM AND TERMINATION.

The term of this agreement will begin after finishing the checkout process and end after twelve months according to the usage period.

8. CONFIDENTIALITY.

For a period of five (5) years from the date of disclosure of the applicable confidential information, the receiving party shall

- (i) hold the confidential information of the disclosing party in trust and confidence and avoid the disclosure or release of such confidential information to any other person or entity by using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own confidential information of a similar nature, but not less than reasonable care, and
- (ii) not use the confidential information of the disclosing party for any purpose whatsoever except as expressly contemplated under this agreement;

provided that, to the extent the confidential information constitutes a trade secret under law, the receiving party agrees to protect such information for so long as it qualifies as a trade secret under applicable law. The receiving party shall disclose the confidential information of the disclosing party only to those of its employees and contractors having a need to know such confidential information and shall take all reasonable precautions to ensure that such employees and contractors comply with the provisions of this section. Each party shall be responsible for all violations of this agreement by its employees and contractors. The obligations under this section shall not apply to information that the disclosing party can demonstrate

- (i) was in its possession at the time of disclosure and without restriction as to confidentiality,
- (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of this agreement or other wrongful act by the receiving party,
- (iii) has been received from a third party without restriction on disclosure and without breach of this agreement by the receiving party, or
- (iv) is independently developed by the receiving party without regard to the confidential information. In addition, the receiving party may disclose confidential information as required to comply

with binding orders of governmental entities that have jurisdiction over it, provided that the receiving party gives the disclosing party reasonable written notice. Notwithstanding anything to the contrary, customer acknowledges and agrees that Botium, its employees and agents shall be free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of any services and performed under this agreement.

9. GENERAL.

9.1 Independent Parties.

Neither customer nor Botium is a legal representative, partner or agent of the other.

9.2 Entirety.

This agreement represents the entire agreement of the parties with regard to the products, documentation, services and confidential information and supersedes all other agreements related to this subject matter. This agreement may not be amended except in writing signed by both parties. Purchase orders will be for the sole purpose of defining quantities, prices and describing the products, documentation and services to be provided under this agreement and to this extent only are incorporated as a part of this agreement and all other terms in purchase orders are rejected.

9.3 Severability.

If any provision of this agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the agreement.

9.4 Governing Law and Jurisdiction.

This Agreement will be governed by and construed in accordance with the laws of Austria. All disputes arising out of or relating to this agreement will be submitted to the exclusive jurisdiction of the state or federal courts located in Vienna, and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue.

10. Definitions.

“Confidential information” means any and all information or proprietary materials (in every form and media) not generally known in the relevant trade or industry and which has been or is hereafter disclosed or made available by one party to the other party under this agreement in connection with the transactions contemplated under this agreement, including

- (i) all trade secrets,
- (ii) existing or contemplated products, services, designs, technology, processes, technical data, engineering, techniques, methodologies and concepts and any related information, and
- (iii) information relating to business plans, sales or marketing methods and customer lists or requirements.

“Disclosing party” means the party to this agreement disclosing confidential information to the other party.

“Documentation” means the electronic user and administrative manuals contained within the products.

“Checkout process” means the Botium standard online ordering flow that is governed by the terms of this agreement.

“Products” means the Botium software products made available to customer by Botium.

“Receiving party” means the party to this agreement receiving confidential information from the other party.