Terms of Use
Cloud
of the BOC Group

1.   Scope of Application

1.1.1. The following Terms of Use Cloud form the underlying regulatory framework for all present and future agreements concluded after 01.07.2019 between BOC Products & Services AG, including subsidiaries (hereinafter jointly referred to as "BOC") on the one hand, and the client of BOC on the other hand, and that pertain to an Operation Service Agreement for an Enterprise Edition of BOC standard software (hereinafter referred to as "Product"). These conditions shall form part of the contract even if, in individual cases, reference is not explicitly made to the Terms of Use Cloud upon conclusion of a contract.

1.1.2. These Terms of Use Cloud shall be supplemented by the General Terms and Conditions of BOC (hereinafter "GTC"). In the event of conflicting regulations, the following order of priority shall apply: 1. regulations from the individual contract (offer), before 2. these Terms of Use Cloud, before 3. the GTC of BOC.

1.1.3. The GTC as well as the Terms of Use can be viewed at https://www.boc-group.com/gtc/.

2.   Operation Service Agreement

2.1.   Operation Service Agreement SaaS

2.1.1. The subject matter of an Operation Service Agreement for Software as a Service (SaaS) is the operation of the Product, the right of use (licence) as well as the maintenance of the selected Product in the agreed scope. The operation, Right of Use (Licence) and maintenance of the Product form a unit.

2.2.   Operation Service Agreement Operations-Only

2.2.1. The subject matter of an Operation Service Agreement Operations-Only is only the operation incl. the hotline for the selected Product for which the client already possesses a valid Right of Use (Licence) as well as a valid product maintenance agreement., Products without a valid maintenance agreement cannot be operated by BOC, with the exception of test and development systems.

2.3.   General

2.3.1. Upon concluding an Operation Service Agreement, BOC undertakes to operate or have an appointed third party operate the offered Product and, where required, solutions and additional modules.

2.3.2. The provision occurs via the electronic transfer of the access data. The deployment time is the time at which the client receives the access data.

2.3.3. The client shall treat the passwords and log-ins required for the use with confidentiality, and shall set up the necessary technical conditions in his infrastructure such that it is able to access the operating environment via the internet.

2.3.4. The client expressly agrees to refrain from carrying out attacks on the operating scenario for the purpose of security checks, capacity tests or the like. Tests that have been announced may only be carried out following prior written consent from BOC at the agreed times and within the agreed scope.

2.3.5. BOC is entitled to block the client's access to the Product if it has reasonable grounds to suspect that the client is involved in internet activities that threaten the security of the BOC infrastructure or that of a third party. This blocking may only occur for the duration of the threat. Any costs incurred by BOC in this context shall be borne by the client.

2.3.6. The operating service is rendered by BOC Information Technologies Consulting GmbH, Operngasse 20b, 1040 Vienna, on behalf of BOC Products & Services AG.

2.4.   Remuneration of the Operation Service Agreement

2.4.1. The remuneration of an Operation Service Agreement SaaS includes the remuneration for
- the operation of the Product,
- the Right of Use (Licence) and
- the product maintenance.

2.4.2. For an Operation Service Agreement Operations-Only in the context of an existing Right of Use (Licence) and existing maintenance agreement, the existing agreements on remuneration remain unaffected. The payment for the ongoing operation service shall be invoiced additionally.

2.4.3. Briefing or training on this Product, as well as other Product-related services, are not included in this remuneration and require a separate agreement.

2.4.4. The first invoicing shall take place upon provision to the client. The part year already started at the time of provision shall be invoiced proportionately. After this, the invoicing shall take place annually in advance.

2.4.5. The operating service fee is value-secured. . The terms of payment and provisions regarding the price index are based on the provisions of the GTC.

2.5. Minimum Term and Termination of the Operation Service Agreement

2.5.1. An Operation Service Agreement is concluded for an unlimited period of time. This may be terminated in whole or in part by either contracting party without providing reasons with three month notice at the end of a quarter; this may take place at the earliest, however, at the end of the minimum term of one year. A termination must take place in writing. The minimum term shall not apply for extensions of the scope of an Operation Service Agreement.

