

1. INTERPRETATION

1.1 **Definitions.** In these General Terms, the following definitions apply:

“**boxxe**” means boxxe Limited (company number 02109168) whose registered office is at East Moor House Artemis House Eboracum Way, Heworth Green, York, England, YO31 7RE or any subsidiary or associated company that enters into the Order with the Customer;

“**boxxe Materials**” has the meaning set out in clause 6.1.8.

“**boxxe Software**” means software owned by boxxe for use in object code and, where specified by boxxe in writing, source code form and any updates, upgrades, versions or releases of the same existing now or in the future and all related specifications, documentation and other materials supplied with the software;

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

“**Contract**” means the contract between boxxe and the Customer for the sale and purchase of the Products and/or Services in accordance with these General Terms and, where applicable, the Special Terms;

“**Customer**” means the person or firm who purchases the Products and/or Services from boxxe;

“**Deliverables**” means the deliverables set out in the Order;

“**Force Majeure**” means an event or sequence of events beyond any party’s reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water or telecommunications service, strike, lockout or boycott or other industrial action. Inability to pay shall not be a Force Majeure event;

“**General Terms**” means the terms and General Terms set out in this document in clauses 1 to 14 as amended from time to time in accordance with clause 14.7;

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“**Microsoft Cloud Services**” mean a range of subscription-based plans for either standalone services or as a bundled suite of services as set out in your Order. For the purposes of the Contract, Microsoft Cloud Services are Products and Third Party Software.

“**Order**” means the Customer’s order for the Products and/or Services, as set out in the Customer’s purchase order form, the Customer’s written acceptance of boxxe’s quotation, or overleaf, as the case may be;

“**Products**” means the products (including any Software) (or any part of them) set out in the Order;

“**Services**” means the services, including the Deliverables, supplied by boxxe to the Customer as set out in the Specification;

“**Special Terms**” means the additional terms relating to Microsoft Cloud Services set out in the Annex to the General Terms;

“**Software**” means boxxe Software and/or Third Party Software (as the case may be);

This document is subject to boxxe standard terms and General Terms.

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“Specification” means any specification for the Products and/or Services, including any related plans and drawings, that is agreed in writing by the Customer and boxxe; and

“Third Party Software” means all software owned by or licensed to the Customer from a third party (whether or not supplied by boxxe and which comprises part of the Products).

1.2 In these unless the context otherwise requires:

1.2.1 any clause headings in these General Terms are included for convenience only and shall have no effect on the interpretation of these General Terms;

1.2.2 a reference to a ‘person’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;

1.2.3 words in the singular include the plural and vice versa;

1.2.4 a reference to ‘writing’ or ‘written’ includes any method of reproducing words in a legible and non-transitory form (including email); and

1.2.5 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

1.3 In the event of any conflict between the General Terms and the Special Terms, the Special Terms shall take precedence.

2. BASIS OF CONTRACT

2.1 These General Terms and, where applicable, the Special Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Products and/or Services in accordance with these General Terms and, where applicable, the Special Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when boxxe issues a written acceptance of the Order or otherwise commences the supply of the Products and/or Services to the Customer, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of boxxe which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by boxxe and any descriptions contained in boxxe’s catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products and/or Services described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation given by boxxe shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days, or as otherwise expressly stated in the quotation, from its date of issue.

2.7 Where the Customer’s Order includes Microsoft Cloud Services, the Special Terms shall form part of the Contract.

3. SUPPLY OF SERVICES

3.1 boxxe shall supply the Services:

3.1.1 in accordance with the Specification in all material respects;

3.1.2 using reasonable care and skill; and

3.1.3 in accordance with all applicable law.

3.2 boxxe shall use all reasonable endeavours to meet any agreed performance dates, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

- 3.3 boxxe shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services and boxxe shall notify the Customer in any such event.
- 3.4 The Customer acknowledges and accepts that the performance of certain Services may carry a risk to the Customer of loss of data. The Customer warrants that it will insure against loss that may be suffered as a result of the performance of the Services and undertakes all appropriate data and application backup procedures prior to any Services being carried out.
- 3.5 The Customer acknowledges that any report produced by boxxe as a result of the Services relates only to the Customer's computer network and configuration at the time the Services was performed. boxxe cannot guarantee that the report provides details of all risks and threats to the Customer's computer network.
- 3.6 If the Customer gives notice in writing to boxxe within a reasonable time of discovery that some or all of the Services do not comply with the warranty set out in clause 3.1, boxxe shall, at its option, either re-perform the relevant Services or issue a refund in respect of the relevant Services.

