

UNBOXED

**Back Office Planning System (BOPS)
Support and Hosting Agreement**

[Client]

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The Parties

This agreement is made on the [] ("Commencement Date")

Between:

[], whose registered address is at [] ("you"/"Customer");

and

Unboxed Consulting Limited, whose registered address is 2nd floor, 60 – 62 Commercial Street, London, E1 6LT ("we"/"us"/"Unboxed").

The Agreement

1. Definitions

- 1.1. **"Agreement"** means this Support and Hosting Agreement together with the applicable G-Cloud Call-Off Order Form, Call-Off Contract terms and the Pricing Document.

In the event of any conflict, the following order of precedence applies:

- (1) the G-Cloud Call-Off Contract (including Order Form and schedules);
- (2) the Pricing Document;
- (3) this Support and Hosting Agreement.

- 1.2. **"Associates"** means all members, employees or self-employed contractors or associates of Unboxed (including corporate entities) who are engaged in the provision of Services.
- 1.3. **"BOPS"** means the Back Office Planning System open-source software platform.
- 1.4. **"Pricing Document"** means the applicable BOPS pricing document (Dedicated Single-instance SaaS service or Multi-tenanted SaaS service) associated with the G-Cloud service being procured.
- 1.5. **"Services"** means the hosting, support, maintenance and related operational services provided by Unboxed to the Customer in respect of BOPS, as described in the Pricing Document.

2. Support Services

- 2.1. Unboxed shall supply the support, hosting, maintenance and related operational services for BOPS to the Customer in accordance with this Agreement.
- 2.2. The Services include, as applicable to the Customer's selected service variant (single-instance SaaS or multi-tenanted SaaS):
- a. provision and operation of the BOPS platform in a secure UK cloud hosting environment;
 - b. platform monitoring, security patching, routine maintenance and scheduled upgrades;
 - c. incident and defect support for the BOPS platform;
 - d. management of platform availability issues;
 - e. provision of service communications and operational notices;
 - f. contract and service management activities.

- 2.3. Incidents and defects shall be classified using the following severity levels:
- P1 – Critical:** A service-wide issue resulting in complete loss of access to BOPS, or preventing the processing of planning applications, for which no reasonable workaround is available.
- P2 – High:** A significant loss of functionality affecting multiple users or key workflows, where a workaround may exist.
- P3 – Medium:** A limited issue affecting non-core functionality, specific users or individual configurations, where an effective workaround exists.
- P4 – Low:** A cosmetic or low impact issue which can be simply worked around.
- 2.4. Standard support coverage shall be provided Monday to Friday, 9am to 5pm UK time, excluding public holidays.
- 2.5. Response and remediation targets are as set out in the Pricing Document.
- 2.6. Resolution of an incident may include the provision of a reasonable workaround.
- 2.7. Enhanced or authority-specific support services, where procured, shall apply in addition to the standard Services and shall be as described in the applicable Pricing Document.
- 2.8. Unboxed does not guarantee uninterrupted or error-free operation of BOPS and does not warrant that all defects can or will be corrected.
- 2.9. Additional aspects of the services such as onboarding, data migration and enhanced insurance are included in the Pricing Document.

3. Obligations of the Customer

- 3.1. The Customer shall, and shall procure that its personnel shall:
- 3.1.1. cooperate fully and in good faith with Unboxed in connection with the provision of the Services;
 - 3.1.2. comply with all reasonable directions, guidance and instructions issued by Unboxed in relation to BOPS and the Services;
 - 3.1.3. provide timely, accurate and complete information, access, approvals and decisions reasonably required by Unboxed to perform the Services;
 - 3.1.4. ensure that only suitably trained and competent personnel use or administer BOPS;
 - 3.1.5. effect and maintain adequate security measures to safeguard BOPS from access or use by any unauthorised person;
 - 3.1.6. promptly notify Unboxed of any actual or suspected faults, incidents or security issues affecting BOPS;

- 3.1.7. comply with the applicable open-source licence governing BOPS, failure to comply is a material breach.
- 3.2. Unboxed shall not be responsible for any failure to meet service levels or other obligations to the extent caused by the Customer's failure to comply with this clause 3.

4. Term

- 4.1. The Services shall commence on the Commencement Date and shall continue for the term specified in the G-Cloud Call-Off Order Form unless terminated earlier in accordance with the G-Cloud Call-Off Contract.

