

# Boxphish License Agreement & Definitions

## 1. Definitions

- a. **Agreement** means the Work Order, these Supply Terms and the Data Processing Agreement.
- b. **Boxphish** means Boxphish Ltd (company number: 11458830) whose registered office is at 1st Floor, 8 Park Row, Leeds, England, LS1 5HD.
- c. **Customer** means the entity or organisation identified as the 'Customer' the relevant Work Order.
- d. **Customer Data** means the commercial and/or business data of the Customer shared with Boxphish in the course of the Agreement
- e. **Customer Service Plan** means, in respect of the Support Services, the support services terms provided by Boxphish to the Customer available at <https://www.boxphish.com/wp-content/uploads/2024/02/Boxphish-Customer-Service-Plan-SLA-Document-2024.pdf> (as updated from time to time).
- f. **Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).
- g. **Fee(s)** means the subscription fee for the access to the Service(s) as set out in the relevant Work Order
- h. **Initial Term** means the term of the Agreement as set out in the relevant Work Order or if no term is set out in the relevant Work Order for a period of one (1) year from the date the Customer first accesses the Service(s).
- i. **SaaS Service** means the SaaS services to which the Customer has subscribed to as set out in the relevant Work Order.
- j. **Service(s)** means (as the context determines) the SaaS Service, the Support Services, and any other services as set out in the relevant Work Order.
- k. **Supply Terms** means the terms and conditions contained herein.
- l. **Support Services** means, in respect of the relevant Services, the support services provided by Boxphish as described in the Customer Service Plan.
- m. **Work Order** means the work order entered into by or on behalf of the Customer and Boxphish, incorporating these Supply Terms.

## 2. Term

a. The Agreement is effective for the Initial Term that is stated on the Work Order, or if no Initial Term is specified on the Work Order, for a period of one (1) year from the date the Customer first accesses the Service (deemed to be the Initial Term).

b. Unless otherwise stated on the Work Order, the Agreement shall automatically renew after the Initial Term expires, for a further 12 months. This will automatically be activated unless either party serves notice on the other of its intention not to renew the Agreement at least ninety (90) days prior to the expiration of the then current term.

## 3. Usage

a. In consideration of the Customer paying the Fees, Boxphish grants the Customer a non-exclusive, non-transferable, non-sublicensable, limited, revocable right and license to use the Service and the online software applications provided by Boxphish as part of the Service (**Software**), subject to the terms and conditions of the Agreement and solely for the Customer's internal business operations.

b. The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Service that (i) is illegal or causes damage or injury to any person or property or (ii) Boxphish considers (acting reasonably) may be likely to cause harm or offense to any person or property. Boxphish reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause 3b.

c. The Customer shall not:

- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means or attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-

perceivable form all or any part of the Software or the Service;

- (ii) access all or any part of the Service in order to build a product or service which competes with the Service;
- (iii) use the Service to provide services to third parties or commercially exploit or otherwise make the Service available to any third party; or
- (iv) introduce or permit the introduction of, any virus into the Service or Boxphish's network and / or information systems.

#### 4. Supply of Service

a. Boxphish shall supply the Service to the Customer in accordance with the Work Order in all material respects and with reasonable skill and care.

b. Boxphish reserves the right to amend the Service if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Service, and Boxphish shall notify the Customer in any such event.

c. Boxphish shall use commercially reasonable endeavours to make the Service available 24 hours a day, seven days a week, except for (i) planned maintenance and (ii) unscheduled maintenance (provided that Boxphish has used reasonable endeavours to give the Customer at least six hours' notice in advance).

d. Boxphish will, as part of the Service and at no additional cost to the Customer, provide the Customer with Boxphish's standard customer support services during normal business hours in accordance with its Customer Service Plan in effect at the time that the Service is provided. Boxphish may amend the Customer Service Plan in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Boxphish's then current rates.

