

## TERMS OF SERVICE CUBBIT DS3

These Terms of Service, together with the documents referred to herein (collectively, the 'Agreement'), govern the contractual relationship between Cubbit S.r.l., with registered office at via della Zecca 1, 40121, Bologna, Italy, tax code and VAT no. 03562001200 (hereinafter, 'Cubbit', 'we', 'us' or 'our') and the natural or legal entity using the Services (the 'Customer', 'you' or 'your'), unless a separate agreement has been previously entered into with such legal entity.

By clicking 'Accept', signing the Order or using the Services, you confirm that you have read, understood and fully accept this Agreement and that you have the legal capacity to accept it as a Customer.

If acceptance of this Agreement is on behalf of a legal entity, you represent that you are duly authorised to represent such entity and that you have the authority to bind such entity to the terms of this Agreement.

### 1. DEFINITIONS.

In addition to any other terms defined in this Agreement and the Documentation, the following capitalised terms shall have the following meanings:

**'Acceptable Use Policy'** ('AUP') means the current rules governing the use of the Services in effect, accessible at [cubbit.io/it/legal/aup](https://cubbit.io/it/legal/aup).

**'Account'** means the Cubbit DS3 account.

**'Administrator'** means the user designated by the Customer to manage the Services and the Customer Data on its behalf.

**'Affiliate'** means any entity that is controlled directly or indirectly by, controls, or is under common control with another party. 'Control' is defined as the ability to exert a dominant influence over an entity.

**'Agreement'** means these Terms of Service, the Orders including the SLA, if any, the Documentation, the Acceptable Use Policy, the Privacy Notice as well as the Personal Data Processing Agreement, if applicable.

**'Authorised User'** means any person authorised by the End User to access the Services provided to the End User or otherwise using the Services under the End User's responsibility.

**'Beta Services'** means services or features released to collect Suggestions and identify any problems before official launch, also identified as "alpha," "beta," "preview," "early access," "evaluation," or by words or phrases having the same meaning.

**'Cloud Infrastructure'** means the set of IT resources, including servers, storage systems, networks, software and other technological components used to deliver the Services.

**'Confidential Information'** means information, not in a public domain, which is explicitly stated and classified as such or which, due to its nature and content, is considered confidential, disclosed by one Party to the other Party, in any form, including oral communication. Such information may include, but is not limited to: technological information such as source codes, algorithms, software development methods, test data, research and development projects, models, technical drawings, technological trade secrets and information on proprietary software, hardware or devices, technical data, performance specifications, business information, evaluations resulting from audits, service development plans, customer information, and marketing plans.

**'Credentials'** means the keys set to access the Account, including the second authentication factor or private keys provided by Cubbit or generated by the Services.

**'Cubbit DS3'** (Distributed Simple Storage Service) means the cloud object storage service provided by Cubbit, having the specifications described in the Documentation.

**'Cubbit Website'** means the Cubbit website that can be accessed at the address [cubbit.io](https://cubbit.io), its subdomains, as well as any related pages as periodically updated by Cubbit.

**'Data Processing Agreement'** means the agreement governing the terms and conditions under which Cubbit processes personal data on your behalf, in accordance with EU Regulation 2016/679 ("GDPR") and applicable data protection laws.

**'Documentation'** means the technical guide for the Services, which can be found at [docs.cubbit.io](https://docs.cubbit.io) (and any subsequent or related Cubbit Websites) which may be updated by Cubbit periodically. It may also include other technical materials, in either electronic or printed form, provided by Cubbit relating to the use, functionality and specifications of the Services.

**'Effective Date'** means the date on which you accept this Agreement by clicking "I accept" during the registration, or the date on which you begin to use the Services or the date of the Order, whichever is earlier.

**'Force Majeure'** means any event beyond the control of a Party. Such events may include, by way of example but not limited to, force majeure events (including earthquakes or other natural disasters), acts of terrorism, wars or military operations, civil disturbances or riots, strikes (not involving the affected Party), fires, floods, earthquakes, civil unrest, epidemics, failures or delays in computer systems, telecommunications, internet services, or hosting facilities, involving hardware, software, or power systems not under the direct possession or control of the affected Party or that are beyond its control, as well as

cyberattacks, actions or inactions of a public authority, including legislative, regulatory, or industrial standard changes, or applicable orders or directives from government authorities related to the Services.