4. PRODUCTS

- 4.1 The Products are described in the Specification. boxxe reserves the right to amend the Specification of the Products if required by any applicable statutory or regulatory requirements.
- 4.2 Having regard to the prevailing statutory or other Government regulations in force from time to time and in the case of Products originating in the USA to the regulations of the US Department of Commerce, the Customer will not re-export directly or indirectly any Products without having first obtained any necessary consents or authorisations as may be required by any applicable Government regulations.
- 4.3 If the Products ordered become unavailable for any reason boxxe may substitute an alternate or equivalent item and the Customer shall not unreasonably withhold acceptance of delivery.
- 4.4 The Customer does not have the right of cancellation once boxxe accepts an Order, unless expressly stated in writing in the Order. In such situations the following applies:
 - 4.4.1 any request by the Customer for cancellation of any Order or part Order, or for the rescheduling of deliveries will only be considered by boxxe if made at least 48 hours before despatch of or provision of access to the Products. Cancellation shall be subject to acceptance by boxxe at its sole discretion and may be subject to a reasonable administrative charge. The Customer hereby agrees to indemnify boxxe against all loss, costs (including the cost of labour and materials used and overheads incurred) damages, charges and expenses arising out of the cancellation and/or rescheduling of the Order.

In the case of a training course, cancellation will be subject to the following termination charges;
 - 4.4.2 within 15 Business Days of the start of the course: a charge of £25;
 - 4.4.3 within 10 Business Days of the start of the course: a charge of 50% of the course fees; and
 - 4.4.4 within 5 Business Days of the start of the course: a charge of 75% of the course fees.Notwithstanding the foregoing, the Customer shall not have any right to cancel Orders for Microsoft Cloud Services once the Order is submitted to boxxe.
- 4.5 boxxe shall ensure that:
 - 4.5.1 each delivery of physical Products is accompanied by a delivery note which shows the date of the Order, all relevant Customer and boxxe reference numbers, the type and quantity of the Products, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
 - 4.5.2 if boxxe requires the Customer to return any packaging materials to boxxe, that fact is stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as boxxe shall reasonably request. Returns of packaging materials shall be at boxxe's expense.
- 4.6 boxxe shall deliver physical Products to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after boxxe notifies the Customer that the Products are ready

for delivery.

- 4.7 Delivery of physical Products shall be completed on the Products' arrival at the Delivery Location.
- 4.8 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. boxxe shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure or the Customer's failure to provide boxxe with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.9 The Customer shall inspect physical Products upon delivery and shall, within 7 days, notify boxxe in writing of any shortfall or non-compliance.
- 4.10 If boxxe fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. boxxe shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure or the Customer's failure to provide boxxe with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.11 If the Customer fails to accept delivery of physical Products within three Business Days of boxxe notifying the Customer that the Products are ready for delivery, then, except where such failure or delay is caused by a Force Majeure or boxxe's failure to comply with its obligations under the Contract:
 - 4.11.1 delivery of the physical Products shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which boxxe notified the Customer that physical Products were ready; and
 - 4.11.2 boxxe shall store the physical Products until delivery takes place, and may charge the Customer for all related costs and expenses (including insurance).
- 4.12 If 10 Business Days after the day on which boxxe notified the Customer that the physical Products were ready for delivery the Customer has not accepted delivery of them, boxxe may resell or otherwise dispose of part or all of those physical Products and charge the Customer for any shortfall below the price of the Products.
- 4.13 boxxe may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

- 5.1 All Third Party Software is supplied on as 'as is' basis. If any such Third Party Software should fail to conform to its current product description, the sole obligation of boxxe in this respect is to use all reasonable endeavours to obtain and supply a correction or a corrected version from the relevant manufacturer, provided that the Customer notifies boxxe of any such non-conformity within 14 days of the date of delivery of the Product.
- 5.2 Subject to clause 5.1, boxxe warrants that on delivery, and for a period of 3 months from the date of delivery, the Products shall:
 - 5.2.1 conform in all material respects with their description and any applicable Specification;
 - 5.2.2 be free from material defects in design, material and workmanship; and
 - 5.2.3 be of satisfactory quality (within the meaning of the Sale of Products Act 1979).
- 5.3 Subject to clause 5.4, if the Customer gives notice in writing to boxxe within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.2;
 - 5.3.1 boxxe is given a reasonable opportunity of examining such Products; and
 - 5.3.2 the Customer (if asked to do so by boxxe) returns such Products to boxxe's place of business at the Customer's cost,
 - 5.3.3 boxxe shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.
- 5.4 boxxe shall not be liable for Products' failure to comply with the warranty set out in clause 5.2 in any of the following events:
 - 5.4.1 the Customer makes any further use of such Products after giving notice in accordance with clause

