
Boxtone (GSA 6-29-2012 CARAHSOFT FINAL)

Master Agreement

This Master Software License and Maintenance Agreement ("Agreement") is made this ____ day of _____ 200_ (the "Effective Date") by and between Boxtone Inc., a Delaware corporation with offices at 8825 Stanford Boulevard, Columbia, Maryland 21045 ("BoxTone") and _____, an agency/corporation with offices at _____ ("Customer").

Background

This Agreement sets forth the terms on which Boxtone has agreed to license Customer to use certain Licensed Software (as defined below). This Agreement also governs the parties' respective rights and obligations concerning certain services relating to the Licensed Software.

Agreement

NOW, THEREFORE, Boxtone and Customer, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, hereby agree as follows:

1. Definitions

- a. "Affiliate," with respect to any party, means any entity that controls, is controlled by or under common control with such party.
- b. "Confidential Information" shall have the meaning set forth in Section 6.a of this Agreement.
- c. "Delivery Date" means the date on which Customer received the initial copy of the Software.
- d. "Documentation" means such Operators documentation as Boxtone supplies to Customer in the performance of this Agreement.
- e. "Effective Date" shall have the meaning ascribed to it by the preamble to this Agreement.
- f. "License Term" has the meaning ascribed to it by the applicable Order.
- g. "Maintenance and Support Services" has the meaning ascribed to it by Section 3.a of this Agreement.
- h. "Operator" means an individual authorized by Customer to log into the Licensed Software as installed on a single computer or multiple computers, regardless of whether the individual is actually using the Licensed Software at any given time.
- i. "Order" means (i) the Order attached to this Agreement as Exhibit A, (ii) an order in a form similar to that attached to this Agreement as Exhibit A, (iii) an order placed by Customer or a Customer employee and accepted by Boxtone through a web site operated by or for Boxtone, or (iv) a paper or electronic purchase order or other similar record submitted by Customer and accepted by Boxtone pursuant to this Agreement, (v) another written agreement executed by the parties expressly identifying itself as an Order pursuant to this Agreement, in each case entered into prior to or after Customer's acceptance of this Agreement.
- j. "Order Effective Date" means the effective date of the applicable Order.
- k. "Processor" means any processor where the Software is installed or run.
- l. "Representative" has the meaning ascribed to it by Section 4.a of this Agreement.
- m. "Software" means the object code version of the Boxtone proprietary software specified by the Order, together with any related Documentation, as well as any Updates thereto.
- n. "Update" means a release of Software that includes bug fixes and/or fixes of minor errors and/or corrections or minor enhancements only, and no new major features, and that is identified by an increase in a release or version number to the right of the first decimal (for example, an increase from Version 5.1 to 5.2 or from Version 5.1.1 to 5.1.2). "Update" shall not be construed to include Upgrades.

o. **“Upgrade”** means a release of Software that includes additional capabilities (functionality) and/or major enhancements over versions of the Software previously supplied to Customer, and that is identified by an increase in the release or version number to the left of the decimal (for example, an increase from Version 5.2 to Version 6.0).

p. **“Version”** means a release of the Software identified by release or version number (for example, Version 5.0, 5.1 and 5.1.1). For the avoidance of doubt, each Update and Upgrade of Software is a new Version of such Software.

2. Grant of License; Related Provisions.

a. **Grant of License.** BoxTone, effective as of the Order Effective Date and subject to the terms and conditions of this Agreement, hereby grants Customer a non-exclusive, non-transferable license during the License Term (without right of sublicense) to use the Software solely to the extent specified by the applicable Order, and solely for the internal business purposes of Customer and its Affiliates.

b. **Delivery.** BoxTone will make commercially reasonable efforts to deliver the Licensed Software on the schedule specified by the applicable Order. Without limiting Customer’s rights under the warranties established by Section 8 of this Agreement, Customer will be deemed to have accepted the Licensed Software upon delivery of the same.

