

Service Terms & Agreement

PLEASE READ THIS AGREEMENT CAREFULLY, AS IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS AND REMEDIES.

1. OVERVIEW

This Agreement ("Agreement") sets forth the terms and conditions of your use of the BOXX Virtual Private Cloud (VPC) services (the "Services"), and represents the entire agreement between you and BOXX Cloud Services ("BCS") concerning the subject matter hereof and is made effective as of the date of manual or electronic acceptance.

Use of the service signifies you are accepting this Agreement and are stating that the information contained within is accurate and has been reviewed by you, the customer. Your acceptance of this Agreement signifies that you have read, understand, acknowledge and agree to be bound by this Agreement, and any other agreements or policies that are expressly incorporated herein.

The terms "We", "Us" or "Our" shall refer to BOXX Cloud Services. The terms "You", "Your", "User" or "Customer" shall refer to any individual or entity who accepts this Agreement. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

We reserve the right to change the terms of this SLA in accordance with your BCS Agreement. Your use of the Services after such changes or modifications shall constitute your acceptance of this Agreement and any limitations to the Services as last revised. If you do not agree to be bound by this Agreement and any Service limitations as last revised, you may in your sole and absolute discretion, terminate the agreement and all future obligations and receive a pro-rata refund of any pre-paid Fees for the remainder of the Purchased Services Term.

2. DESCRIPTION OF SERVICES

We offer varying plans of Virtual Private Cloud (VPC) Services:

Dedicated Workstation. If you purchase time on a Dedicated Workstation, an entire Workstation is reserved exclusively for your usage. You will have exclusive rights to your Workstation's bandwidth, memory, and storage space, and your Workstation's computational performance will not be affected by the usage patterns of other customers.

You are solely responsible for reviewing the functionality of uploaded applications and data content in the BCS hosted location.

Professional Services. If we determine that any support request falls outside the scope of your service plan, you can request custom support services ("Professional Services") on a thirty (30) minute incremental basis for a fee, or on a per service basis, which we will quote to you before providing the custom support service. If you elect to use our Professional Services, we reserve the right to charge any or all of the fees for such Services prior to the commencement of any work being performed. Professional Services fees are non-refundable. In the event you request that we install any Third Party Software (defined below) not provided as part of the Services, you represent and warrant that (1) you have the right to use and install the Third Party Software, (2) you have paid the applicable licensing fees for the Third Party Software, and (3) the Third Party Software does not and shall not infringe on the intellectual property rights of any other person or entity. You also agree to defend, indemnify and hold harmless us and our employees, officers and directors for, from and against any and all claims brought against us and our employees, officers or directors by a third party alleging the Third Party Software is not being used lawfully or that it infringes a third party's right, patent, trademark, copyright or other intellectual property right. You agree that in such an event you shall pay all resulting costs, damages, expenses and reasonable attorneys' fees that a court awards and any settlements incurred by us in connection with any such claims. You must, within three days of any Professional Services delivery, notify us if there are any issues with the Professional Services. We are not responsible for and will not provide assistance with any issue(s) that arise beyond the three days of any Professional Services.

3. SERVICE TERMINATION

Migration of Workstations. You acknowledge and agree that as a normal course of business, it may be necessary for us to migrate our Workstations. As a result, you may be assigned or re-assigned a different IP address. We do not warrant that you will be able to consistently maintain your given IP address.

Term of the Agreement. This term of this Agreement shall commence on the Effective Date and continue until all Purchased Services Terms have expired or been terminated. Except as otherwise specified in the applicable Order Form, all Purchased Services Terms shall automatically renew month-to-month, unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Purchased Services Term.

Termination. Either party may terminate this Agreement immediately without further notice if the other party breaches its obligations under this Agreement and does not remedy such breach within thirty (30) calendar days of the date on which the breaching party receives written notice of such breach from the non-breaching party.

