

## Standard Cloud Terms and Conditions

These terms and conditions govern the purchase of Microsoft Cloud Services from boxxe Ltd, whether purchased through the boxxe portal or by placing an order against a boxxe quotation and are incorporated into and made part of that order. By accessing or using the Cloud Services, the Customer agrees to this Agreement on behalf of itself and its Users, and represents and warrants that Customer has full authority to bind itself and its Users to this Agreement. If the Customer does not agree to this Agreement, Customer may not access or use the Cloud Services, and must immediately notify boxxe to cancel the Cloud Services without having accessed or used the Cloud Services.

### 1. Definitions

For the purposes of this agreement, the following definitions shall apply:

**“Customer Agreement”** means the agreement that Microsoft uses to convey or provide Products to Customer, as set out on the [website](#) (and as updated by Microsoft from time to time).

**“Fees”** means the amounts payable to boxxe for the use, access and consumption of the Cloud Services purchased by the Customer.

**“Microsoft”** means Microsoft Corporation.

**“Microsoft’s SLA”** means the service level agreement commitments Microsoft makes directly to you regarding delivery and/or performance of the applicable Product, as detailed in the Customer Agreement.

**“Product”, “Services” and “Cloud Services”** means the Microsoft online services, which may include Microsoft software technology, provided to you under a Customer Agreement.

**“Standard Cloud Terms and Conditions”** means the terms set out in this document.

**“Standard Terms and Conditions of Sale”** means boxxe’s standard terms and conditions which can be found [here](#) and that form part of the Agreement.

**“Subscription”** means an order for a quantity of Product for a defined term (e.g., 30 days or 12 months).

**“Territory”** means the United Kingdom.

### 2. The Service

2.1. The provisions set out in this Agreement are to be read in conjunction with the boxxe Standard Terms and Conditions of Sale as well as with the Microsoft Customer Agreement. The set of these terms together will apply to the provision of Cloud Services. If there are any inconsistencies between this Agreement, the Standard Terms and Conditions of Sale and the Microsoft Customer Agreement, the order of precedence shall be as follows:

2.1.1. these Standard Cloud Terms and Conditions;

2.1.2. the Microsoft Customer Agreement; and

2.1.3. the boxxe Standard Terms and Conditions of Sale.

2.2. All orders are subject to the terms and conditions of the Contract in the order referenced above.

2.3. boxxe reserves the right to refuse an order from the Customer or any End User at its discretion.

2.4. boxxe reserves the right to refuse or delay the provision of the Cloud Services to the Customer or an End User if due fees have not been paid when payable and boxxe shall not accept any liability arising in relation to the refusal or delay in provision of the Cloud Services as a result.

2.5. The customer is responsible for ensuring it has a copy of the Service Provider Terms and Conditions, which may require the Customer pro-actively downloading a copy from the Service Provider’s [website](#).

### 3. Customer Obligations

- 3.1. If boxxe provides software to the Customer to access Cloud Services, this software is provided to the Customer subject to the Microsoft EULA, which applies with respect to any Software.
- 3.2. Any conflict or inconsistency between the EULA and this Agreement will be resolved in favour of the EULA if it relates to Software.
- 3.3. Customer is responsible for all activity occurring under Customer's Cloud Services and Support accounts.
- 3.4. Customer will provide boxxe with all information and assistance required to supply the Cloud Services or enable Customer's use of the Cloud Services. Customer will immediately notify boxxe of any unauthorized account use or other suspected security breach, or unauthorized use, copying or distribution of Cloud Services, Documentation or Customer Data.
- 3.5. Customer rights to any of the products do not include any license, right, power or authority to cause any part of the products to become subject to the terms of an excluded license. An excluded license is any license, such as an open-source software license, that requires as a condition of use, modification, or distribution of software subject to the excluded license, that it or other software combined or distributed with it be:
  - 3.5.1. disclosed or distributed in source code form;
  - 3.5.2. licensed for the purpose of making derivative works; or
  - 3.5.3. redistributable at no charge.
- 3.6. Customer must not remove any copyright, trademark, or patent notices from any of the Products.

