

## 1. INTRODUCTION

This TBoxCloud Beta Testing Agreement (“**Agreement**”) is executed as of \_\_\_\_\_ (“**Effective Date**”).

BETWEEN

TBoxCloud, Inc. with its place of business at 3350 Shelby St. Suite 200, Ontario, California, 91764 (“**TBoxCloud**”).

AND

\_\_\_\_\_ with its place of business at \_\_\_\_\_ (“**Company**”).

## 2. DEFINITIONS

- a. “**Agreement**” means collectively the Master Agreement (MA), Professional Services Agreement (PSA), Subscription Agreement (SA), Statement of Work (SOW), Service Level Agreement (SLA), Services Description (SD), Beta Testing Agreement, any Order Forms, whether written or available online at [www.tboxcloud.com](http://www.tboxcloud.com) specifically incorporated by reference herein.
- b. “**Professional Services**” or “**Consulting**” means services provided by TBoxCloud to deliver projects on a Time and Materials or Fixed Price basis.
- c. “**Connector**” or “**TBoxConnector**” means the application developed, hosted, and supported by TBoxCloud which is used to connect 2 or more applications.
- d. “**Hosted Solution**” or “**TBoxHub**” means collectively all hardware, software applications, and Connectors hosted in the Cloud by TBoxCloud under this Agreement.
- e. “**Not a Software**” means TBoxCloud is not a Software company providing a user interface or public access to its Hosted Solutions.
- f. “**Fully Managed Services**” or “**Fully Managed**” or “**Managed Services**” means Hosted Solutions EXCLUSIVELY accessed and managed by TBoxCloud.
- g. “**Services**” means collectively Professional Services and Managed Services.

WHEREAS, Company agrees to test a TBoxCloud Enterprise Integration Solution known as the \_\_\_\_\_ (“**TBoxConnector**”) and keep TBoxCloud aware of the test results.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, TBoxCloud and Company hereby agree as follows:

### 3. TBOXCLOUD'S OBLIGATIONS

While in Testing, TBoxCloud shall provide Company with the following:

- a. Provisioning of the TBoxConnector.
- b. Access to a Project Portal with the TBoxConnector Specifications for field mapping and testing.
- c. Limited customization of the standard TBoxConnector to Company' specifications ("Customization"), free of charge. The scope of the limited customization is at the discretion of TBoxCloud.

Upon satisfactory completion of the testing, TBoxCloud shall provision a production version of the TBoxConnector, including the Customization, to be used by Company, contingent upon Company's execution of TBoxCloud's Agreements and acceptance of the Payment Terms. While in production, Company shall be entitled to the same benefits to which regular purchasers of the TBoxConnector will be entitled.

### 4. COMPANY'S OBLIGATIONS

Company shall test the TBoxConnector under Company's standard operating conditions during the test period. Company shall document on the project portal and report test results as mutually agreed with TBoxCloud.

### 5. TBOXCONNECTOR A TRADE SECRET

Company acknowledges that the TBoxConnector is proprietary to, and a valuable trade secret of, TBoxCloud and is entrusted to Company only for the purpose set forth in this Agreement. Company shall treat the TBoxConnector in the strictest confidence. Company agrees that it will not, without TBoxCloud's prior written consent:

- a. Disclose any information about the TBoxConnector including, but not limited to, its design and performance specifications, and the existence of the beta test and its results to anyone other than Company's employees who are performing the testing.
- b. Copy any portion of the TBoxConnector specifications, except to the extent necessary to perform the beta testing.

### 6. SECURITY PRECAUTIONS

Company shall take security precautions to prevent unauthorized access to the project portal and TBoxConnector information.

### 7. TERM OF AGREEMENT

The test period shall last 30 days or longer if agreed in writing by the parties. This Agreement shall terminate at the end of the test period or upon TBoxCloud request to terminate the testing, whichever occurs first. The restrictions and obligations in this Agreement shall survive the expiration, termination or cancellation of this Agreement, and shall continue to bind Company, its successors, heirs and assigns.

## 8. RETURN OF MATERIALS

Upon the conclusion of the testing period or at TBoxCloud's request, Company shall promptly (within 2 days) return the original and all copies of TBoxConnector related materials to TBoxCloud and erase all portions thereof from computer memory.

## 9. DISCLAIMER OF WARRANTY

Company understands and acknowledges that the TBoxConnector is a test product and its accuracy and reliability are not guaranteed. Owing to its experimental nature, Company is advised not to rely exclusively on the TBoxConnector for any reason. Company waives any and all claims it may have against TBoxCloud arising out of the performance or nonperformance of the TBoxConnector.

THE TBOXCONNECTOR IS PROVIDED AS IS, AND TBOXCLOUD DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO IT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 10. LIMITATION OF LIABILITY

TBoxCloud shall not be responsible for any loss or damage to Company or any third parties caused by the TBoxConnector or by TBoxCloud's performance of this Agreement.

TBOXCLOUD SHALL NOT BE LIABLE FOR ANY DIRECT INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGE, WHETHER BASED ON CONTRACT OR TORT OR ANY OTHER LEGAL THEORY, ARISING OUT OF ANY USE OF THE TBOXCONNECTOR OR ANY PERFORMANCE OF THIS AGREEMENT.