- 5.3;
- 5.4.2 the defect arises because the Customer failed to follow boxxe's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- 5.4.3 the defect arises as a result of boxxe following any design or Specification supplied by the Customer;
- 5.4.4 the Customer alters or repairs such Products without the written consent of boxxe;
- 5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working General Terms; or
- 5.4.6 the Products differ from their description and/or Specification as a result of changes to the manufacturer's specification or technical data; or
- 5.4.7 the Products differ from their description the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this clause 5, boxxe shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.2.
- 5.6 The terms implied by sections 13 to 15 of the Sale of Products Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7 These General Terms shall apply to any repaired or replacement Products supplied by boxxe.

6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall:
 - 6.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - 6.1.2 co-operate with boxxe in all matters relating to the supply of the Products and Services;
 - 6.1.3 provide boxxe, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by boxxe;
 - 6.1.4 provide boxxe with such information and materials as boxxe may reasonably require in order to supply the Product and Services, and ensure that such information is accurate in all material respects;
 - 6.1.5 prepare the Customer's premises for the supply of the Services (where applicable);
 - 6.1.6 provide a safe working environment as defined by health and safety legislation;
 - 6.1.7 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - 6.1.8 keep and maintain all materials, equipment, documents and other property of boxxe ("**boxxe Materials**") at the Customer's premises in safe custody at its own risk, maintain the boxxe Materials in good condition until returned to boxxe, and not dispose of or use the boxxe Materials other than in accordance with boxxe's written instructions or authorisation.
- 6.2 If boxxe's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 6.2.1 boxxe shall without limiting its other rights or remedies have the right to suspend performance of the Services and the delivery of the Products until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays boxxe's performance of any of its obligations;
 - 6.2.2 boxxe shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from boxxe's failure or delay to perform any of its obligations as set out in this clause 6.1; and
 - 6.2.3 the Customer shall reimburse boxxe on written demand for any costs or losses sustained or incurred by boxxe arising directly or indirectly from the Customer Default.

- 6.3 The Customer warrants and undertakes that it has obtained from all persons including third parties all necessary approvals and authorities required to allow boxxe access to all information technology networks and systems used by the Customer and any third party in any relevant jurisdiction in which the Customer operates and in which the Services are performed and the Products are supplied (including but not limited to the Computer Misuse Act 1990) and any contract governing the use of such networks and systems.
- 6.4 The Customer shall not, without the prior written consent of boxxe, at any time during the supply of Products and/or Services under these General Terms and for three months after, solicit or entice away from boxxe or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of boxxe and with whom the Customer has had dealings with a result of the supply of the Products and/or Services.
- 6.5 Any consent given by boxxe in accordance with clause 6.4 shall be subject to the Customer paying to boxxe a sum equivalent to 20% of the then current annual remuneration of boxxe's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

7. TITLE AND RISK

- 7.1 The risk in physical Products shall pass to the Customer on completion of delivery.
- 7.2 Title to physical Products shall not pass to the Customer until boxxe receives payment in full (in cash or cleared funds) for those Products and any other Products and Services that boxxe has supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums.
- 7.3 Until title to physical Products has passed to the Customer, the Customer shall:
- 7.3.1 store those Products separately from all other products held by the Customer so that they remain readily identifiable as boxxe's property;
 - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to those Products;
 - 7.3.3 maintain those Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 7.3.4 notify boxxe immediately if it becomes subject to any of the events listed in clause 11.2; and
 - 7.3.5 give boxxe such information relating to those Products as boxxe may require from time to time.
- 7.4 If before title to physical Products passes to the Customer the Customer becomes subject to any of the events listed in clause 11.2, then, without limiting any other right or remedy boxxe may have boxxe may at any time:
- 7.4.1 require the Customer to deliver up all Products in its possession which have not been irrevocably incorporated into another product; and
 - 7.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

8. PRICE AND PAYMENT

- 8.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in boxxe's published price list in force as at the date of delivery or provision of access.
- 8.2 The price for the Services shall be as set out in the Order, or, if no price is quoted, the price shall be calculated on a time and materials basis as follows:
- 8.2.1 the price shall be calculated in accordance with boxxe's standard daily fee rates in force from time to time;
 - 8.2.2 boxxe's standard daily fee rates for each individual are calculated on the basis of an eight- hour day from 9.00 am to 5.30 pm worked on Business Days;
 - 8.2.3 boxxe shall be entitled to charge an overtime rate of 50% per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 8.2.2; and