Transition of Customer Data. Upon termination or expiration of this Agreement, Customer shall have the ability to export or retrieve the Customer Data from the Hosted Service within sixty days (60) days after the effective date of termination.

Termination of Services. You acknowledge and agree that upon expiration or termination of your Services, you must discontinue use of the Services and relinquish use of the IP addresses and Workstation names assigned to you in connection with Services. Prior to termination of the Services, you are responsible for moving your applications or Workstation content off our Workstations. We will not transfer your Workstation content to another provider. If you fail to move your Workstation content off our Workstations prior to termination, then all such content will be deleted, and we will not be able to provide a copy of such content.

4. YOUR OBLIGATIONS

Abusive Activities. You acknowledge and agree that you may not use our Workstations as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, denial of service, or other abusive activities. Workstation hacking or other perpetration of security breaches is prohibited, and we reserve the right to terminate service without warning should such activity occur. Use of your dedicated Workstation(s) as an anonymous gateway is prohibited. We prohibit the use of software or scripts run on our Workstations that cause the Workstation to load beyond a reasonable level, as determined by us. You agree that we reserve the right to remove your applications temporarily or permanently from our Workstations if you are in violation of this Agreement and/or there are activities that threaten the stability of our network. You acknowledge and agree that all applications and Workstations associated with your account may be removed if one Workstation is in violation of this Agreement. You agree not to engage in unacceptable use of the Services, which includes, without limitation, use of the Services to: (1) disseminate or transmit any material that, to a reasonable person may be grossly offensive, vulgar or malicious; (2) attempt to mislead any person as to the identity, source or origin of any communication; (3) interfere, disrupt or attempt to gain unauthorized access to any computer system, Workstation, network or account for which you do not have authorization to access or at a level exceeding your authorization; (4) engage in any other activity deemed by us to be in conflict with the spirit or intent of this Agreement or any of our policies; or (5) use your Workstation as an "open relay" or for similar purposes.

Storage and Security. You shall be solely responsible for undertaking measures to: (1) prevent any loss or damage to your applications or Workstation content; (2) maintain independent archival and backup copies of your applications or Workstation content; and (3) ensure the security, confidentiality, and integrity of all your applications or Workstation content transmitted through or stored on our Workstations.

Our Workstations are not an archive, and we shall have no liability to you or any other person for loss, damage, or destruction of any of your content. You shall not use the Service in any way, in our sole discretion, that shall impair the functioning or operation of our services or equipment. Specifically, by way of example and not as a limitation, you shall not use the Services as: (1) a repository or instrument for placing or storing archived files; and/or (2) placing or storing material that can be downloaded through other websites. You acknowledge and agree that we have the right to carry out a forensic examination in the event of a compromise to your Workstation or account.

Bandwidth. BOXX Cloud Service systems have at least a 10Gbps connection to each system, and multiple peering locations. While there is no absolute data-transfer limit, we ask that you consider limiting your usage to under 250GBytes per month. Additional fees may apply to users that greatly exceed this data-transfer limit. If you have a large amount of data that you need available on the system, please inform us so we can coordinate pre-loading your data or system image on your remote system.

Workstation Content. You shall be solely responsible for providing, updating, uploading and maintaining your Workstation and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through your Workstation. You acknowledge and agree that in the course of providing you with technical assistance, it may be necessary for our support staff to modify, alter or remove the contents of your dedicated Workstation.

5. PROVISIONS SPECIFIC TO DEDICATED WORKSTATIONS

The Dedicated Workstation will come configured with one of the standard configurations selected by You. We may install a limited number of additional applications ("Supported Applications") or modify the standard configuration ("Configuration Add-Ons") of your Workstation at your request and subsequent purchase of Professional Services. A full list of Supported Applications is available from our support team upon request. We will provide the primary (administrator) username, authentication credentials, and access information to You, at which point You will take over the management and additional configuration of the Dedicated Workstation. We will not be responsible for content, customization, or any other activities associated with the Supported Application, including any repair of the Supported Application should it stop working. We shall limit technical support of an inoperable Supported Application to restoring said Supported Application to its original state (fresh installation, with no data or customization).