### 4. Provision and Suspension

- 4.1. The Customer acknowledges that boxxe is reliant on the provisioning of the Cloud Services from Microsoft which boxxe cannot control. As such, boxxe makes no representation, guarantee or warranty about Microsoft's ability to provide continuity of Cloud Services or reliability.
- 4.2. boxxe shall be entitled to suspend or restrict the Cloud Services (or part thereof) without liability to the Customer (or its End Users) for any of these reasons:
  - 4.2.1. to comply with legal or regulatory obligations or requests;
  - 4.2.2. if boxxe reasonably believes that the Cloud Services are being resold, provisioned, or used in breach of the provisions under this agreement, the Microsoft Customer Agreement, the boxxe Standard Terms and Conditions of Sale or any other obligations the customer has with Microsoft;
  - 4.2.3. if the Customer refuses to co-operate with boxxe's reasonable investigation of any suspected breach of the Contract;
  - 4.2.4. if boxxe has reasonable cause to suspect that the Customer has acted or will act fraudulently, unlawfully, in a criminal way or in a way that could create detriment to boxxe, Microsoft or End User;
  - 4.2.5. in the case of any force majeure event;
  - 4.2.6. if Customer has not paid any due and payable invoices or amounts on time;
  - 4.2.7. if Customer has not paid any outstanding amounts under any other contract that has been entered into with boxxe, as set out in that other contract;
  - 4.2.8. if it is required for Maintenance or to implement a change;
  - 4.2.9. if it is required to protect the integrity or security of boxxe's network or Services.
- 4.3. If it is required to restrict or suspend the Service for any of the reasons above, boxxe will inform the customer as soon as is reasonably possible.
- 4.4. Once orders are placed, they can be cancelled by the Customer within 72 hours and the Customer will be given a pro-rated refund.

## 5. Fees and Payment

5.1. Customer agrees to pay boxxe the Fees identified in the Order.

5.2. boxxe reserves the right to make adjustments to pricing for reasons including, but not limited to, changing market conditions, discontinuation, unavailability, and Microsoft price changes.

5.3. Customer shall also pay boxxe for all Cloud Services used, accessed and/or consumed whether or not a purchase order has been issued by the Customer and boxxe may invoice Customer for Cloud Services based both on any pre-agreed estimate and/or on actual use, access and/or consumption in accordance with usage reports provided to boxxe by Microsoft.

5.4. Unless otherwise agreed, boxxe will invoice Customer for the Services monthly in arrears.

5.5. Customer will pay each of the invoices within 30 days of the invoice date and unless otherwise agreed, by direct debit. This must be in full and in clear funds, without deduction or set-off.

5.6. If Customer does not pay any of the invoices by the due date, without limitation to other rights, boxxe may:

5.6.1. charge a late payment charge, as described in the relevant Service Schedule;

5.6.2. charge interest on the unpaid amount at 4 per cent a year above Lloyds Bank Plc's base rate from time to time in force. That interest will compound on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment; and

5.6.3. restrict or suspend the Services.

## 6. Subscriptions

6.1. Customer's subscription to the Cloud Services may include enrolment into an ongoing/recurring payment plan. Subscription will automatically renew at the end of the disclosed billing period. Customer may opt out of this automatic renewal system by giving boxxe not less than three months' written notice prior to the end of the then current term. The expiration or termination of this agreement will only terminate Customer's right to place new orders for additional Products under this agreement.

6.2. Payment will be charged to the Customer's chosen payment method at confirmation of the purchase and at the start of every new billing period.

6.3. boxxe reserves the right to change our pricing.

6.4. If Customer does not cancel the subscription after the price change takes effect and prior to the start of Customer's new subscription period, the subscription will be renewed at the price in effect at the time of the renewal, without any additional action by Customer, and Customer authorises boxxe to charge Customer's payment method for these amounts.

6.5. Customer commits in advance to purchase a specific quantity of Software/Cloud Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Software/Cloud Services.

6.6. Each renewal term will be for a period of 12 months. Pricing for a renewal term will be the pricing in effect as of the commencement of the renewal term.

6.7. During this term Customer will commit to a minimum number of seats and will be unable to decrease the number of seats until at renewal.

## 7. Data Protection

7.1. Customer has sole responsibility for the accuracy and reliability of all Customer Data. The Cloud Services rely on Customer Data as supplied by Customer, and boxxe is not liable for the content of Customer Data. Except as required under applicable law, boxxe does not assume any duty or obligation to correct or modify Customer Data.

7.2. Customer acknowledges that boxxe is a transactional party and resells the Cloud Services of Microsoft. As such, the processing of personal data shall be subject to the arrangements and contract terms directly between Customer and Microsoft through the Microsoft Customer Agreement and any other applicable Agreements between the two parties.