c. **Limitations and Restrictions.** Customer shall not, and shall not permit any of its employees or independent contractors to (i) duplicate the Software for any purpose other than as necessary to use the same as contemplated by this Agreement and to preserve one copy for off-line archival and disaster recovery purposes; (ii) transfer the Software except for temporary transfer in the event of computer malfunction, (iii) publish the Software or use the same other than for the purposes described in Section 2.a of this Agreement; (iv) reverse engineer, disassemble, decompile or translate the Software; (v) change, modify or otherwise alter the Software; (vi) transfer, pledge, rent, share or sublicense the Software; (vii) grant any third party access to or use of the Software on a service bureau, timesharing, subscription service, rental or application service provider basis or otherwise; (viii) grant any third party access to the computers on which the Software has been installed, except such access may be granted to Customer’s contractors solely for the purpose of maintaining and supporting Customer’s computers and computer system; (ix) defeat or circumvent, attempt to defeat or circumvent, or authorize or assist any third party in defeating or circumventing controls the Software places on the number of Operators or the number of users supported by the Software, or (x) use or attempt to access or use any third party software provided as part of or in conjunction with the Software separate or apart from the Software.

3. Maintenance.

a. **Maintenance.** BoxTone during the Service Term will provide maintenance and support services in respect of the Software (**“Maintenance and Support Services”**) as specified by the applicable Order in accordance with Exhibit B – Error Correction Standards. All Updates, Upgrades, modifications, enhancements and changes delivered to Customer in the course of such services will be deemed Software for the purposes of this Agreement.

b. **Limitations.** Notwithstanding any other provision of this Agreement, Maintenance and Support Services do not cover, and BoxTone shall not be required to provide, (a) Upgrades, Updates or modifications to the Software except as and when BoxTone makes them generally commercially available to its customers, (b) service requests placed by persons other than a Representative, (c) Maintenance and Support Services or support for any Version of the Software other than the then-current version and the two (2) immediately preceding Versions of such Software, (d) services necessitated by Customer’s failure to create and preserve reasonable backup copies of its data and other business information and records, perform accuracy checks on a routine basis, and take such other precautions as may reasonably be required to detect and guard against possible malfunctions, loss of data, or unauthorized access to the Software.

4. Customer Responsibilities.

a. **Representatives.** Customer hereby appoints the Customer employees identified on the applicable Order (no more than three) as Customer’s technical representatives for the purposes of this Agreement (each, a **“Representative”**). Customer represents that each Representative shall be knowledgeable in Customer’s operations and the operation of the Software, and shall be authorized to coordinate Customer’s activities under this Agreement and shall serve as Customer’s primary contact with BoxTone. BoxTone shall be entitled to rely on all oral and written orders and instructions issued by any Representative including, without limitation, instructions to initiate

work and incur expenses for Customer's account. Customer reserves the right to select and reassign any Representative, provided, that any replacement Representative meets the requirements established by this Section 4.a.

b. Hardware and Related Software. Customer, as between Customer and BoxTone throughout the term of each Order, shall be responsible for procuring and maintaining the hardware and related software described in the applicable Order. Customer will grant BoxTone such local and remote access to and control over such hardware and software as BoxTone reasonably requires to perform its obligations under this Agreement.

Records, Audits. Customer, during the applicable License Term and for six (6) months thereafter, will maintain complete and accurate records regarding its use and reproduction of Software. Customer, promptly on BoxTone's reasonable request, will provide BoxTone with copies of such records for BoxTone's review, provided, that all such records shall be deemed Customer Confidential Information. If BoxTone's review reveals that Customer has exceeded the limitations imposed by the applicable Order on the number of seats, users or personnel to be supported by the Software, BoxTone may invoice Customer its then-current standard license fees for the excess. BoxTone will bear the cost of such review unless the review reveals a material level of excess use. Such audits must adhere to reasonable notice and security measures deemed appropriate by the Government End User.

c.