## 11. NO RIGHTS GRANTED

Company understands and acknowledges that the TBoxConnector is provided for its own use for testing purposes only. This Agreement does not constitute a grant or an intention or commitment to grant any right, title or interest in the TBoxConnector or TBoxCloud's trade secrets to Company. Company may not sell or transfer any portion of the TBoxConnector information to any third party or use the TBoxConnector in any manner to produce, market or support its own products, services, or business. Company shall clearly identify the TBoxConnector as TBoxCloud's property.

## 12. NO ASSIGNMENTS

This Agreement is personal to Company. Company shall not assign or otherwise transfer any rights or obligations under this Agreement.

### 13. INTELLECTUAL PROPERTY OWNERSHIP

- a. **Company IP and specifications:** Notwithstanding anything contained to the contrary, Company shall retain all right, title and interest in and to Company IP. “**Company IP**” shall mean all information, data, software, tools and other materials developed by or for Company, outside TBoxCloud Services. Company grants to TBoxCloud a non-exclusive, worldwide, royalty-free license to use the Company IP (if required) solely for the Deliverables. Company warrants that the work specifications provided by the Company or any Company IP do not infringe third party intellectual property rights.
- b. **TBoxCloud IP:** Notwithstanding anything contained to the contrary, TBoxCloud shall retain all right, title and interest in and to TBoxCloud IP. “**TBoxCloud IP**” shall mean all information, methodologies, data, software, tools and other materials developed by or for TBoxCloud including any changes made to its pre-existing products.
- c. **Residuals:** “**Residuals**” means general know-how, documentation, and changes performed on the TBoxConnector during the course of performance of the testing, provided that in no event shall Residuals include any of Company Pre-Existing IP or Confidential Information. TBoxCloud is free to use Residuals with its products and services.

### 14. WARRANTIES AND DISCLAIMERS

TBoxCloud has the full power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement and the performance of its obligations hereunder do not conflict with or constitute a default under any other agreement to which TBoxCloud is party.

Company has the full power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement and the performance of its obligations hereunder do not conflict with or constitute a default under any other agreement to which Company is party.

Company understands and acknowledges that the TBoxConnector is a test product and its accuracy and reliability are not guaranteed. Owing to its experimental nature, Company is advised not to rely exclusively on the TBoxConnector for any reason. Company waives any and all claims it may have against TBoxCloud arising out of the performance or nonperformance of the TBoxConnector.

THE TBOXCONNECTOR IS PROVIDED AS IS, AND TBOXCLOUD DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO IT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 15. LIMITATION OF LIABILITIES

In no event shall either party be liable to the other for any indirect, incidental, special, consequential, reliance, cover or lost profits damages, whether in contract or tort, even if the other party has been advised of the possibility of such damages. Neither party's aggregate liability for damages hereunder shall exceed the total amount of fees paid and/or due by Company for the Services purchased.

THE FORGOING LIMITATIONS ON LIABILITY SHALL NOT APPLY TO ANY OF THE FOLLOWING: (A) FRAUD OR FRAUDULENT MISREPRESENTATION; (B) BREACH OF WARRANTIES, OR; (C) BREACH OF CONFIDENTIALITY.

## 16. LEGAL NOTICES & INQUIRIES

All notices and inquiries shall be communicated in writing by hand delivery, courier service, or email at the addresses set forth below:

### LEGAL

Company		TBoxCloud	
<b>Company Name:</b>		<b>Company Name:</b>	TBoxCloud, Inc.
<b>Attention to:</b>		<b>Attention to:</b>	Legal
<b>Address:</b>		<b>Address:</b>	3350 Shelby St. Suite 200, Ontario, California, 91764
<b>Fax/Email:</b>		<b>Fax/Email:</b>	By Email: legal@TBoxCloud.com
<b>With a copy to:</b>		<b>With a copy to:</b>	By Email: ceo@TBoxCloud.com

## 17. ASSIGNMENT

None of the Agreements are assignable by either party in whole or in part without the written consent of the other party. Notwithstanding the foregoing, either party may assign or transfer any of the Agreements to any of its Affiliates. The Agreements shall be assigned to the acquiring party or the merged entity in the event of a merger or a sale of all or a substantial portion of such party's assets or stock or transfer of persons.

## 18. FORCE MAJEURE

Neither party shall be liable for any failure or delay in fulfilling the terms of this Agreement due to fire, strike, war, civil unrest, terrorist action, government regulations, act of Nature or other causes which are unavoidable and beyond the reasonable control of the party claiming force majeure. This provision shall not be construed as relieving either party from its obligation to pay any sum due to the other party.

## 19. GOVERNING LAW

This Agreement shall be construed and governed by the laws of the State of California without regard to principles of conflict of laws.

**20. ENTIRE AGREEMENT**

The Agreements shall constitute the complete agreement between the parties respecting the subject matter. The Agreements may not be extended, amended, terminated, or superseded except by agreement in writing between the parties. The Agreements supersede all previous agreements between TBoxCloud and Company, whether oral or written, regarding subject matter hereof. Standard terms and conditions of a Purchase Order or an Invoice or any similar document whether hosted on a party's website or otherwise, shall be ineffective. There is no intended third party beneficiaries to this Agreement unless expressly stated.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized representatives as of the Effective Date written above.

**TBoxCloud**

Name:  
Title:  
Email :  
Signed:

**Company**

Name:  
Title:  
Email:  
Signed:

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