Configuration Add-Ons. We offer multiple configuration options ("Configuration Add-Ons") for an extra fee. The specific Configuration Add-Ons available depend on which dedicated Workstation configuration you purchase. You acknowledge and agree that installing a Configuration Add-On may require additional provisioning time, may require us to install Third Party Software (defined below), third party hardware or internally developed custom software to your Workstation, and, in some cases, may limit the versions of Third Party Software available for use with your Workstation. Third Party Software, third party hardware and internally developed customer software will not be supported by us.

6. SERVICE UPTIME GUARANTEE

We offer a Service uptime guarantee of 99.5% ("Service Uptime Guarantee") of available time per month. If we fail to maintain this Service Uptime Guarantee in a particular month (as solely determined by us), you may contact us and request a credit of 5% of your monthly fee for that month. The credit may be used only for the purchase of further products and services from us or applied to future payments owed and is exclusive of any applicable taxes. The Service Uptime Guarantee does not apply to service interruptions caused by: (1) periodic scheduled maintenance or repairs we may undertake from time to time; (2) interruptions caused by you from custom scripting, coding or the installation of third-party applications; (3) causes beyond our control or that are not reasonably foreseeable; and (4) outages related to the reliability of certain programming environments.

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7. REFUNDS

There are no refunds of any payments made except pro-rata refund of any pre-paid Fees for the remainder of the Purchased Services Term, should Customer choose to terminate agreement due to BCS changes or modification of agreement, policies, or services.

8. THIRD PARTY SUPPLIERS

"Third-Party" means any hardware, software, or application not developed or owned by Us.

The Third-Party Software is neither sold nor distributed to you, and you may use the Third-Party Software solely as part of the Services. You may not use the Third-Party Software outside of the Services, unless it is owned by You. We may provide your personal information to third-party providers if it is required to be provided to the Third-Party Software vendors. You acknowledge and agree that your use of the Third-Party Software is subject to our agreement(s) with the third-party providers. In addition, if the Third-Party Software is accompanied by or requires consent to a service or license agreement from the third-party provider, your use of the Third-Party Software is subject to such service or license agreement. You may not download, install, or use any Third-Party Software that is accompanied by or requires consent to a service or license agreement from a third-party provider unless you first agree to the terms and conditions of such service or license agreement. You may not remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that are contained in or on the Third-Party Software. You may not reverse engineer, decompile, or disassemble the Third-Party Software, except and only to the extent that such activity is expressly permitted by applicable law. You acknowledge and agree that the third-party providers (and their affiliates and suppliers) make no representations or warranties about any Third-Party Software offered in connection with the Services, and expressly disclaim any liability or damages (whether direct, indirect, or consequential) arising from the use of the Third-Party Software. You acknowledge and agree that any Third-Party Software will be supported by us and not by the third-party providers (or their affiliates or suppliers).

All Third-party suppliers disclaim any and all liability for consequential and other indirect damages and implied warranties, including the implied warranties of non-infringement, merchantability and fitness for a particular purpose. The collective liabilities of BCS and its Third-party suppliers are subject to any limitations within this Agreement.

9. TITLES AND HEADINGS; INDEPENDENT COVENANTS; SEVERABILITY

The titles and headings of this Agreement are for convenience and ease of reference only and shall not be utilized in any way to construe or interpret the agreement of the parties as otherwise set forth herein. Each covenant and agreement in this Agreement shall be construed for all purposes to be a separate and independent covenant or agreement. If a court of competent jurisdiction holds any provision (or portion of a provision) of this Agreement to be illegal, invalid, or otherwise unenforceable, the remaining provisions (or portions of provisions) of this Agreement shall not be affected thereby and shall be found to be valid and enforceable to the fullest extent permitted by law.