- 8.2.4 boxxe shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom boxxe engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by boxxe for the performance of the Services, and for the cost of any materials.
- 8.3 boxxe may, by giving notice to the Customer at any time up to 5 Business Days before delivery, increase the price of the Products and/or Services to reflect any increase that is due to:
- 8.3.1 any factor beyond boxxe's control (including foreign exchange fluctuations, increases in taxes and duties);
- 8.3.2 any request by the Customer to change the delivery date(s), quantities or types of Products and/or Services ordered, or the Specification; or
- 8.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give boxxe adequate or accurate information or instructions.
- 8.4 The price of the Products is inclusive of the costs and charges of packaging, insurance and transport of the Products.
- 8.5 The price of the Products and/or Services is exclusive of VAT, which the Customer shall pay in addition on receipt of a valid VAT invoice.
- 8.6 Unless agreed otherwise by boxxe, boxxe may invoice the Customer on or at any time after the completion of delivery or provision of access in respect of the Products and/or on completion of the Services.
- 8.7 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by boxxe. Time of payment is of the essence.
- 8.8 If the Customer fails to make any payment due to boxxe under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). boxxe may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by boxxe to the Customer

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by boxxe.
- 9.2 The Customer hereby acknowledges that any Intellectual Property Rights in any Third Party Software shall at all times vest and remain vested in the relevant Third Party Software owner.
- 9.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights (including in any Third Party Software), the Customer's use of any such Intellectual Property Rights is conditional on boxxe obtaining a written licence from the relevant licensor on such terms as will entitle boxxe to license such rights to the Customer.
- 9.4 The Customer acknowledges and agrees:
- 9.4.1 that it is its sole responsibility to comply with any terms and conditions of licence attaching to any third party products supplied and delivered by boxxe including any Third Party Software;
- 9.4.2 that failure to comply with any such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the licensor; and
- 9.4.3 to indemnify boxxe in respect of any damages, costs, charges or expenses incurred by boxxe following any action by a Third Party Software owner as a result of a breach by the Customer of such terms and conditions.
- 9.5 All boxxe Materials are the exclusive property of boxxe.

10. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

11. TERMINATION AND SUSPENSION

- 11.1 If the Customer becomes subject to any of the events listed in clause 11.2, boxxe may terminate the Contract with immediate effect by giving written notice to the Customer.
- 11.2 For the purposes of clause 11.1, the relevant events are:
 - 11.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - 11.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 11.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 11.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - 11.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 11.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - 11.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - 11.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 11.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.1 to clause 11.2.8 (inclusive);
 - 11.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

- 11.2.11 the Customer's financial position deteriorates to such an extent that in boxxe's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - 11.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 11.3 Without limiting its other rights or remedies, boxxe may:
- 11.3.1 suspend provision of the Products and/or Services under the Contract or any other contract between the Customer and boxxe if the Customer becomes subject to any of the events listed in clause 11.2.1 to clause 11.2.12, or boxxe reasonably believes that the Customer is about to become subject to any of them; or
 - 11.3.2 suspend or terminate the Contract, if the Customer fails to pay any amount due under this Contract on the due date for payment or otherwise breaches any term of the Contract.
- 11.4 On termination of the Contract for any reason the Customer shall immediately pay to boxxe all of boxxe's outstanding unpaid invoices and interest and in respect of Products and/or Services supplied but for which no invoice has been submitted, boxxe shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 11.5 On termination of the Contract for any reason, the Customer shall return all of the boxxe Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then boxxe may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract
- 11.6 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 11.7 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in the Contract shall limit or exclude boxxe's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 12.1.2 fraud or fraudulent misrepresentation;
 - 12.1.3 any matter in respect of which it would be unlawful for boxxe to exclude or restrict liability.
- 12.2 Subject to clause 12.1:
- 12.2.1 boxxe shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any: loss of profit; loss of data; damage to reputation or goodwill; loss of contract; or any indirect or consequential loss arising under or in connection with the Contract; and
 - 12.2.2 boxxe's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products and/or Services to which the claim relates.