2.5.2. A termination by the client must be directed in writing to the BOC subsidiary with which the client has a contractual relationship. The parties agree meeting the deadline corresponds to the receipt of the notice of termination by the indicated BOC subsidiary.

2.5.3. Both contractual parties are entitled to the extraordinary dissolution of the Operation Service Agreement in the event that there is an important cause for which the respective other contractual party is responsible, insofar as the contractual party does not resolve this cause for dissolution within a reasonable period despite a written request to do so, in which the cause for dissolution is specified and the plausibility thereof is validated.

2.5.4. An important cause is deemed to exist if a contractual party:
- breaches an essential contractual provision and fails to cease or discontinue this breach and remedy the consequences of the breach within a period of seven days despite a request to do so,
- is in default of a payment by more than three months,
- becomes insolvent or if an insolvency proceeding or equivalent (in particular, a settlement or restructuring proceeding) is commenced against it or if such proceedings are rejected due to a lack of assets,
- violates anti-corruption provisions, or, if the continuation of the contractual relationship has become unacceptable due to a fundamental loss of trust, the existence of which must be validated vis-à-vis the contractual party.

2.5.5. Furthermore, BOC is entitled to cancel the contract immediately if the client does not possess a valid Right of Use or associated product maintenance agreement.

2.5.6. The claim to remuneration during the minimum period of validity shall remain unaffected by an extraordinary termination. In this case, BOC is entitled to immediately charge the fees until the end of the minimum term.

2.5.7. Following the termination of the Operation Service Agreement, BOC shall, at the client's request, provide data, stored in the Product by the client, available in a machine-readable format (BOC XML structure) for further use. The data shall be kept available for 90 days after termination of the Operation Service Agreement and then subsequently, or at the client's request, immediately, be irrevocably deleted.

3. Operation of the Product

3.1. General

3.1.1. The operation of the Product includes
- the operation of the server and software components of the Product,
- the operation of the hardware infrastructure incl. operating system,
- the provision of storage space,
- the operation of the underlying network infrastructure on the operation side,
- the provision of third-party licences, in particular for database software as well as various software solutions for administration and security,
- the maintenance of the necessary hardware and network components (exclusively on the operation side),
- ongoing monitoring of the systems,
- the upkeep and restoration of the operational readiness of the underlying hardware and network components as well as of the configuration,
- the data backup and, where necessary, restoration of the data saved in the Product by the client, as well as,

- the migration to newer Product versions or fix levels, with the exception of the client-specific adjustments to the application library, in accordance with the product maintenance agreement including carrying out smoke tests.

3.1.2. Availability periods as well as planned maintenance windows are listed in the "SLA Factsheet for Cloud Services".

3.2. Data Backup

3.2.1. BOC carries out daily backups. The backups are stored on a separate storage system in the primary data centre and, additionally, in a fallback data centre. This results in a maximum tolerable data loss of 24 hours. The restoration target depends on whether the restoration occurs in the primary data centre (depending on the service request prioritisation) or in the fallback data centre in the scope of a disaster recovery (maximum 1 week). BOC secures all backups for 90 days (storage time).

3.2.2. The backups are carried out automatically and replicated in the fallback data centre. Incident-free execution of these backups is automatically monitored.

3.2.3. A restoration of the application data, at the request of the client, shall be invoiced at cost.

3.2.4. The replication of the backups between the two data centres takes place via an encrypted channel.

3.3. System Requirements

3.3.1. In order to be able to use the Product via the acquired operating service, the necessary system requirements, such as an up-to-date web browser and suitable internet connection, must be fulfilled. The latest information on the system requirements of the respective Product and version can be requested from the BOC client advisor.

