

# TERMS OF SERVICE AGREEMENT

LAST UPDATED: APRIL 1, 2020

REPLACES IN ITS ENTIRETY ALL PRIOR VERSIONS

THIS TERMS OF SERVICE AGREEMENT (this “**Agreement**”) is entered into by and between QUBEDocs USA LLC, an Oregon limited liability company (“**Company**” or “**We**”) and the subscriber to the Service (“**You**”) and governs Your use of <https://www.qubedocs.com> and any of its subdomains (our “**Website**”), the services We provide you, including, without limitation, QUBEDocs, MiBI, and related planning, consultation, training, installation, support, and maintenance (collectively, the “**Service**”), and all software, applications, code, scripts, instruction sets, and related documentation, that We include as part of the Service, as many be amended or updated (the “**Software**”), and any other engagement between You and Company. If You have previously entered into a separate written agreement with Company concerning the Service, then the terms and conditions of this Agreement shall control to the extent of a conflict with the terms of such separate written agreement, unless such separate written agreement explicitly states otherwise. Please review this Agreement carefully as this Agreement is a legal agreement between You and Company.

By accepting this Agreement electronically (for example, by clicking “I Accept”) or by using or accessing the Service, You are agreeing to the terms and conditions of this Agreement. If You are entering into this Agreement on behalf of a company or other organization, by accepting this Agreement or by using the Service, You are representing that You have the authority to bind such Person to the terms and conditions of this Agreement. If You do not agree to the terms and condition of this Agreement, or do not have such authority to bind Your organization, then You may not use the Service.

This Agreement replaces all prior versions, and is effective between Company and You as of the date of Your acceptance of this Agreement. **This Agreement may change, and You should review this Agreement regularly.** We may modify this Agreement at any time, for any reason, and without prior notice or liability to You or any other Person by posting amended terms on this Website. Your continued use of the Service following any amendment of this Agreement is Your acceptance of this Agreement, as amended. We will, however, reasonably endeavor to give prior notice of any material modification or discontinuation of any portion of the Service.

## Definitions

“**Account**” means Your user account with Company enabling access to and use of the Service.

“**Affiliate**” means, with respect to a party: (a) any Person (excepting any natural person) which directly or indirectly controls, is controlled by, or is under common control with, such Party; or (b) an officer, director, or 10% or more shareholder of such Party. For purposes of the preceding sentence, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or direct or indirect ownership (beneficially or of record) of, or direct or indirect power to vote, 5% or more of the outstanding shares of any class of capital stock (or in the case of an entity other than a corporation, 5% or more of any class of equity interest).

“**Intellectual Property**” means all rights, titles, and interests in and to any and all intellectual property of any kind, including ideas, suggestions, discoveries, improvements, inventions, patents, data, trade secrets, know-how, drawings, designs, specifications, trademarks together with associated goodwill, original works of authorship, or materials created, developed, made, authored, conceived, or reduced to practice, in each case worldwide and together with as applicable all renewals, extensions, continuations, divisionals, reissues, re-examinations, and substitutions, all to be interpreted broadly.

“**Malicious Code**” means viruses, worms, time bombs, programs which misleads users of its true intent, and other harmful or malicious code, files, scripts, agents or programs.

“**Materials**” means content, images, files, data, or other information.

“**Person**” means any natural person, corporation, limited liability entity, business entity, firm, joint venture, partnership, trust, unincorporated organization, association, or any governmental authority.

“**Representatives**” means, with respect to a party, its directors, officers, managers, employees, employers, partners, Affiliates, subcontractors, agents, principal, consultants, advisors, and other authorized representatives of such party.

“**Service Materials**” means all Materials on or accessible by or through the Website or the Service, whether submitted by Company, You, or any other Service subscriber, but expressly excluding Your Materials.

“**Subscription**” means Your unique subscription package regarding the specific type, range, and/or package of Service, any customizations, restrictions, or limitations that apply to Your use of the Service not set forth in this Agreement, and the applicable Service fees, term dates, payment terms, and other related details.

“**User**” means the individual user that accesses and uses the Service under Your Subscription, as applicable.

“**Your Materials**” means the Materials submitted to the Service by You or Your User(s) through Your Account, or supplied by You to Company for uploading to or input into the Service.