13. NOTICES

- 13.1 Any notice given by a party under the Contract shall be in writing, be signed by, or on behalf of, the party giving it and be sent to the relevant party at its registered office address or email address notified by it to the party from time to time. Notices may be given, and are deemed received:
- 13.1.1 by hand: on receipt of a signature at the time of delivery;
 - 13.1.2 by Royal Mail Recorded Signed for post: at 10.00 am on the Business Day after posting;

- 13.1.3 by commercial courier: on the date and time that the courier's delivery receipt is signed; and
- 13.1.4 by email: one Business Day after transmission.

14. GENERAL

- 14.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
 - 14.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
 - 14.1.2 uses reasonable endeavours to minimise the effects of that event.
- 14.2 If, due to Force Majeure, a party:
 - 14.2.1 is or shall be unable to perform a material obligation; or
 - 14.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days or more,the other party may, terminate the Contract on immediate written notice.
- 14.3 boxxe's rights under these General Terms are cumulative and in addition to and not exclusive of any rights which boxxe has otherwise in law, whether under statute, at common law or otherwise, and nothing in these General Terms is intended to or will be construed as excluding any such rights which boxxe has otherwise in law.
- 14.4 boxxe may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.5 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of boxxe.
- 14.6 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 14.7 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these General Terms and is duly signed or executed by, or on behalf of, boxxe.
- 14.8 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.9 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.10 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.11 Nothing in the Contract shall be deemed to create a partnership or joint venture or contract of employment of any kind between the parties nor shall it be deemed to grant any authority not expressly set out in the Contract or create any agency between the parties.
- 14.12 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formations (including non-contractual disputes or claims) will be governed by and construed in accordance with laws of England.
- 14.13 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

ANNEX - SPECIAL TERMS – MICROSOFT CLOUD SERVICES

1. BACKGROUND

- 1.1 'You' and 'your' means the Customer. 'we', 'us' and 'our' means boxxe.
- 1.2 Words that are capitalised but have not been defined in these Special Terms have the meanings given to them in the General Terms.
- 1.3 In case of any conflict between any of the terms in these Special Terms and the terms in the General Terms, the terms of these Special terms will take priority.
- 1.4 We will, as a Microsoft Cloud Services reseller, provide you with a subscription to the Microsoft Cloud Services that are hosted by Microsoft.
- 1.5 The Subscriptions provided by us may change and not all subscriptions offered by the Microsoft are available from us.

2. MICROSOFT CLOUD SERVICES TERMS

- 2.1 We may assist you to specify or choose Microsoft Cloud Services but the assessment and selection of your chosen Microsoft Cloud Services for your purposes remain your ultimate responsibility. We do not warrant or represent that the performance of the Microsoft Cloud Services will be adequate for you and shall not be liable for any inaccuracies in any element of any service specification supplied in connection with any Microsoft Cloud Services. We only undertake that in giving assistance we have acted in good faith.

2.2 Microsoft Customer Agreement

- 2.2.1 We will only provide your Subscription to the Microsoft Cloud Services if you have entered into an end user licence agreement with Microsoft in the form set out at <https://www.microsoft.com/licensing/docs/customeragreement> as may be amended or supplemented from time to time by Microsoft (the "**Customer Agreement**").
- 2.2.2 By accepting the terms of the Customer Agreement, you represent and warrant to use to agree to observe and comply with it for any and all use of the Microsoft Cloud Services and the person accepting its terms it is authorised to do so on your behalf.
- 2.2.3 In addition to our rights in the General Terms, if you do not comply with the Customer Agreement, we may restrict or suspend the Microsoft Cloud Services upon giving you notice, and: (a) you will pay the Charges that are payable for the Microsoft Cloud Services until your Subscription ends; and (b) we may charge a restarting Charge to start the Microsoft Cloud Services again.
- 2.2.4 You are responsible in accordance with the terms of the Customer Agreement for the use of the Microsoft Cloud Services.
- 2.2.5 You will enter into the Customer Agreement for your own benefit and the rights, obligations, acknowledgements, undertakings, warranties and indemnities granted in accordance with the Customer Agreement are between you and Microsoft.
- 2.2.6 You will deal with Microsoft with respect to any loss or damage suffered by you or Microsoft under the Customer Agreement and any loss or damage will not be enforceable against us.
- 2.3 You acknowledge that Microsoft is a third party, which we do not control. We make no representation, guarantee or warranty about Microsoft's delivery of any Microsoft Cloud Services or their reliability, credit rating or solvency.
- 2.4 You shall use, and shall procure that each end user use, the Microsoft Cloud Services in compliance with applicable laws and any fair usage policy (as amended from time to time) notified to you by us or Microsoft.
- 2.5 We do not make any representations, whether express or implied, about whether the Microsoft Cloud Services will operate in combination with any of your equipment and software.
- 2.6 The Microsoft Cloud Services are provided solely for your own use and you will not resell the Microsoft Online Services (or any part or facility of it) to any third party.