5. Payment

- 5.1. Fees for the Services shall be payable annually in advance in accordance with the Pricing Document.
- 5.2. Any charges payable by the Customer under this Agreement shall be paid within 14 days following receipt of Unboxed's invoice.
- 5.3. All fees payable under this Agreement are exclusive of VAT which should be payable by the Customer in addition at the prevailing rate.
- 5.4. Unboxed shall have the right to charge interest on overdue invoices at the rate of 5% per annum above the base rate of the Bank of England calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment.

6. Warranty

- 6.1. Unboxed warrants to the Customer that the Services will be carried out with reasonable care and skill by personnel whose qualifications and experience are appropriate for the tasks to which they are allocated.
- 6.2. The Customer acknowledges that it is responsible for ensuring that the Services and BOPS meet its requirements and are suitable for its intended purposes.
- 6.3. Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to satisfactory quality, fitness for purpose, availability, accuracy, non-infringement or ability to achieve a particular result is given or assumed by Unboxed, and all such warranties, conditions, undertakings and terms are excluded to the fullest extent permitted by law.
- 6.4. The Customer agrees that its sole and exclusive remedy for any breach of the warranty in clause 6.1 shall be for Unboxed, at its option, to remedy the non-conformance within a reasonable time, or, if Unboxed reasonably determines

that such remedy is not practicable, to refund the fees paid for the Services in respect of the period in which the breach occurred.

- 6.5. Unboxed does not warrant that BOPS or any open-source components will be free from defects or that all errors can or will be corrected, and Unboxed shall use reasonable endeavours to correct repeatable errors where they materially affect the provision of the Services.

7. Intellectual Property ("IP")

- 7.1. All intellectual property rights in and to any pre-existing work or materials created before the Services commence shall remain with the party providing them.
- 7.2. BOPS is an open-source software platform. Use, modification and redistribution of BOPS are governed by the applicable open-source licence.
- 7.3. Any software code, modifications, enhancements or extensions to BOPS created by Unboxed or its Associates in the course of providing the Services shall be contributed to the BOPS open-source codebase and made available under the same open-source licence.
- 7.4. Any documentation, configuration, scripts, tools, utilities or other materials created by Unboxed or its Associates in the course of providing the Services which do not form part of the BOPS codebase shall belong to Unboxed, unless otherwise expressly agreed in writing. Unboxed grants to the Customer a perpetual, non-exclusive, royalty-free licence to use such materials solely for the Customer's internal use, and for exit, migration, and re-procurement purposes, in connection with BOPS, subject to payment of all fees due.

8. Liability

- 8.1. Unboxed shall during the term of this Agreement, maintain employer's liability, third party liability, and professional indemnity insurance cover in respect of its liabilities arising out of or connected with this Agreement, such cover to be to a minimum value of five hundred thousand pounds and with an insurance company of repute. Unboxed shall on request supply copies of the relevant certificates of insurance to the Customer as evidence that such policies remain in force. Unboxed undertakes to use reasonable commercial efforts to pursue claims under such insurance policies.
- 8.2. Unboxed shall indemnify the Customer for personal injury or death caused by the negligence of its employees in connection with the performance of their duties hereunder or by defects in any product supplied pursuant to this Agreement.
- 8.3. Save in respect of claims for death or personal injury arising from Unboxed's negligence, in no event will Unboxed be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of Unboxed, whether such damages were reasonably foreseeable or actually foreseen.
- 8.4. Except as provided above in the case of personal injury, death and damage to tangible property, Unboxed's maximum liability to the Customer under this Agreement or otherwise for any cause whatsoever (whether in the form of the

additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the lesser of:

the sum for which Unboxed carries comprehensive insurance cover pursuant to clause 8.1 above; or

a sum equivalent to the price paid to Unboxed for the products or services that are the subject of the Customer's claim, plus damages limited to 25% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Customer in obtaining alternative products and/or services.

- 8.5. The parties hereby acknowledge and agree that the limitations contained in this clause 8 are reasonable in light of all the circumstances.
- 8.6. The Customer's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action. For the purposes of this clause, the 'Licensor' includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

9. Termination

- 9.1. Either party may terminate this Agreement in accordance with the G-Cloud Call-Off Contract. However, no refund will be due from Unboxed to the Customer in the event of contract termination.