4. Product Use

4.1. Right of Use (Licence)

4.1.1. For the term of the Operation Service Agreement SaaS, BOC grants the client the worldwide, non-exclusive, non-sublicensable, non-transferable right to use the Product, and the acquired additional components, in the manner intended and to the extent prescribed by the Operation Service Agreement SaaS against ongoing payment. The remuneration of the Right of Use (Licence) is included in the Operation Service Agreement SaaS.

4.2. Right of Use (Licence) for Test and Development Systems

4.2.1. In addition to every Right of Use according to section 4.1.1 and for the term of the Operation Service Agreement, or by separate agreement, BOC grants the client the worldwide, non-exclusive, non-sublicensable, non-transferable right to use the agreed Product and, where applicable, additional components to the agreed extent, in the manner intended for test and development purposes only. The client is not entitled to use this licence for other purposes, such as in particular in productive systems.

4.2.2. For the operation of the right of use for test and development systems in the BOC Cloud Environment, an Operation Service Agreement Operations-Only against ongoing payment, in accordance with section 2.2, is required.

4.3. Scope of the Right of Use

4.3.1. If a Right of Use (Licence) follows a "Concurrent Use" principle (CC), the number of users specified in the offer is to be understood as the highest number of users that may use the Product simultaneously.

4.3.2. Rights of use according to the "Named Use" principle (NU) are assigned to specific users and allow only these users personal access to the Product.

4.3.3. Beyond this, clients may also purchase a Right of Use for additional components.

4.3.4. The use of the application programming interfaces (REST API) is limited to 500 accesses per hour.

4.3.5. The Product, as well as all documents and information entrusted within the context of the business relationship, are the intellectual property of BOC. Herein, BOC reserves all rights not explicitly granted. This also applies to any future upgrades or similar developments of the Products.

4.3.6. BOC is entitled to withdraw the Right of Use from the client if the client breaches significant parts of the agreement and the client does not cease such behaviour despite a warning and setting of an appropriate deadline for the removal or cessation thereof. In the case of the withdrawal of the Right of Use, the client is not entitled to a refund of the agreed remuneration.

5. Product Maintenance

5.1. Rendering of the Maintenance Service

5.1.1. In the scope of an Operation Service Agreement, BOC renders in particular the following maintenance services for the Product:
- recovery of operability and support in the elimination of malfunctions and incidents of the Product (see section 6. Hotline)
- Maintenance of the Product through preventive measures
- Provision of subsequent releases and fix levels of the Product

5.1.2. BOC informs the client of any technical improvements, troubleshooting measures, potential downtimes as well as upgrades of the Product if required via email.

5.2. Releases and Fix Levels

5.2.1. BOC distinguishes between the following release types:

Name	Release identifier	Maintenance period	Description
Long-Term Support Release (LTS)	LTS	The product maintenance is guaranteed for 6 months after the publication of the next LTS release. This typically leads to a maintenance period of 2 years.	A long-term support (LTS) release is a major release of a product that is explicitly designated LTS. Long term support releases are issued every 1.5 years.
Major Release (major)	The first place of the version number (e.g. **10**.0.0)	The product maintenance is guaranteed for 3 months after the publication of the next major release. This typically leads to a maintenance period of 9 months.	Major releases are issued one to two times per year. A major release may contain important new functions and changes to the database scheme.
Minor Release (Minor)	The second place of the version number (e.g. 10.**1**.0)	The rules of the major release upon which the minor release is based apply. The maintenance period ends accordingly, together with the last published major release.	Minor releases have no regular publication cycle. They are issued when a new functionality is introduced outside of a major release.
Fix Level (FL)	The third place of the version	The rules of the major release upon which the fix level is based apply.	A fix level contains several bug fixes or security updates.

Name	Release identifier	Maintenance period	Description
	number (e.g. 10.1.**1**)	The maintenance period ends accordingly, together with the last published major release.	