5. Term; Termination.

a. Term. The license term (the "License Term") with respect to each unit of Software delivered pursuant to this Agreement shall commence on the Delivery Date for the applicable copy of the Software and continue for the period specified by the applicable Order or, if no such period is specified, then the License Term will continue for a period of one (1) year.

b. Termination.

c. Effect of Termination. On the termination of this Agreement by either party, all licenses granted to Customer hereunder shall terminate and Customer shall cease using the applicable Software and return all copies of the same to BoxTone. Neither the expiration nor termination of this Agreement or any Order shall affect the parties' respective payment obligations or their obligations with respect to the protection and use of Confidential Information.

6. Confidentiality.

a. Definition. "Confidential Information" for the purposes of this Agreement shall mean all confidential and proprietary information and trade secrets (whether or not patentable or copyrightable), owned or possessed by either party ("Disclosing Party") and disclosed by such party to the other party ("Receiving Party") prior to the expiration or termination of this Agreement, including without limitation, any data processes, computer or software products or programs, cost and pricing data, know-how, marketing or business plans, analytical methods and procedures, hardware design, technology, financial information, manufacturing information and procedures, or personnel or client data, provided, that Confidential Information shall not include information supplied to the Receiving Party which (1) is or becomes available to the public other than as a result of disclosure by the Receiving Party or its employees in violation of this Agreement; (2) was known to the Receiving Party prior to disclosure pursuant to this Agreement and was not otherwise restricted by contract or law; (3) information required to be released in accordance with applicable law or Court order; or (4) becomes available to the Receiving Party on a non-confidential basis from a third party not restricted by contract or law regarding such information. For the avoidance of doubt, the Software shall be deemed BoxTone Confidential Information, and all electronic mail and instant messages transmitted (other than by BoxTone) to or from facilities and devices owned or controlled by Customer shall be the Confidential Information of Customer.

b. Nondisclosure.

(i) The Receiving Party shall (i) hold the Disclosing Party's Confidential Information in strict confidence, and provide at least the standard of care used by the Receiving Party in the protection of its own Confidential Information, and not to disclose such Confidential Information to any third party, and (ii) without the written permission of the Disclosing Party, not use any Confidential Information of the Disclosing Party except as

reasonably required to exercise its rights or perform its obligations under this Agreement or required under applicable law or Court order.

(ii) The Receiving Party shall limit disclosure of the Disclosing Party's Confidential Information to those employees who need to know the same to accomplish the purposes of this Agreement, and only so long as the recipients of such disclosures are bound by a written agreement not to disclose the Confidential Information or use it in any manner other than in furtherance of this Agreement. Nothing in this Agreement shall be construed to preclude BoxTone from reporting to the applicable third party vendor Customer's use of third party software provided as part of or in conjunction with the Software.

7. Ownership. BoxTone, as between BoxTone and Customer, shall own all right, title and interest in and to all software and documentation BoxTone supplies to Customer in the performance of this Agreement, including without limitation all error corrections, updates, upgrades and custom features and functions, and all patents, copyrights and other intellectual property rights therein. Effective on delivery of any of the foregoing to Customer, BoxTone shall be deemed to have granted Customer a license to use the same in conjunction with the Software to which the same relates. Customer shall not remove or modify any program markings or any notice of proprietary rights, and shall reproduce such markings and notices on all copies of the Software made by or for Customer.

8. Warranties.

a. Title Warranties. BoxTone warrants that it has sufficient right, title and interest in the Software to grant the licenses contemplated by this Agreement.

b. Software Warranty. BoxTone warrants that, upon installation and for a period of ninety (90) days thereafter, the Software shall conform in all material respects to the Documentation or, in the case of custom features and functions, the applicable specifications.

c. Services Warranty. BoxTone warrants that, upon completion and for a period of ninety (90) days thereafter, the Services provided by BoxTone pursuant to this Agreement shall be of a competent and workmanlike quality and performed in a competent and workmanlike manner.

d. Termination of Warranties. THE WARRANTIES BY BOXTONE SHALL IMMEDIATELY CEASE WITH RESPECT TO ANY SOFTWARE IF CUSTOMER OR ANY THIRD PARTY, WITHOUT BOXTONE'S PRIOR WRITTEN APPROVAL, ENHANCES OR OTHERWISE ALTERS SUCH SOFTWARE IN ANY MANNER WHATSOEVER. For the avoidance of doubt, BoxTone's warranties shall not be affected by Customer's use of any feature or function of the Software described by the applicable Documentation, including without limitation features intended to permit Operators to configure the Software.