10. General

- 10.1. Any training required by the Customer shall be provided by Unboxed in accordance with its standard scale of charges from time to time in force.
- 10.2. Unboxed shall be entitled to identify the Customer as a customer of Unboxed in its publicity materials, subject to the Customer's prior written approval on each publicity document.
- 10.3. Each party shall treat as confidential all information supplied by the other party under this Agreement which is designated as confidential, or which is by its nature clearly confidential, provided that this Clause shall not extend to any information which was rightfully in the possession of a party prior to the commencement of the negotiations leading to this Agreement, or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).
- 10.4. The parties agree to comply with their respective obligations under the Data Protection Legislation in the processing of personal data. This clause does not relieve, remove or replace a party's obligations under the Data Protection Legislation.
- 10.5. For the purposes of this Agreement, "**Data Protection Legislation**" means all applicable laws and regulations relating to the processing of personal data and privacy as may be applicable from time to time, including the Data Protection Act 2018, the GDPR (EU General Data Protection Regulation 2016/679), the retained EU law

version of the GDPR (UK GDPR) and any successor legislation or as amended from time to time.

- 10.6. The parties acknowledge and agree that in respect of any personal data processed by us as a data processor for and on your behalf, the parties shall comply with their respective obligations as set out in Schedule 1.
- 10.7. This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.
- 10.8. This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties to this Agreement.
- 10.9. No party shall issue or make any public announcement or disclose any information regarding this Agreement, unless prior written consent has been obtained from the other party.
- 10.10. This Agreement is personal to the parties and, subject to clause 10.11 below, neither this Agreement nor any rights, licenses or obligations under this Agreement, may be assigned by either party, without the prior written approval of the other party.
- 10.11. Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all, or of substantially all, of such party's equity securities, assets or business relating to the subject matter of this Agreement, or to any entity controlled by, that controls, or is under common control with, a party hereto. Any attempted assignment in violation of this clause will be void and without effect.
- 10.12. This Agreement shall be binding upon, and enure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.
- 10.13. This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However, the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 10.14. Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Agreement by written notice to the other party.
- 10.15. All notices hereunder shall be in writing.
- 10.16. Notices shall be deemed to have been duly given:
 - a. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - b. when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated; or
 - c. on the fifth business day following mailing, if mailed by national ordinary mail, postage pre-paid; or
 - d. on the tenth business day following mailing, if mailed by airmail, postage

pre-paid,

in each case addressed to the most recent address, email address, or facsimile number notified to the other party.

- 10.17. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
- 10.18. No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.
- 10.19. Where either party has incurred any liability to the other party, whether under this Agreement or otherwise, and whether such liability is liquidated or unliquidated, each party may set off the amount of such liability against any sum that would otherwise be due to the other party under this Agreement.
- 10.20. The parties confirm their intent (except as provided in clause 10.7 not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

11. Law and Jurisdiction

- 11.1. This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English Law
- 11.2. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement.

12. Non-solicitation of Our Associates

- 12.1. You undertake that you (including for the purpose of this clause any subsidiary group or associated company, or any person connected with you, directly or indirectly (whether on your own account or on behalf of another)), shall not, without our prior written consent, either:
- a) whilst the Services are being supported; or
 - b) within a period of 6 months after the end of the Services;
- directly or indirectly entice away or endeavour to entice away from us to provide any work or services any person who during the previous 12 months:
- c) has been engaged in any role on the Services; and
 - d) has been employed by us (or otherwise engaged by us in the case of non-employees or self-employed contractors).

- 12.2. In the event that you are in breach of the undertaking in clause 12.1 you agree to pay liquidated damages of a sum equal to an amount that is equivalent to 35% of the persons concerned annual salary (or total contract fee in the case of self-employed contractors) in their new position.

Signatures

AS WITNESS the hands of the parties the day and year first written before

Signed by

For and on behalf of

[]

Signed by

For and on behalf of

Unboxed Consulting Limited

Schedule 1

Data Processing Schedule

1. Definitions

- 1.1 In this Schedule, except where the context otherwise requires, the following words and expressions shall have the following meanings.

Data Protection Legislation means all applicable laws and regulations relating to the processing of personal data and privacy as may be applicable from time to time, including the Data Protection Act 2018, the GDPR (EU General Data Protection Regulation 2016/679), the retained EU law version of the GDPR (UK GDPR) and any successor legislation or as amended from time to time.

Controller, Processor, Data Subject, Personal Data and Processing shall have the same meaning as in the Data Protection Legislation, and their cognate terms shall be construed accordingly.