- 2.7 **Microsoft's discretion.** Microsoft may accept or reject your order for Microsoft Cloud Services at Microsoft's discretion. Accordingly, if Microsoft reject your Order, we may cancel your Order for Microsoft Cloud Services (in whole or in part) on giving you written notice (even if we have previously accepted the Order in accordance with the General Terms).
- 2.8 **New Releases of Existing Microsoft Cloud Services.** You acknowledge and agree that Microsoft may modify a Microsoft Cloud Services, or may release a new version of a Microsoft Cloud Services 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 Microsoft Cloud Service offerings. Microsoft reserves the right to add new features or functionality to, or remove existing features or functionality from, a Microsoft Cloud Services.
- 2.9 **Disablement.** Microsoft may disable your Subscription for legal or regulatory reasons or as otherwise permitted under the Customer Agreement and we will notify you of a disablement as soon as commercially reasonable. We will not be liable to you for such disablement and you will continue to pay the Charges to us for the term of your Subscription.
- 2.10 **Service Level Agreement Credits.** Microsoft makes certain service levels commitments to you in Microsoft's SLA provided in the Customer Agreement. If you wish to make a claim on Microsoft's SLA, you must escalate the claim to us and we will pass it on to Microsoft for review. The claim will be reviewed according to Microsoft's SLA review process. If applicable, we 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.
- 2.11 **Microsoft communications.** Microsoft may send direct communications to you related to the terms of the Customer Agreement or the operation or delivery of the Microsoft Cloud Services. You must provide accurate contact information for the administrator of each of your domains.
- 2.12 **Digital Partner of Record.** We will provide you with standard support Services for your Product. We will notify you on what those standard support Services cover separately in writing. Those standard support Services can be enhanced and will be subject to separate terms. As a result of the provision of any of those support Services, you agree to attach us as your digital partner of record (**DPOR**) to your Microsoft Cloud Services at our request. DPOR benefits you, us and Microsoft and helps us optimise your usage of the Microsoft Cloud Services. You can add us as your DPOR through your Microsoft Cloud Services account administration page (we can show you how to do this on request) or by following a link we generate for you.
- 2.13 **Customer Data.**
- 2.13.1 The security, privacy and data protection commitments made by Microsoft in the Customer Agreement only apply to the Microsoft Cloud Services purchased from Microsoft.
- 2.13.2 You have sole responsibility for the accuracy and reliability of all of your data. The Microsoft Cloud Services rely on your data, and we are not liable for the content of your data. Except as required under applicable law, we do not assume any duty or obligation to correct or modify any of your data.
- 2.13.3 You acknowledge and accept that we are a transactional party and resell the Microsoft Cloud Services of Microsoft. As such, the processing of personal data shall be subject to the arrangements and contract terms directly between you and Microsoft through the Customer Agreement and any other applicable agreements between you and Microsoft.
- 2.13.4 Where we act as a data controller of your personal data, our privacy policy shall apply to Orders placed. A copy of the policy can be found on our website and is available upon request. You are responsible for obtaining the consent of all data subjects whose personal data is provided to or otherwise made available to us (such as your employees, clients or related third parties).
- 2.13.5 Notwithstanding any other provision of these Special Terms, you agree 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 Microsoft Cloud Services provided by Microsoft.
- 2.14 You shall ensure that if you save or in any way process personal data via a Microsoft Cloud Service, you acknowledge and:
- 2.14.1 agree to select the Microsoft Cloud Services in compliance with your legal obligations in view of the intended use of the Microsoft Cloud Service;