## The Service

1. **Service.** The Service is licensed to You per the terms of this Agreement, as well as, Your Subscription, as applicable. A Subscription is not the purchase of any good or software, but rather, a right to use the Service according to the terms of this Agreement and Your applicable Subscription. We reserve the right to replace, modify, discontinue, and/or upgrade the Service at our sole discretion, and will reasonably endeavor to notify You of any pending user interface changes resulting from such replacements, modifications, and upgrades. Basic support entitlement for the Service, to the extent applicable, is available as

provided in, and subject to the terms of, the [Service Level Guarantee](http://documents.qubedocs.com/downloads/Service_Level_Guarantee.pdf) ( [http://documents.qubedocs.com/downloads/Service Level Guarantee.pdf](http://documents.qubedocs.com/downloads/Service_Level_Guarantee.pdf) ). Any additional support may be provided at Company's discretion and may result in an increase in Your Service fees.

- 2. Service Subscriptions and Payment.** While certain aspects of the Service may be provided to You without charge or on a trial basis, at the discretion of Company, generally, Company provides the Service as a paid annual Subscription. As indicated in Your Subscription, or if not otherwise specified, payment will be due in advance of service time, and is non-refundable. Service fees may change from time-to-time, including, without limitation, the imposition of fees for aspects of the Service that were previously provided without charge, due to improvements to the Service, such as updates, upgrades, and fixes, or to reflect the increase in the costs of goods or services of Third-Party Providers. In the event of an increase to Service fees due to an increase in charges from Third-Party Providers, Company shall provide You notice, and such increase to Your Service fees shall take effect in the following calendar month unless otherwise set forth in Company's notice. Service fees are exclusive of taxes, and You are responsible for payment of all taxes applicable to Your payment for the Service, which shall be made at the same time You pay Your Service fees. In the event You do not pay Your Service fees when due, Company may charge interest at the rate of 18% per annum, or the maximum rate allowed by applicable law, whichever is less, on any such overdue payments. Please keep Your payment and registration information up-to-date. If Your payment and/or registration information is not accurate, current, and complete, or if payment is not otherwise timely received, Company may suspend or terminate Your Account, terminate Your license, and refuse any further use of the Service.

### Use of the Service

- 1. Your Account.** You are responsible for all actions with respect to Your Account, including, without limitation, the uploading, storage, and exporting of Materials, and for any misuse of the Service. Please keep Your Account credentials confidential. If You become aware that Your Account is being used by a Person that You have not authorized to access the Service on Your behalf via explicit access management, or "sharing" functionality in the platform, please notify us at [support@qubedocs.com](mailto:support@qubedocs.com). Unless otherwise permitted by the terms of Your Subscription, and then only as expressly permitted, You may not share Your Account information or let any other Person utilize Your Account to access the Service.
- 2. Use and Misuse.** You may use the Service solely for Your internal business purposes and only as permitted by, and subject to any restrictions or limitations set forth in this Agreement and Your Subscription. Without limiting the generality of the foregoing, You may not use the Service in any other manner and may not: (a) use the Service to provide products or services to other Persons; (b) upload any Materials unless You are the owner of such Materials, or You are authorized by the owner of such Materials to use them in such manner; (c) otherwise use the Service in any manner that infringes or misappropriates the Intellectual Property, proprietary, publicity, or personalty right of any Person; (d) resell or sublicense the Service; (e) access the Service in any manner other than through Your Account; (f) copy, frame, or mirror any part of the Service; (g) reverse engineer the Service; (h) access the Service in order to build a competitive product or service; (i) copy any features, functions, or graphics of the Service; (j) disrupt the Service, or any other Person's access to, or use of, the Service; (k) upload, post, distribute, link to, publish, reproduce, engage in, or transmit any: (i) Illegal, fraudulent, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, harassing, offensive, inappropriate, or objectionable information or communications of any kind, or (ii) any Malicious Code; (l) access or attempt to access any database or server on which the Service resides or operates, in an attempt to discover the underlying source code of the Service, including the Software, or otherwise for any purpose other than use of the Service according to the terms of this Agreement; or (m) violate any law.

### Third-Party Services and Software

The Service is not a stand-alone service and inherently requires the use of software and services provided by other Persons ("Third-Party Providers"). The software and services of Third-Party Providers requires separate licenses and permissions, none of which are granted to You under this Agreement. By accepting this Agreement, You agree to be bound by all terms and agreements, licenses, and permissions governing Your use of software and services of such Third-Party Providers, and You understand that such agreements and the terms of service governing any such Third-Party Provider software and services may change at any time without notice. You are solely responsible for locating all agreements and obtaining and maintaining all necessary licenses and permissions to utilize any software and services of Third-Party Providers in conjunction with the Service. While Company has existing interfaces with the software and services of certain Third-Party Providers, it does not warrant that the use of the Service with any software or service of any Third-Party Provider will be available at any time, nor that Your Materials or any Service Materials will be compatible with such Third-Party Providers. Company disclaims all liability for the inoperability of any part of the Service with the software or services of any Third-Party Provider. A non-exhaustive list of the core Third-Party Providers for each Service is set forth at this [link](#).