7.3. Each Party shall process personal data in accordance with all applicable data protection legislation including without limitation the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations, and secondary legislation) as amended from time to time (the "Data Protection Legislation"). Terms used throughout this section including "data controller", "data processor", "data subject", "personal data" and "processing" are as defined in the Data Protection Legislation.

7.4. Personal data processing will be accomplished through electronic and non-electronic means, for the purpose of the terms and conditions.

7.5. Customer is responsible for obtaining the consent of all Customer related data subjects whose personal data is provided to or otherwise made available to boxxe in accordance with these terms and conditions. (E.g., Customer employees, Customer clients or related third parties).

7.6. To the extent Customer discloses or transmits Customer Data to a third party, boxxe is no longer responsible for the security, integrity, or confidentiality of such content outside of boxxe's control.

7.7. To the extent required by Applicable Law, Customer shall notify the individual users of the Products or Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities, and shall obtain the users' consent to the same.

7.8. boxxe's privacy policy shall apply to orders placed. A copy of the policy can be found on boxxe's website and is available upon request.

7.9. Notwithstanding any other provision of these terms and conditions, Customer agrees that boxxe shall not be considered a data processor or data controller or in any other way have any responsibilities or liability in respect of the processing of personal data pursuant to Cloud Services provided by Microsoft transacted by boxxe and where boxxe is not processing such data.

## 8. Warranties

8.1. boxxe will not be liable for any delay or failure to comply with our obligations under these terms if the delay or failure arises from any cause which is non foreseeable and beyond our reasonable control.

8.2. Unless required by Applicable Law, boxxe does not give any express or implied warranties, representations or conditions concerning the Products or Services. To the maximum extent permitted under Applicable Law, boxxe disclaims any warranties of any kind, including warranties of merchantability, fitness for a particular use, title, noninfringement, or error-free or uninterrupted use of the services or software.

8.3. boxxe makes no warranties or conditions as to the items that are distributed under a third-party name, copyright, trademark, or trade name that may be offered with or incorporated with any Product. To the maximum extent permitted by Applicable Law, boxxe will not have liability in connection with any of those third-party items.

8.4. No advice or information, whether oral or written, obtained by customer from boxxe or from boxxe's or Service Provider's website, will create any warranty by boxxe not expressly stated in these terms.

8.5. Microsoft warrants its Products to Customer as described in the Customer Agreement.

8.6. Customer warrants and represents that:

8.6.1. Customer is incorporated and established in the Territory and shall not make any payments to boxxe for the Products from outside the Territory;

8.6.2. Customer accepts the terms of the Customer Agreement with Microsoft and the person signing it is authorised to do so on the Customer's behalf;

8.6.3. by accepting the terms of the Customer Agreement, Customer agrees to observe and comply with it; and

8.6.4. except where boxxe and Customer have otherwise agreed in writing to act on Customer's behalf in respect of a certain matter, Customer will deal with Microsoft with respect to any loss or damage suffered by Customer under the Customer Agreement and any loss or damage will not be enforceable against boxxe.

## 9. Indemnity

9.1. The unenforceability or invalidity of any part of this agreement, for any reason whatsoever, shall not affect the validity or enforceability of the remainder. Failure to enforce any provision of this agreement will not constitute a waiver.

9.2. Customer is responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer Data, including any Malware contained in the Customer Data.

9.3. Customer will defend, indemnify, and hold harmless boxxe for, from, and against any losses, damages, penalties, costs, and expenses, including, without limitation, reasonable legal fees and expenses incurred by boxxe in connection with any claims or actions by Service Provider or any other third party arising out of or in connection with:

9.3.3. Customer's failure to comply with applicable laws or regulations;

9.3.4. Customer's failure to pay boxxe for all Cloud Services accessed, consumed and/or used;

9.3.5. Customer's failure to comply with the terms contained in these Standard Cloud Services Terms and Conditions, Customer Agreement and the Standard Terms and Conditions of Sale; including its agents or employees.

9.3.6. Claims by employees, agents or other personnel of the Customer relating to or arising out of this Agreement.

9.4. Indemnification will include the payment of all reasonable legal fees and other costs (including, without limitation, costs of establishing rights to indemnification) incurred by boxxe in defending such claims.