Disclaimer. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, INCLUDING, PURPOSE OR IMPLIED WARRANTY OF NONINFRINGEMENT. No employee, agent or representative of BoxTone has the authority to bind BoxTone to any oral representation or warranty concerning the Software or BoxTone services. ANY WRITTEN OR ORAL REPRESENTATION OR WARRANTY NOT EXPRESSLY CONTAINED IN THIS AGREEMENT OR SIGNED BY AN OFFICER OF BOXTONE SHALL NOT BE ENFORCEABLE BY CUSTOMER. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT FOR CLAIMS ARISING UNDER SECTION 6 HEREOF, UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR, IN THE CASE OF BOXTONE, ITS SUPPLIERS HAVE ANY OBLIGATION OR LIABILITY TO THE OTHER HEREUNDER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES INCURRED BY THE OTHER PARTY (INCLUDING DAMAGES FOR LOST BUSINESS, LOST PROFITS OR DAMAGES TO BUSINESS REPUTATION), REGARDLESS OF HOW SUCH DAMAGES ARISE AND REGARDLESS OF WHETHER OR NOT A PARTY WAS ADVISED SUCH DAMAGES MIGHT ARISE. IN THE EVENT THAT BOXTONE IS FOUND LIABLE FOR ANY REASON UNDER THIS AGREEMENT, IN NO CASE SHALL

BOXTONE'S LIABILITY FOR ACTUAL IN THE AGGREGATE EXCEED THE AMOUNTS PAID BY CUSTOMER PURSUANT TO THE APPLICABLE ORDER IN THE SIX (6) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Limitations of Liability are not applicable to the US Government as a customer to the extent they conflict with US Government rights under Federal law, the FAR, or the IT Solicitation. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

9.

10. Intellectual Property Indemnification.

a. BoxTone, at its expense, will, indemnify and hold Customer harmless from any claim, action, suit or proceeding made or brought against Customer by a third party alleging that Customer's use of the Software within the scope of this Agreement infringes such third party's United States or European Union patent, trade secret, copyright or other intellectual property right (each, a "Claim"). BoxTone's obligation under this Section 10.a shall be subject to Customer's providing BoxTone with prompt notice of any Claim, cooperation with BoxTone in the defense and settlement of the Claim, and In the event a court of competent jurisdiction makes a determination that any Software infringes, or if BoxTone determines that the Software likely infringes, the intellectual property rights of a third party, BoxTone, at its option and expense, shall: (i) modify the infringing portion of the Software so as to make it noninfringing; (ii) replace the infringing product with a non-infringing product having substantially similar functionality; (iii) obtain the right to continue using the infringing portion of the Software; or (iv) refund Customer the fees paid for the affected Software prorated over a five-year period from delivery.

b. BoxTone's obligations under this section shall not apply to the extent of any Claim or infringement resulting from (i) Customer's continued use of the infringing product after receipt of notice from BoxTone of a claim or after receipt of the remedy required of BoxTone under this section; (ii) modifications to the Software by any party other than BoxTone; (iii) modifications to the Software made pursuant to Customer's express instructions; (iv) combination of the Software with other products, processes or materials not provided by BoxTone or specified by the applicable Documentation; or (v) Customer's use of the Software other than in accordance with the terms of this Agreement.

11. Independent Status of Parties. Nothing contained in this Agreement, nor in the relationship created thereby, shall be interpreted to evidence a joint venture, partnership or principle-agent relationship between BoxTone and Customer. Neither party shall have any right or authority to act on behalf of, or incur any obligation for, the other party.