### Intellectual Property and Proprietary Information

- 1. Reservation of Rights.** Subject to the limited license expressly granted to You in this Agreement, Company reserves all right, title, and interest in and to the Service and Service Materials (including, without limitation, all software, source code, object code, media files, workflows, logos, trademarks, and other related Intellectual Property rights, and any derivatives of the foregoing). For clarity, no Intellectual Property rights are granted to You under this Agreement other than the limited license expressly granted. You recognize and agree that: (a) all Service Materials are the property of Company and its licensors, and are protected by Intellectual Property laws; and (b) You do not acquire any right, title, or interest in or to the Service Materials, except for a personal, limited, nonexclusive, nontransferable, revocable license to use the Service only for so long as, and only for the purposes set forth in, this Agreement and Your applicable Subscription.
- 2. Your Materials.** You understand that use of the Service requires Your input and transmission of Your Materials to Company. You license the right, and authorize Company to, host, copy, transmit, display, modify, and adapt Your Materials, or anything created using the Service, including any application or program code (whether by You, or on Your behalf), and to sublicense such right to Company's hosting connectivity and telecommunications service providers, each as necessary for Company to

provide the Service to You or otherwise provide post-production services on Your behalf. You warrant that You own, or that You have obtained all appropriate rights and licenses to use in conjunction with the Service, Your Materials, and that Company's use of Your Materials in accordance with this Agreement will not result in the violation of any law, nor infringe the Intellectual Property rights of any Person. Subject to the limited rights granted by You under this Agreement, We acquire no right, title, or interest from You or Your licensors under this Agreement in Your Materials. Company will create backup copies of Your Materials from time to time, and shall reasonably endeavor to ensure such copies are sufficient to allow Company to restore Your Materials to the Service, such that Your Materials are restored to the Service in the state existing at the time such backup copy was made. Company shall endeavor to restore Your Materials to the Service upon Your request.

3. **Oversight.** Company has no obligation to monitor Your Materials, or the content of any other subscriber to the Service; provided, however, We may monitor Your use of the Service or Your Materials to satisfy any of our legal obligations to protect Company or its subscribers, or to maintain the Service.
4. **Suggestions.** You grant Company a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Service any suggestions, enhancement requests, recommendations, or other feedback provided by You, relating to the Service.

### **Privacy and Cookie Policy**

Company's [Privacy Policy](http://documents.qubedocs.com/downloads/PP.pdf) ( <http://documents.qubedocs.com/downloads/PP.pdf> ) and accompanying Cookie Policy is incorporated into this Agreement by reference.

### **Limited Warranty and Disclaimer of Warranties**

Company warrants only that the Service will be available as provided in the [Service Level Guarantee](http://documents.qubedocs.com/downloads/Service Level Guarantee.pdf) ( <http://documents.qubedocs.com/downloads/Service Level Guarantee.pdf> ). Except for the Limited Warranty set forth above, the Service is provided "AS IS", with all faults, and to the maximum extent permitted by law, Company disclaims all representations, warranties, and conditions, of any kind, express, implied, or statutory, or those arising by usage or trade or operation of law, with respect to the Service, the Software, the Website, the Service Materials, and any other software or services accessible by or through the Service or Website, including, without limitation, the warranties of fitness for a particular purpose, title, merchantability, non-interference with or non-infringement of any Intellectual Property rights, or the accuracy, reliability, or quality of the Service. Company does not warrant the operability, availability, comprehensiveness, completeness, correctness, or accuracy of the Service, the Software, the Website, the Service Materials, or any software or service accessible by or through the Service or Website, or that the Service or Website is secure, or free from bugs, viruses, Malicious Code, interruption, errors, theft, or destruction. In the event that the exclusions for implied warranties do not apply to You, any implied warranties are limited to the lesser of 60 days from the effective date of this Agreement or the shortest period permitted by law.