- 2.14.2 agree to fulfil and procure for all other legal and technical provisions and requirements (e.g. consent of users, data processing agreements, encryption) to comply with applicable data protection requirements; and
- 2.14.3 accept the scope of the respective Microsoft Cloud Services, as well as the risks that may exist depending on the type of Microsoft Cloud Services in view to the intended use of that Microsoft Cloud Service.
- 2.15 **Notification to end users.** To the extent required by applicable law, you shall notify the individual users of the Microsoft Cloud 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.
- 2.16 **Excluded License.** Your rights to any of the Microsoft Cloud Services do not include any license, right, power or authority to cause any part of the Microsoft Cloud Services 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:
- 2.16.1 disclosed or distributed in source code form;
- 2.16.2 licensed for the purpose of making derivative works; or
- 2.16.3 redistributable at no charge.
- 2.17 **Warranty.** Microsoft warrants its Microsoft Cloud Services to you as described in the Customer Agreement.
- 2.18 **No Warranty.** Unless required by applicable law, neither we or Microsoft give any other express warranties, representations or conditions concerning the Microsoft Cloud Services. To the maximum extent permitted under applicable law, we and Microsoft disclaim all implied warranties and conditions relating to the Microsoft Cloud Services.
- 2.19 **No Warranties for Other Items.** Neither we or Microsoft makes any warranties or conditions as to the items that distributed under a third party name, copyright, trade mark or trade name that may be offered with or incorporated with any Microsoft Cloud Services. To the maximum extent permitted by applicable law, neither we or Microsoft will have an liability in connection with any of those third party items.
- 2.20 **Proprietary notices.** You must not remove any copyright, trademark or patent notices from any of the Microsoft Cloud Services.
- 2.21 **Reservation of Rights.** At any time during the term of the Customer Agreement, Microsoft may terminate your status as its customer. We will then terminate your right to use any Microsoft Cloud Service immediately upon written notice to you at Microsoft's request. Termination will not affect our right to invoice you for a Microsoft Cloud Service order, or your obligation to pay us. If Microsoft terminates your status as its customer, you will not have any claim against us or Microsoft for damages or lost profits resulting from the termination.
- 2.22 **Export Restriction.** The Microsoft Cloud Services, software, services and technology supplied pursuant to the Contract are subject to U.S., European and national export jurisdiction. You 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.
- 2.23 **Minimum Period of Service and Renewal Periods.**
- 2.23.1 Unless one of us gives written notice to the other of an intention to terminate the Microsoft Online Services with at least the relevant notice period provided in clause 2.23.2 below before the end of the Minimum Period of Service for the Subscription or a Renewal Period for the Subscription, at the end of the Minimum Period of Service for the Subscription or Renewal Period for the Subscription, the Microsoft Online Services will automatically extend for a Renewal Period and both of us will continue to perform each of our obligations in accordance with the Contract.
- 2.23.2 If you have a:
- 2.23.2.1 monthly subscription to a Microsoft Cloud Services, the notice period for the purpose of clause 2.20.21 shall be at least 5 Business Days before the end of the Minimum Period of Service for the Subscription or a Renewal Period for the Subscription; and

- 2.23.2.2 for any other subscription to a Microsoft Cloud Services (for example, an annual Subscription), the notice period for the purpose of clause 2.20.21 shall be at least 30 days before the end of the Minimum Period of Service for the Subscription or a Renewal Period for the Subscription.
- 2.23.3 Charges for a Renewal Period will be our pricing in effect as at the commencement of the Renewal Period.
- 2.23.4 You may add licences to a Subscription by submitting an additional Order to us. The additional licences will be included in your existing Subscription and will be co-terminus with your existing licences for that Subscription. Those additional licences shall be subject to the terms of the Contract.
- 2.23.5 You acknowledge and accept, during the Minimum Period of Service you will commit to a minimum number of seats/licences specified in your Order. As specified in clause 2.23.4 you can add to the number of seats/licences during the Minimum Period of Service or any Renewal Period. However you will not be able to decrease the number of seats/licences specified in the Order or added subsequently until the commencement of a Renewal Period of the relevant Subscription.
- 2.23.6 You shall not be entitled to move your Subscriptions to another Microsoft Cloud Services provider or reseller during the Minimum Period of Service or any Renewal Period.
- 2.24 **No cancellation:** You acknowledge and accept that you shall not be entitled to cancel any Order for Microsoft Cloud Services once submitted to us. Upon submission of your Order you shall become liable to pay us all Charges for the Minimum Period of Subscription and any applicable Renewal Period.
- 2.25 **Indemnification.** You shall defend, indemnify and hold us, Microsoft or any other third party harmless from and against any third party claims and any damages, liability, costs and expenses that arise out of your:
- 2.25.1 negligence or misconduct in your performance under these Special Terms or the Customer Agreement;
- 2.25.2 your failure to pay us any Charges or other sums due in connection with the Microsoft Cloud Services; and/or
- 2.25.3 failure to abide by the terms of these Special Terms or the Customer Agreement.
- 2.26 **Invoicing:** Unless set out otherwise in any applicable Order, we will invoice you for the following Charges in the amounts set out in any applicable Order (or, in respect of any Renewal Period, our Charges in force at the commencement of the Renewal Period):
- 2.26.1 Recurring Charges, except Consumption Charges, monthly or yearly (as specified in the Order) in advance;
- 2.26.2 Consumption Charges, monthly in arrears, calculated at the then current rates;
- 2.26.3 any Termination Charges (determined in accordance with clause 2.30) upon termination of the relevant Microsoft Online Service, Contract or Order.
- 2.27 We may invoice you whether or not a purchase order has been issued by you.
- 2.28 Payments will be charged to your chosen payment method at confirmation of the purchase and at the start of every new billing period.
- 2.29 **Additional cancellation, suspension and termination rights**
- 2.29.1 We shall be entitled to suspend or restrict the Microsoft Cloud Services (or part thereof) without liability to you (and your end users) for any of the reasons set out below and you shall continue to pay the Charges to us:
- 2.29.1.1 to comply with legal or regulatory obligations or requests;
- 2.29.1.2 if we reasonably believe that the Microsoft Cloud Services are being resold, provisioned, or used in breach of the provisions under the Contract, the Customer Agreement or any other obligations you have with Microsoft;