10. LIMITATIONS OF LIABILITY

OTHER THAN FOR BREACHES OF CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS HEREUNDER, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES RESULTING FROM: (i) THE USE OR THE INABILITY TO USE

THE SERVICES; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; OR (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR CONTENT. IN ANY CASE, OTHER THAN FOR BREACHES OF CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS HEREUNDER, THE AGGREGATE LIABILITY OF EACH PARTY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO US HEREUNDER FOR THE SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

11. INDEMNIFICATION

You agree to indemnify, defend and hold us, our affiliates and licensors, each of our and their business partners (including third party sellers on websites operated by or on behalf of us) and each of our and their respective employees, officers, directors and representatives, harmless from and against any and all claims, losses, damages, liabilities, judgments, penalties, fines, costs and expenses (including reasonable attorney's fees), arising out of or in connection with any claim arising out of (i) your use of the Services, its various applications, as well as any third-party services, solutions, or applications, in a manner not authorized by this Agreement, and/or in violation of the applicable restrictions, and/or applicable law, (ii) your Application, Your Content, or the combination of either with other applications, content or processes, including but not limited to any claim involving infringement or misappropriation of third-party rights and/or the use, development, design, manufacture, production, advertising, promotion and/or marketing of your Application and/or Your Content, (iii) your violation of any term or condition of this Agreement or any applicable Additional Policies, including without limitation, your representations and warranties, or (iv) you or your employees' or personnel's negligence or willful misconduct.

BCS agrees to defend, indemnify and hold Customer and its employees, contractors and agents harmless from and against any and all actual or threatened third party claims, suits, actions or proceedings (collectively "Customer Claims", including all related damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of or relating to a Customer Claim that Customer, a permitted Customer Affiliate or an End User's or an Administrative User's use as permitted hereunder infringes or misappropriates the Intellectual Property Rights of a third party.

12. CONFIDENTIALITY

Confidentiality. As used herein, "Confidential Information" means all confidential and proprietary information of either party, whether oral or written, that is designated or identified as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure, including the terms and conditions of this Agreement, business and marketing plans, Customer Data, technical information, product designs, trade secrets and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party without restriction on use or disclosure prior to its disclosure by the receiving party; (iii) was independently developed by the receiving party without breach of any obligation owed to the disclosing party as evidenced by documentation; or (iv) is rightfully received from a third party without restriction on use or disclosure.

The receiving party shall not use or disclose any Confidential Information other than to exercise its rights and/or perform its obligations under this Agreement, except with the disclosing party's prior written consent or as otherwise required by law or legal process. Notwithstanding the foregoing, the receiving party may disclose Confidential Information to its Affiliates or other agents who have a bona fide need to know such Confidential Information; provided, that each such Affiliate or agent is bound by confidentiality obligations at least as protective as those set forth herein. The receiving party shall protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). The receiving party shall promptly notify BCS if it becomes aware of any actual or reasonably suspected breach of confidentiality of Confidential Information.

If the receiving party is compelled by law or legal process to disclose Confidential Information, it shall provide the disclosing party with prompt prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's expense, if the disclosing party wishes to contest the disclosure.

If the receiving party discloses (or threaten to disclose) any Confidential Information in breach of this Section, the disclosing party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies may be inadequate.

Upon any termination of this Agreement, the receiving party shall continue to maintain the confidentiality of the Confidential Information for five (5) years and, upon request, return to the disclosing party or destroy (at the disclosing party's election) all materials containing such Confidential Information, with the exception of information required to be retained by law or for internal archival and procedural purposes, provided that Customer's final export of Customer Data shall be conducted in accordance with this Agreement. Notwithstanding the foregoing, any Confidential Information relating to a trade secret of a party shall be maintained as confidential by the other party for so long as such Confidential Information remains protected as a trade secret.