**'Maintenance'** jointly means the activities of monitoring and supervision, release of software updates, and correction of errors and bugs which are aimed at anticipating, diagnosing and/or resolving any malfunctions, security problems, and activities to optimise the performance of data transfer, management and access.

**'Order'** means one or more purchase orders referring to this Agreement. Each Order, duly completed and signed by the Customer and sent to Cubbit, constitutes a binding contractual proposal for the purposes of the conclusion of this Agreement, subject to written acceptance by Cubbit.

**'Party/ies'** means Cubbit and/or the Customer.

**'Personal Data'** shall have the same meaning as under the General Data Protection Regulation (Regulation (EU) 2016/679 ("GDPR")).

**'Privacy Notice'** means the set of information on the collection, use, storage and protection of personal data provided to the data subject, accessible at [cubbit.io/legal/privacy-policy](https://cubbit.io/legal/privacy-policy).

**'Project'** an organisational entity in which Your Content is managed and stored within the Services.

**'Service Level Agreement'** or **'SLA'** means the service level agreement offered by Cubbit in respect of the Services, currently in force, accessible at [www.cubbit.io/legal/sla](https://www.cubbit.io/legal/sla).

**'Subscription'** means the agreement to access and use a given Service offering.

**'Suggestion'** means suggestions, questions, comments, ideas, original and creative materials or other information related to the Services, shared or sent directly to Cubbit or posted on Cubbit's communication channels by the End User.

**'Usage limit'** means the amount of data managed through the Services purchased by the Customer.

**'Your Content'** means the files and digital materials that you or your Authorised Users transfer to Cubbit for the purposes of backup, hosting, storage, or sharing through the Customer's Account, within the scope of the Services provided.

means files, data and any other digital material that you, or your Authorised Users, upload, transfer, store, or manage through your Account in connection with the use of the Services, for backup, hosting, archiving or sharing purposes

## 2. SERVICES.

### 2.1. Scope.

This Agreement governs the access to and use of Cubbit DS3 products and services provided through a Cloud Infrastructure owned or managed by Cubbit (the 'Services'). The Customer is entitled to access and use the Services in accordance with this Agreement.

### 2.2. Security and Data Protection.

#### I. Security Measures.

Subject to your responsibilities set forth in paragraphs 3.3 (Your Content), 3.5 (Restrictions) and the conditions set forth in Section 10 (Limitations of Liability), Cubbit will implement high security standards in order to adequately protect Your Content against accidental or unlawful loss, destruction, access or disclosure. These measures will be constantly updated in line with technological developments and the Services offered.

#### II. Data Protection.

You agree to transfer and store your Content through the use of the Services as described in the Documentation. Cubbit and its subcontractors may not access or use your Content stored in the Swarm, except where necessary to maintain or provide the Services or, where technically possible, to comply with rules or regulations or measures issued by judicial and/or administrative authorities. We will promptly notify you of the existence of any rules or orders relating to the disclosure of your Content, to the extent that such disclosure is permitted under the relevant rule or order.

### 2.3. Changes to the Services.

Cubbit is committed to providing better, safer and more efficient Services. To achieve these objectives, it may be necessary from time to time to modify or to activate/deactivate specific functionalities or features of the Services. If, during the term of this Agreement, Cubbit makes changes to the Services that result in a material reduction in functionality or limit access to certain features, Cubbit shall promptly notify you via the email address associated with your Account or indicated in the Order and, where possible, provide adequate notice to allow you to assess the impact of the changes.

#### 2.4. Subcontractors.

Subject to the provisions of the Data Processing Agreement, you agree that Cubbit may freely use third parties, including network, power, datacenter, hardware and/or software providers, and technical services to provide the Services, without requiring prior notice or approval. Cubbit shall retain full responsibility for the proper, full and lawful performance of the subcontracted services.

### 3. YOUR RESPONSIBILITIES

#### 3.1. General

You will use the Services in good faith and in accordance with the terms and conditions of this Agreement and any applicable laws, rules or regulations governing their use.