12. Dispute Resolution.

a. **Informal Dispute Resolution.** At the written request of either party, the parties will attempt to resolve any dispute arising under or relating to this Agreement through the informal means described in this Section 12.a. Each party will appoint a senior management representative who does not devote substantially all of his or her time to performance of this Agreement. The representatives will furnish to each other all non-privileged information with respect to the dispute that the parties believe to be appropriate and germane. The representatives will use commercially reasonable efforts to resolve the dispute without the necessity of any formal proceeding. Subject to the provisions of Section 12.b of this Agreement, formal proceedings for the resolution of the dispute may not be commenced until the earlier of: (i) the designated representatives conclude that resolution through continued negotiation does not appear likely; or (ii) thirty (30) days have passed since the initial request to negotiate the dispute was made; provided, however, that a party may file earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or permanent equitable relief.

b. .

c. **Limitation of Actions.** No proceeding, regardless of form, arising out of or related to this Agreement may be brought by either party after the sixth anniversary of the accrual of the cause of action, except that (i) proceedings related to violation of a party's proprietary rights may be brought at any time within the applicable statute of limitations, (ii) either party may enforce any indemnity obligation of the other party under this Agreement at any

time, and (iii) proceedings for non-payment may be brought up to six (6) years after the date the last payment was due.

13. Miscellaneous Provisions.

a. Government Sales. This section applies to all acquisitions of Software (collectively or individually for the purposes of this section, the “*Government Acquired Products*”) by or for the government of the United States of America (the “*Federal Government*”), or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal Government. By accepting delivery of the Government Acquired Products, the Federal Government hereby agrees that this software qualifies as “commercial” computer software within the meaning of the acquisition regulation(s) applicable to this procurement. If this Agreement fails to meet the Federal Government’s needs or is inconsistent in any respect with United States law, the Federal Government agrees to return the Government Acquired Products unused. The following additional statement applies only to acquisitions by the Federal Government that are governed by DFARS Subpart 227.4 (October 1988): “Restricted Rights - Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data – Noncommercial Items clause at DFARS 252.227-7013 (1995).”

b. Export Regulations. The United States Government regulates the transfer of technology across national boundaries. Customer shall not acquire, ship, transport, export or re-export the Software directly or indirectly, into any country in violation of any applicable law (including, but not limited to, the United States Export Administration Act and the regulations promulgated thereunder) nor will Customer use the Software for any purpose prohibited by such laws.

c. Assignment. Neither party may assign its rights or obligations hereunder without the other party’s prior written consent. Notwithstanding the above, BoxTone may assign its rights or delegate its duties hereunder in whole or in part to any affiliate or subsidiary without Customer’s prior written consent, and either party may assign this Agreement in its entirety (and not in part) to the purchaser of substantially all of such party’s outstanding shares or substantially all of the assets to which this Agreement relates.

d. Force Majeure. Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such party, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, fire, communication line failures, power surges or failures, earthquakes or other disasters.

e. Governing Law; Jurisdiction. Severability. If any of the provisions of this Agreement shall be or become invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the remaining provisions of this Agreement. Instead, this entire Agreement shall be construed as though not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

f. Interpretation. This Agreement is being entered into among competent and experienced business persons and the terms and provisions of this Agreement shall be construed fairly as to the parties hereto and not in favor of or against either party, regardless of which party was generally responsible for the preparation of this Agreement. Customer acknowledges that the limited warranties, disclaimers and limitations of liability contained in this Agreement set forth an allocation of risk reflected in the fees and payments due hereunder. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

g. Notices. All notices hereunder shall be sent to the parties at their respective addresses set forth in the Order, or at such other addresses as they may designate by written notice.

h. Counterparts. This Agreement may be executed in multiple counterparts and delivered by facsimile transmission, each of which shall be deemed an original but all of which shall constitute one and the same instrument.