### **Force Majeure**

Company shall not be responsible or liable to You or any other Person for any default or delay in the performance of its obligations under the Agreement if and to the extent such default or delay is caused by: (a) fire, flood, earthquake, elements of nature, or other acts of god; (b) any outbreak or escalation of hostilities, acts of terrorism, war, riots, civil disorders, or sanctions; (c) epidemic, pandemic, quarantine restrictions, or other public emergencies; (d) general failure of public infrastructure or communications resources; (e) strikes or other labor trouble, failure of the usual means of production or of transportation, or shortage of labor, raw materials, or shortage of utilities, fuel and/or energy (f) other causes or circumstances beyond the reasonable control of Company; and (g) any other force majeure-type event.

### **Limitation of Liability and Indemnity**

Subject to applicable law, in no event shall Company, or its Affiliates, providers, licensors, or their respective Representatives, be liable to You, Your organization, or to any other Person for any: (a) indirect, special, incidental, punitive, exemplary, or consequential damages of any kind; or (b) damages relating to failures of telecommunications, the internet, electronic communications, or security, corruption, loss, or theft of data, viruses, Malicious Code, loss of business, revenue, profits, or investment, or loss of use of software or hardware. The above limitations apply even if Company has been advised of the possibility of such damages. To the maximum extent permitted by law, Your sole and exclusive remedy arising out of or related to this Agreement, the Service, the Software, the Website, or the Service Materials shall be to discontinue Your use of the Service. In the event that the law limits the application of the above sole remedy, in no event shall Company, or its Affiliates, providers, licensors, or their respective Representatives be liable to You or to any other Person for any claim with respect to an Account in excess of the amount You paid with respect to such Account for the Service during the 6 months prior to such claim.

You agree to and shall indemnify, defend, and hold Company, its Affiliates, providers, licensors, and their respective Representatives harmless from any and all claims, liability, and expenses, including reasonable attorneys' fees and costs, arising out of, related to, or in connection with: (a) Your use of the Service; (b) any breach of this Agreement, Your Subscription, or applicable law by You or any User; or (c) any misuse of Your Materials. Company reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any such claims, and You agree to reasonably cooperate as requested by Company in any defense.

### **Risk of Credit Card Information.**

You acknowledge and agree that: (a) transmitting cardholder data on the internet may involve certain security risks; (b) Company shall only be responsible for the security of cardholder data upon the encryption and receipt of the cardholder data by our server(s)

or third-party processors or merchants; and (c) Company shall not be responsible for any damages, harm, or loss caused, or alleged to be caused, as a result of the transmission of the cardholder data prior to its encryption and receipt by our server(s) or service providers, including, but not limited to, damages, fraud, embezzlement, theft, identity theft, or invasion of privacy.

## Term & Termination

**Term of Agreement.** This Agreement commences on the date You accept or use the Service and will continue until all Service Subscriptions granted in accordance with this Agreement have expired or are otherwise terminated. Except as otherwise stated in any Subscription, all Subscriptions for the Service shall automatically renew for additional period equal to that of the expiring Subscription term unless either party gives the other notice of non-renewal no less than 15 days prior to the end of the relevant Subscription term. The per-unit pricing during any such renewal term shall be the same as the prior term unless Company provides written notice of a pricing increase before the end of such prior term, in which case the per-unit pricing increase will be effective upon renewal and thereafter.

**Termination.** Either party may terminate this Agreement, at any time, or for any reason, with such termination to take effect as of the later of: (a) the next occurring billing date; or (b) the end of the then-current Subscription term. This Agreement is also terminable by Company upon any breach of this Agreement by You. Company will not refund any Service fees previously paid by You if You terminate this Agreement prior to the conclusion of the term of Your Subscription or We terminate this Agreement due to Your breach of this Agreement. This Agreement will terminate if a party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon termination of this Agreement (including, an expiration of Your Subscription), You must immediately stop using the Service and must pay any outstanding payments as they come due. In no event shall any termination relieve You of the obligation to pay Company for the period prior to the effective date of termination.

**Surviving Provisions.** Notwithstanding any terms under this Agreement, all provisions of this Agreement that, by their terms, are intended to survive, or would reasonably be expected to survive, the termination of this Agreement shall do so, including, without limitation, the sections covering Warranties & Disclaimer, Limitation of Liability, Indemnification, and the General Provisions.