5.2.2. Subsequent releases of the Product and fix levels shall be made available to the client. In principle, the client is free to choose whether and when to introduce new releases of the Product to the cloud environment. However, the version being used must always be within the maintenance period.

5.2.3. If the client allows the maintenance period of a Product version to expire without carrying out an update of the installation in the cloud environment, BOC cannot guarantee trouble-free operation of the Product. Maintenance services shall then only be available to a limited extent. In exceptional cases, this omission can lead to the result that it is no longer possible to continue the operation of the Product. BOC's claim to payment remains unaffected by this. BOC is not liable for damages resulting directly or indirectly from the client's failure to make use of new releases or fix levels within the maintenance period.

5.2.4. Fix levels that are pertinent to security may be introduced and installed by BOC at any time, even without consulting the client.

5.2.5. Information regarding the current maintenance period may be requested from the BOC client advisor.

5.2.6. The Product that has been extended/amended by releases or fix levels is subject to the same Right of Use (Licence) as the Product version originally acquired.

5.3. Limitation of the Maintenance Service

5.3.1. The following services are not offered in the scope of the product maintenance and therefore require a special agreement:
- Adjustment of a subsequent release of the Product to client-specific extensions (product adaptations),
- Adjustment of the Product to application-specific requirements or framework conditions of the client,
- Treatment of malfunctions that are caused by
  - force majeure or unauthorised interferences by third parties,
  - utilisation of the Product for a purpose other than its intended purpose, or,
  - non-compliance with the hardware and software requirements stipulated by BOC,
- On-site servicing for the client as well as,
- training sessions.

5.3.2. If, based on an incident report by the client, services are requested that are not included in the performance obligation in the context of the product maintenance, BOC can still perform these services upon request. A special agreement is required in this case.

5.3.3. Services performed in the scope of special agreements shall be charged according to BOC's current price list. This also applies in particular to maintenance services rendered by BOC based on a client incident report that are not included in the performance obligation to which BOC is bound.

6. Hotline

6.1.1. For technical questions about the Product, as well as for the reporting of incidents, qualified staff of the client may contact the BOC hotline directly.

6.1.2. BOC receives incident reports exclusively via the hotline by email or during the service times by telephone.

6.1.3. The basic procedure for the handling of incidents is structured as follows:

- Notification of the incident by the client at the earliest possible time via the BOC hotline
- Appointment of a point of contact on the client's end to serve as a contact person for BOC
- Implementation of the troubleshooting
- Confirmation by the client of the successful troubleshooting

6.1.4. When making use of the hotline, the client must, if necessary, use the tools provided by BOC for the containment and diagnosis of the fault.

6.1.5. Every incident report requires a clear, comprehensible description in order to ensure the reproducibility of the relevant circumstances.

6.1.6. A named point of contact on the client's end is also appointed in the interest of the client. The point of contact must have sufficient authorisation to initiate the necessary measures on the client's end and to actively support BOC in any potential elimination of faults. In particular, information that is requested by BOC and is necessary for the elimination of the fault must be made available by the client.

6.1.7. An incident that requires troubleshooting is deemed to exist if the Product exhibits behaviour that deviates from the corresponding performance specification/documentation in the respective version, and if this can be reproduced by BOC, or, the incident has been adequately documented by the client.

6.1.8. Incidents shall be classified in accordance with the following scheme:
- An incident that inhibits operation is deemed to exist if the use of the Product is not possible at all in productive operation.
- An incident that obstruct operation is deemed to exist if the use of the Product is possible in productive operation, but there are severe limitations to the usage.
- A minor incident is deemed to exist if the use of the Product in productive operation is possible with slight restrictions, or if there is an incident in the Product in a test or development system.

6.1.9. Rectification of the incident may also take place via a product release, fix level, measures at the infrastructure level, an appropriate workaround solution or via indication of customer-side remedial measures. However, in no event is the client entitled to inspect the source code.

6.1.10. Reaction and response times for incident reports as well as service inquiries are listed in the "SLA Factsheet for Cloud Services".