- 2.29.1.3 if you refuse to co-operate with our reasonable investigation of any suspected breach of the Contract;
 - 2.29.1.4 if we have reasonable cause to suspect that you have acted or will act fraudulently, unlawfully, in a criminal way or in a way that could create detriment to us, Microsoft or any of your end users;
 - 2.29.1.5 if you have not paid any invoices or amounts on time;
 - 2.29.1.6 if you have not paid any outstanding amounts under any other contract that has been entered into with us, as set out in that other contract;
 - 2.29.1.7 if we are required to undertake any maintenance or to implement a change; or
 - 2.29.1.8 if it is required to protect the integrity or security of our network or services.
- 2.29.2 In addition to our other rights set out in the General Terms, we may terminate the Contract, in whole or in part, with immediate effect, if you breach any of these Special Terms.
- 2.29.3 In addition to our other rights set out in the General Terms, if Microsoft terminates any part or all of the Microsoft Cloud Services, we may terminate the Contract, in whole or in part, upon written notice with immediate effect. We will not be liable to you for such termination.
- 2.29.4 If the Contract is entered into by us and you before Microsoft agrees to provide the applicable Microsoft Cloud Services to you, and if subsequently, Microsoft refuses to provide such Microsoft Cloud Services for any reason, boxxe may immediately terminate the Contract, without any liability for such termination, upon written notice to you.
- 2.29.5 Any action by Microsoft such as withholding provision of Microsoft Cloud Services or suspending or terminating your access to, or use of, Microsoft Cloud Services does not give you the right to terminate the Contract. Charges will continue to accrue for the duration of any withholding or suspension of the Microsoft Cloud Services, or any part thereof based upon your Subscription term. You shall be responsible to pay for such Charges in accordance with the Contract.
- 2.30 **Termination Charges:** In addition to the other amounts specified in the General Terms, if the Contract, a Microsoft Online Service or any applicable Order is terminated during the Minimum Period of Service or any Renewal Period, you will pay us the following **Termination Charges**:
- 2.30.1 as compensation, a sum equal to 100 per cent of the Recurring Charges for any remaining period of the Minimum Period of Service or relevant Renewal Period; and
 - 2.30.2 any charges incurred by us from any supplier as a result of the early termination.

3. DEFINED TERMS

In addition to the defined terms in the General Terms, capitalised terms in these Special Terms will have the below meanings or the meanings prescribed to them elsewhere in these Special Terms (and in the case of conflict between these defined terms and the defined terms in the General Terms, these defined terms will take precedence for the purposes of these Special Terms).

“**Charges**” means charges payable by you to us in respect of the supply of the Microsoft Cloud Services ordered by you.

“**Consumption Charges**” means the Charges for consumption-based Subscriptions that are based on resource consumption in the preceding billing period;

“**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 Microsoft Cloud Service, as detailed in the Customer Agreement.

“**Minimum Period of Service**” means for each Subscription the period of consecutive months as set out in any applicable Order beginning on the Service Start Date.

“**Recurring Charges**” means the Charges for the Microsoft Cloud Services or applicable part of the Microsoft Cloud Services that are not consumption based.

“**Renewal Period**” means for a Subscription, the same period as agreed for the Minimum Period of Service for that Subscription.

“**Services Start Date**” means the date we our Microsoft make the relevant Microsoft Cloud Services available to you.

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

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