#### 5. Customer's Obligations

The Customer shall:

- a. co-operate with Boxphish in all matters relating to the Services;
- b. provide Boxphish with such information and materials as Boxphish may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and
- c. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

#### 6. Fees & Payment

a. Payment: An invoice for the Fees will be sent in accordance with what is stated in the Work Order. Boxphish will continue to invoice the Customer until the Agreement is terminated in accordance with clause 2.

b. Preferential Pricing: The Customer may from time to time be offered preferential pricing or discounts for the Service by Boxphish, which should at all times not be disclosed to anyone outside of the Customer's organisation. Boxphish reserves the right to render invoices for the full (non-discounted) Fees due or suspend or terminate the use of the Service in the event that any invoices for those Fees are not paid in full in accordance with the requirements set out in the Work Order.

#### 7. Termination

a. Without affecting any other right or remedy available to it, either party shall be entitled to terminate the Agreement with immediate effect by giving written notice if the other party:

- (i) commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of being notified in writing to do so;
- (ii) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- (iii) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business, or the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.

b. Without affecting any other right or remedy available to it, Boxphish may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Agreement on the due date for payment.

#### 8. Intellectual Property fee

a. All patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database

rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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 (**Intellectual Property Rights**) vesting in the Software and Service belong exclusively to Boxphish or its licensors and nothing in the Agreement shall function to alter such ownership.

b. All Intellectual Property Rights in any Customer Data shall belong to the Customer or its licensors. The Customer grants Boxphish a non-exclusive, non-transferable, right to use its Intellectual Property Rights to the extent required to provide the Service, Software and services hereunder.

c. If the Customer opts to receive any outputs of the Service via SCORM format, Boxphish shall retain all Intellectual Property Rights in such outputs. SCORM courses can be used by the Customer within its existing Learning Management System for the term of the Agreement. Boxphish shall be entitled to check or investigate usage of the Service from time to time and if it is found that the Customer or a third party uses any Boxphish SCORM files outside of the agreed subscription and/or without a valid license, then the Customer will be liable for the full cost of a Boxphish subscription to cover the period of use. A minimum of 12 months will be charged, or to the next nearest 12-month period at the time the breach in use has been discovered, whichever is higher, and any additional investigation costs. Notwithstanding the foregoing, if the Customer has received written permission upfront from Boxphish to continue using the SCORM files outside of the Agreement, then this charge will not apply.

## 9. Privacy

Boxphish shall comply with Boxphish's Privacy Policy available at: <https://www.boxphish.com/privacy-policy/> in respect of Boxphish's collection and use of the Customer's personal information.

## 10. Customer Data

For the purposes of this clause 10, **Customer Data** shall mean the commercial and/or business data of the Customer shared with Boxphish in the course of the Agreement.

a. Boxphish shall follow its archiving and security procedures for the Customer Data.

b. Boxphish shall promptly notify the Customer in writing of any actual or suspected loss or damage to the Customer Data. In the event of any loss or damage to the Customer Data, the Customer's sole and exclusive remedy shall be for Boxphish to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest

backup of such Customer Data to be maintained by Boxphish or its service providers. Boxphish shall not be responsible for any loss, destruction, alteration or unauthorised access to or disclosure of the Customer Data caused by any third party.

## 11. Personal Data

Both parties shall comply with the data processing agreement appended to the Work Order or entered into between the parties on or around the data of the Agreement (**Data Processing Agreement**) and all applicable requirements of the Data Protection Legislation (as defined in the Data Processing Agreement). This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

## 12. Confidentiality

a. Each party undertakes that it shall not at any time during the Agreement, and for a period of two years after termination or expiry of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.b.

b. Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.b.(i); and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

c. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

## 13. Indemnity

a. The Customer shall indemnify Boxphish against all costs, claims, losses and expenses (including indirect and consequential losses) arising out of or in connection with the Customer's use of the Service.

b. Boxphish shall defend the Customer against any claim that the Customer's use of the Service in accordance with the Agreement infringes any copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (i) Boxphish is given prompt notice of any such claim;
- (ii) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Boxphish in the defence and settlement of such claim, at Boxphish's expense; and
- (iii) Boxphish is given sole authority to defend or settle the claim.