2. Controller and Processor

- 2.1 For the purposes of the Data Protection Legislation and this Schedule 1, you are the Controller and we are the Processor. The table at paragraph 9 below sets out the scope, nature and purpose of the Processing, the duration of the Processing, the types of Personal Data and categories of Data Subject.
- 2.2 We agree that we will not process Personal Data other than:
- 2.2.1 as set out in this Schedule;
 - 2.2.2 on your written instructions; or
 - 2.2.3 unless required by law in which case we agree (to the extent permitted by law) to inform you of that legal requirement before such processing.

3. Protection Measures

- 3.1 We agree that all staff who have access to and/or process Personal Data will be legally bound by appropriate confidentiality obligations.
- 3.2 We will ensure that we have in place appropriate technical and organisational measures to ensure that Personal Data is subject to an appropriate level of security, including to the extent required the measures referred to in Article 32(1) of the GDPR/UK GDPR (as the case may be).
- 3.3 In reaching judgement as to the appropriate level of security, we will take into account current technology, costs of implementation and the nature, scope, context and purposes of the processing undertaken as well as the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage of the Personal Data.
- 3.4 Where Personal Data processed under this Agreement includes special category data within the meaning of Article 9 UK GDPR, Unboxed shall implement appropriate technical and organisational safeguards in accordance with Article 9(2) and Article 32 UK GDPR.

4. Transfers outside of the UK and EEA

- 4.1 We will not process or transfer any Personal Data outside of the UK or the European Economic Area ("EEA") unless we have your prior written consent or there are appropriate safeguards in place in accordance with Chapter 5 of the GDPR/UK GDPR (as the case may be), in relation to the transfer and we are providing an adequate level of protection to any Personal Data that is transferred.

5. Data Breach

- 5.1 We will assist you in ensuring compliance with your obligations pursuant to Articles 32 – 36 GDPR/UK GDPR including, without limitation, notifying you without undue delay upon becoming aware of any Personal Data breach affecting Personal Data. We will assist you in responding to any request from a Data Subject and in ensuring compliance with your obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

6. Records and Audit

- 6.1 We will maintain complete and accurate records and information to demonstrate compliance with this Agreement and Data Protection Legislation and will cooperate with and allow for audits by you or our designated auditor in relation to the Processing of Personal Data by us (including, without limitation, making available all information necessary to demonstrate compliance with Article 28 GDPR/UK GDPR).

7. Third Party Processors

- 7.1 We agree not to use any third party processor without your prior written consent. With respect to each third-party processor, we will only engage such processor if a written contract or other agreement is in place that is binding on the third party processor and ensure that the applicable terms with that processor will offer at least the same level of protection for Personal Data as those set out in this Schedule and which meet the requirements of Article 28(3) of the GDPR/UK GDPR (as the case may be). As between you and us, we will remain fully liable for all acts or omissions of any third-party processor appointed by us.
- 7.2 Without prejudice to the above, you consent to us continuing to use any third-party processor already engaged by us at the date of the Agreement, or otherwise in respect of our core IT and business support functions and systems.

8. Effect of Termination

- 8.1 We will upon termination of the Agreement or at any other time requested by you, delete or return all Personal Data to you. We may retain Personal Data if required by law only to the extent and for such period as required by those laws.

9. Data Processing Activity

9.1 The following table includes certain details of the Processing of Personal Data as required by Article 28(3) GDPR/UK GDPR.

Subject matter and duration of the Processing of the Personal Data	Personal Data related to planning applications in BOPS may be processed by us in the course of the provision of Services under the Agreement. Personal Data will be held and processed for as long as the Agreement remains in force. Data is processed for the duration of a planning application and remains stored in the BOPS application indefinitely for the records of the Data Controller (the Relevant Authority).
Nature and purpose of the Processing of Personal Data	Data is processed to enable decisions to be made on planning applications in accordance with the relevant legislation and policy. Names, Addresses and Contact information are needed to meet statutory requirements for the planning process and to inform applicants of the progress and outcome of application. Ownership certificate, photos and plans of home are needed to meet legal requirements of legislation for assessing planning applications. Medical info is needed for evaluating disability exemptions (special category data). The Personal Data is processed for the purposes of facilitating the provision of Services by us to you pursuant to the Agreement
Type(s) of Personal Data to be Processed	Names, addresses, emails, phone numbers, medical information (in some cases), ownership certificates, photographs of homes, documents uploaded by housing planning applicants.
Categories of Data Subject to whom the Personal Data relates	Housing planning applicants, council staff, service providers (planning agents).

Our obligations and rights in relation to the processing	As set out in this Schedule.
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