#### 3.2. Your Account

##### I. Registration

In order to access and use the Services, you must sign up for an Account associated with a valid email address. You will provide true, accurate and complete information when registering your Account and will keep such information up to date throughout the term of this Agreement. This information will be processed in accordance with the Privacy Notice. You may not create multiple accounts for the purpose of obtaining promotions and/or other commercial benefits or to circumvent any restrictions and/or limits on the Services.

##### II. Security and Confidentiality

Except in the event of a breach of this Agreement by Cubbit, you are solely responsible, at your own risk, for backing up of your data, for maintaining the confidentiality of your Credentials, and for taking all reasonable steps to ensure the security and protection of your data and your Account.

##### III. Management

You are responsible for the proper configuration and use of the Services and for all activities that occur under your Account. You understand that designating another user as an Administrator of the Services will allow that user to access, share, restrict access to, or remove Customer Data. We will not be liable for any loss or damage arising from your administration of the Services.

#### 3.3. Your Content.

You are solely responsible for ensuring the legality, integrity, and compliance of Your Content. You represent and warrant that you hold all necessary rights, including any intellectual property rights or permissions, to upload, transfer, or share Your Content via the Services. You agree not to upload, transfer or share any of Your Content that infringes the rights of any third party or that is unlawful, fraudulent, harmful or that may compromise the security or integrity of the Cloud Infrastructure or other users. In the event of a breach of these obligations, Cubbit may suspend or terminate Your access to the Services, and if necessary, remove Your Content that violates this Agreement or applicable law, with or without notice, in accordance with the Acceptable Use Policy.

#### 3.4. Authorised Users

You are responsible for the access and proper use of the Services by your Authorised Users. In the event of any breach by any of your Authorised Users, you will immediately suspend that Authorised User's access to your data and the Services.

#### 3.5. Restrictions.

You agree that you shall not, directly or indirectly, except as expressly permitted by applicable law:

- (a) Transfer, resell, licence or otherwise make available any or all of the Services to third parties (other than Authorised Users) or offer them independently, without Cubbit's permission;
- (b) Copy, modify, or create derivative works from the Services;
- (c) Reverse engineer, disassemble or decompile the Services, or attempt to obtain the source code of software included in the Services;
- (d) Violate or circumvent any service limits of the Services set forth in the Agreement;
- (e) Use the Services to create a directly competitive product or service;

- (f) Perform evaluations, benchmarking or other comparative analysis of the Services, intended for publication, without our prior written consent;
- (g) Tamper with, disable or circumvent any technical security measures implemented in the Services, or use tools to enable disabled features.

## **4. FEES.**

### **4.1. Service Offerings.**

We may offer both free and paid Services. Paid Services may be purchased as pre-committed and/or consumption-based Subscriptions, depending on the offer available. Pre-committed Subscriptions are subject to the Usage limit set forth in the relevant Order. Unless otherwise provided for in this Agreement or by law, (i) payment obligations may not be cancelled and Fees paid are not refundable, and (ii) quantities purchased may not be reduced during the term of the Subscription.

### **4.2. Invoicing and Payment**

You agree to pay Cubbit, or Cubbit's authorised reseller, all fees due in accordance with the payment terms and conditions set out in the relevant Order or applicable agreement between you and the Cubbit's authorised reseller (the 'Fees').

Should the Usage Limit stipulated in the Order be exceeded, the Customer undertakes to place a new Order for the purchase of additional quantities of Services at the request of Cubbit or Cubbit's authorised reseller and/or to pay the Fees due for the excess usage calculated on the basis of the applicable consumption rate.

### **4.3. Late Payment.**

Subject to Cubbit's right to suspend or terminate this Agreement, in the event of late or partial payment of the Fees due within the payment term specified in the invoice, Cubbit shall have the right to charge you interest on late payments. Such interest shall be calculated in accordance with applicable law and shall apply to all overdue payments after a period of 10 (ten) days from the notification of the payment reminder. You will be liable for all recovery costs incurred by Cubbit, including legal fees, upon presentation of supporting documentation.

### **4.4. Purchase from Reseller**

If you have purchased a Subscription through a Cubbit authorised reseller, we shall be entitled to suspend or terminate the Customer's rights to access the Account and use of the Services in the event that Cubbit has not received payment of Fees in accordance with the terms and conditions of the agreement between Cubbit and the relevant reseller in relation to your Subscription.