9.5. Customer expressly acknowledges and agrees that boxxe shall not be liable for any breach by Service Provider of Service Provider's obligations under any applicable Other Related Terms, if any, or for any loss, damages, costs, or expenses incurred by Customer in connection with any actions taken by Service Provider under the Microsoft Customer Agreement and any other applicable terms, including, without limitation, any actions against Customer to enforce any provisions therein.

## 10. Termination

10.1. boxxe may terminate the Order, in whole or in part, with immediate effect, if the Customer breaches these Standard Cloud Terms and Conditions and fails to remedy that breach within 30 days of such breach.

10.2. If Microsoft terminates any part or all of the Cloud Services in relation to any misuse of Cloud Services that violates the Microsoft Customer Agreement, EULA, or any other related terms or due to any other act or omission of the Customer, boxxe may terminate the Order, in whole or in part, upon written notice with immediate effect.

10.3. If the Order is entered into by boxxe and Customer before Microsoft agrees to provide the applicable Cloud Services to Customer, and if subsequently, Microsoft refuses to provision such Cloud Services for any reason, boxxe may immediately terminate the Order, without any liability for such termination, upon written notice to Customer.

10.4. Customer may terminate the Order if boxxe materially breaches these Terms and fails to remedy that breach 30 days after being in receipt of Customer's written notice of breach.

10.5. Any action by Microsoft such as withholding provision of Cloud Services or suspending or terminating Customer's access to, or use of, Cloud Services does not give Customer the right to terminate the Order. Microsoft may disable Customer's Subscription for legal or regulatory reasons or as otherwise permitted under this Service Schedule or Customer Agreement and boxxe will notify Customer of a disablement as soon as commercially reasonable.

10.6. Any such action by Service Provider does not give Customer the right to terminate the Order. Fees will continue to accrue for the duration of any withholding or suspension of the Cloud Services, or any part thereof based upon the Subscription Period. Customer shall be responsible to pay for such Fees in accordance with the Order.

10.7. Customer may also be charged a cancellation fee.

10.8. The expiration or termination of this agreement will only terminate Customer's right to place new orders for additional Products under this agreement.

10.9. Licenses granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of this Agreement.

10.10. Termination will not affect boxxe's right to invoice Customer for an order, or the Customer's obligation to pay boxxe.

10.11. If Microsoft terminates the Customer's status, Customer will not have any claim against boxxe or Microsoft for damages or lost profits resulting from the termination. Microsoft may accept or reject your order for Product's at Microsoft's discretion. Accordingly, if Microsoft reject the Customer Order, boxxe may cancel the Order (in whole or in part) upon giving Customer written notice (even if boxxe had previously accepted the Order in accordance with the Standard Terms).

10.12. All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.

### **11. Agreement changes**

11.1 boxxe may change these terms of the Service, or any part of it, at any time for legal or regulatory reasons; security reasons, to enhance existing features or add additional features, reflect advancements in technology, reasonable technical adjustments to the service and to ensure the ongoing operability of the service.

11.2. Customer acknowledges and agrees that Microsoft may modify a Product or may release a new version of a Product at any time and for any reason including, but not limited to, to address customer needs or otherwise address competitive demands, to respond to a government regulation, order, or law, or to advance innovation in its Product offerings.

### **12. Applicable Laws**

12.1. This Agreement shall be governed by and construed in accordance with English Law and disputes arising between the Parties shall be referred to the English Courts exclusive jurisdiction to settle any dispute.

12.2. The Products, software, services, and technology supplied pursuant to this Service Schedule are subject to U.S., European and national export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments.

### **13. Miscellaneous Provisions**

13.1. Microsoft communications. Microsoft may send direct communications to Customer related to the terms of the Customer Agreement or the operation or delivery of the Product. Customer must provide accurate contact information for the administrator of each of the domains.

13.2. Microsoft makes certain service levels commitments to the Customer in Microsoft's SLA provided in the Customer Agreement. If Customer wishes to make a claim on the Microsoft SLA, Customer must escalate the claim to boxxe and this will be passed on to Microsoft for review. The claim will be reviewed according to Microsoft's SLA review process. If applicable, boxxe will then apply any credit due on next billing reconciliation report. Microsoft reserve the right to audit outages on a per Subscription or per service basis at any time.

13.3. Customer expressly acknowledges and agrees that it may be subject to Service Provider requirements other than those set forth or referenced in the Order, including policies, license agreements, EULAs, system-access terms and conditions, that may be imposed by Service Provider or its licensors upon Customer in connection with accessing or otherwise using the Cloud Services.