#### 14. Limitation of Liability

a. Nothing in this agreement excludes the liability of Boxphish:

- (i) for death or personal injury caused by Boxphish's negligence; or
- (ii) for fraud or fraudulent misrepresentation..

b. Subject to clause 14.a., in no event shall Boxphish be liable for any direct, indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or data use, incurred by the Customer or any third party, whether in an action in contract or tort, arising from the Customer's access to, or use of, the Software or Service provided.

c. Subject to clause 14.a., Boxphish's total aggregate liability under the Agreement (including under the Data Processing Agreement) shall not exceed 125% of the Fees paid or payable hereunder .

#### 15. Force Majeure

a. Neither party shall have any liability to the other under the Agreement if it is prevented from, or delayed in, performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, except to the extent that it could reasonably have avoided such circumstances by (in the case of Boxphish) fulfilling its obligations in accordance with clause 15.b. or otherwise exercising the level of diligence that could reasonably have been expected of it, including strikes, lock-outs or other industrial disputes (including any industrial disputes involving the workforce of Boxphish), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a **Force Majeure Event**), provided that:

- (i). the other party is notified of such an event and its expected duration; and
- (ii). it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned, and that if the period of delay or non-performance continues for three consecutive months or more, the party not affected may terminate the Agreement by

giving not less than 14 days' written notice to the other party.

b. Boxphish shall have in place an appropriate disaster recovery plan to ensure that it is able to comply with its obligations under the Agreement and shall maintain, update and test such disaster recovery plan and notify full details of its then current disaster recovery plan to the Customer no less frequently than every 12 months. If such disaster recovery plan is invoked, the cost and expense of invoking and executing such disaster recovery plan shall be borne by Boxphish.

#### 16. General

a. The Agreement constitutes the entire agreement between the Customer and Boxphish in relation to the provision of the Service and supersedes and extinguishes any representations, communications and prior agreements (whether oral or written) related to its subject matter other than fraudulent misrepresentation.

b. Boxphish may assign, sub-contract or otherwise deal with its rights or obligations under the Agreement without giving the Customer prior notice. The Customer may not assign, sub-contract, sell or transfer its rights or obligations under this License Agreement, except with the prior written consent of Boxphish.

c. Except as expressly stated in these Terms and Conditions, no person who is not a party to the Agreement will derive any benefit from it, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

#### 17. Anti-Bribery and Slavery Policy

a. Both parties shall:

i. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (the **Relevant Requirements**);

ii. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

iii. have and maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 17.a.(ii), and shall enforce them where appropriate;

iv. promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by the first party in connection with the performance of the Agreement;

v. immediately notify the other party in writing if a foreign public official becomes

an officer or employee of the first party or acquires a direct or indirect interest in the first party (and both parties warrant and represent that they have no foreign public officials as officers or employees or direct or indirect owners at the date of the Agreement);

vi. on reasonable request certify compliance with this clause to the other party in writing signed by an officer of such party.

vii. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;

viii. have and maintain throughout the term of the Agreement its own policies and procedures to ensure its compliance; and

ix. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

b. Breach of clause 17.a. shall be deemed an irremediable material breach for the purposes of clause 7.a.(i).

c. For the purpose of this clause 17., the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act, and section 8 of that Act respectively. For the purposes of this clause 17., a person associated with a party also includes any sub-contractor of such party.

#### **18. Solicitation**

a. Neither party shall, for a period of 6 months from the date of the Agreement, directly or indirectly whether through an agent or otherwise solicit or entice away (or attempt to solicit or entice away) from the employment of that party any employee holding an executive or managerial position with, or an officer of, that party.

b. A party shall not be in breach of clause 18.a. as a result of running a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

c. If either party commits any breach of clause 18.a., the breaching party shall, without prejudice to any other rights or remedies of the claiming party, on-demand, pay to the claiming party a sum equal to one year's basic salary of the staff member concerned.

#### **19. Fees increase**

Following the expiry of the Initial Term, Boxphish may on notice to the Customer increase the Fees) not more than once in any 12-month period by a percentage equal to the average indexation percentages of CPI, RPI and RPIX for the period since the previous increase or if any of those indices cease to be published by HM Government, then those indices which most closely match the ceased items.

#### **20. Governing Law and Jurisdiction**

a. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

b. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this License Agreement or its subject matter or formation (including non-contractual disputes or claim).