## Infringement

Company respects Your Intellectual Property rights, and the Intellectual Property rights of other Persons. Consistent with the Digital Millennium Copyright Act (17 U.S.C. § 512) (“**DMCA**”), Company will respond to clear notice of infringement per terms of the DMCA, and to other infringements in a like manner where the situation so warrants. If You believe a Person is infringing Your Intellectual Property on or through the Service, We ask that You submit a notice meeting the requirements of the DMCA to support@qubedocs.com. Your notice must be complete, and should contain, at least: (a) the name, contact information, and the physical or electronic signature of the Person authorized to act on behalf of the owner of an exclusive right; (b) information reasonably sufficient to permit us to contact You, such as an address, telephone number, and e-mail address; (c) identification of the copyrighted work claimed to have been infringed; (d) information reasonably sufficient to identify and locate the allegedly infringing material or activity; (e) a statement that You have a good faith belief that the use is not authorized by the owner, its agent, or the law; and (f) a statement that the information in the notice is accurate, and under penalty of perjury, that You are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

## General Provisions

**Choice of Law & Jurisdiction.** This Agreement is governed by the laws of the state of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. The parties consent to the personal and exclusive jurisdiction of the federal and state courts located in Multnomah County, Oregon.

**Waiver of Jury Trial.** Each party waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

**Export Compliance.** The Service, other technology We make available, and derivatives may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit any Person to access or use the Service in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

**Notices.** Except as otherwise specified in this Agreement, all notices, permissions, and approvals shall be in writing and shall be deemed to have been given upon: (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (d) the first business day after sending by email. Notices to You shall be addressed to the relevant contact designated by You. Notices to us shall be addressed to Company, 4836 NE Holladay St., Suite 1600, Portland, Oregon 97232 or at [info@mindfullsoftware.com](mailto:info@mindfullsoftware.com).

**Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

**Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**Assignment.** You may not assign any of its rights or obligations in this Agreement, whether by operation of law or otherwise, without the prior written consent of Company. Any attempted transfer or assignment in violation of this Agreement shall be null and void. Company may freely assign any or all of the rights and obligations in this Agreement without restriction.

**Arbitration.** **ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO THE SERVICE OR ANY PART OF THIS AGREEMENT WILL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT.** Notwithstanding anything to the contrary, any party to the arbitration may at any time seek injunctions or other forms of equitable relief from any court of competent jurisdiction. **BY ENTERING INTO THIS AGREEMENT AND AGREEING TO ARBITRATION AND THE CLASS ACTION WAIVER BELOW, YOU AGREE THAT YOU ARE WAIVING**

**YOUR RIGHT TO FILE A LAWSUIT, THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR TO LITIGATE ON A CLASS-WIDE BASIS, AND THE RIGHT TO A TRIAL BY JURY. YOU AGREE THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THESE RIGHTS.**

To begin an arbitration proceeding, send written notice requesting arbitration and describing Your claim to Company, at the address set forth below. The notice must: (a) describe the nature and basis of the claim or dispute; and (b) set for the specific relief sought. If You and Company do not reach an agreement to resolve the claim within 30 days after the notice is received, either party may commence an arbitration proceeding. Arbitration will be conducted according to the Commercial Rules of Arbitration of the Arbitration Service of Portland. Arbitration shall be held before a single arbitrator who may also determine any dispute over the scope or applicability of this agreement to arbitrate and judgment on the award may be entered in any court having jurisdiction. The arbitrator will be a retired judge, or an attorney with at least 10 years of active practice in business transactions. If the parties cannot agree on an arbitrator, each party shall select one person to act as arbitrator, and the two so selected shall select a third arbitrator within 30 days of the commencement of the arbitration. The arbitration shall be conducted in Portland, Oregon, or such other mutually convenient location as agreed by the parties. Payment of all filing, administration, and arbitrator fees and costs will be governed by the Commercial Rules of Arbitration.

**Class Action Waiver.** YOU UNDERSTAND AND AGREE THAT EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER PARTY ONLY IN THEIR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both parties agree otherwise, the arbitrator may not consolidate more than one person's claim with Your claim and may not otherwise preside over any form of a representative class or proceeding.

**Entire Agreement.** This Agreement (and those other terms and conditions incorporated herein by reference, including our Privacy Policy) constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted.

#### ACCEPTANCE

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND, BY CLICKING "I ACCEPT THE TERMS AND CODITIONS", YOU INDICATE THAT YOU ACCEPT ITS TERMS AND CONDITIONS. THE PERSON WHO CLICKS "I ACCEPT THE TERMS AND CODITIONS" CONFIRMS THAT HE OR SHE HAS THE AUTHORITY TO BIND YOU TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.