### **4.5. Disputes.**

You may dispute the amount of an invoice in good faith within a period of 30 (thirty) days from the date of receipt of the invoice. The dispute must be substantiated and include any supporting documentation and proof of payment of the disputed amount. If the dispute is submitted after the above deadline, you agree to waive all rights to dispute such amounts, including any right of set-off or refund.

### **4.6. Free Trial.**

You may sign up for a free trial and receive access to some of the Services for a limited period of time to allow you to familiarise yourself with the features and evaluate the performance of the Services before purchasing (the 'Free Trial'). Your use of the Services during the trial period is subject to the terms and conditions of this Agreement and any additional terms that may be specified from time to time on the Cubbit Website. In the event of any conflict between this section and any other provision of the Agreement, this section shall prevail. At the end of the trial period, your data stored within the Services will be permanently deleted. You are responsible for exporting your data from the Services prior to the end of the trial period. We reserve the right to modify or terminate your Free Trial at any time with or without prior notice.

## **5. SUSPENSION.**

### **5.1. Grounds for Suspension.**

Other than in the case of Maintenance, we reserve the right to immediately suspend the Services in whole or in part in the event that:

- (a) Your or your Authorised Users' use of the Services: (i) violates the Acceptable Use Policy or is otherwise unlawful or fraudulent; (ii) may expose us or any third party to civil or criminal liability; (iii) may adversely affect the stability and/or security of the Cloud Infrastructure, the Services or any other user content; (iv) exceeds the Usage limits;
- (b) breach of all or any of the provisions contained in this Agreement, in particular Sections 3.5 (Restrictions) and 4. (Fees and Payment);
- (c) We have received a request from the relevant judicial or administrative authorities;
- (d) Customer becomes subject to insolvency or liquidation or is subject to bankruptcy proceedings.

Suspension will be applied if, in our sole discretion, the conditions are met and the exercise of such right cannot be challenged as a breach of contract by Cubbit. If the cause of the suspension is resolved, we will promptly restore your access to the Services.

## 5.2. Notice.

We will give you prior notice of any suspension of the Services unless we have reason to believe that: (i) this is prohibited by applicable law or governmental order; or (ii) the suspension notice should be delayed to prevent imminent harm to the Services or third parties.

## 5.3. Effect of Suspension.

Suspension of the Services in accordance with Section 5.1 above does not relieve you of your obligation to pay the full fees due to us or Cubbit authorised reseller under the applicable agreement. Customer data will not be deleted during the period of suspension unless otherwise specified in the Acceptable Use Policy or you expressly request deletion.

## 6. TERM; TERMINATION.

### 6.1. Term.

This Agreement shall become effective on the Effective Date and shall remain in force until expiry of the Subscription or termination by you or Cubbit.

### 6.2. Renewal.

Services provided on a consumption basis will be automatically renewed for a term equal to the initial term. Pre-committed Subscriptions will be automatically renewed upon termination for a term equal to the initial term or in any case not exceeding one year, unless either Party gives written notice of non-renewal at least 30 (thirty) days' notice before term expiration in accordance with Article 13.5.

### 6.3. Termination for convenience.

Either Party may terminate this Agreement for any reason whatsoever by giving the other Party at least 30 (thirty) days' prior written notice in accordance with Article 13.5. However, if you have subscribed to pre-commitment Subscription and payment in advance, you shall still be obliged to pay the Fees due for the remaining period of the Subscription and shall not be entitled to any reimbursement for unused Services. This clause does not apply to Services provided through an authorised Cubbit reseller, for which any termination terms shall be governed by the contract with the reseller.

### 6.4. Termination for cause.

#### I. By Either Party.

Either Party may terminate this Agreement with immediate effect if the other Party commits a substantial breach of this Agreement, and such breach remains unremedied for a period of 30 (thirty) days following receipt of a notice of breach from the other Party.

#### II. By Cubbit.

Cubbit may terminate this Agreement with immediate effect by written notice, in accordance with Article 13.5, at its sole discretion and without prejudice to any damages, if:

- (a) 30 days have elapsed since the suspension of the Services in the cases provided for in the Agreement and the cause giving rise to the suspension, pursuant to Article 5, has not been finally remedied, or it is not capable of being remedied;
- (b) You have committed a serious and/or repeated breach of the Acceptable Use Policy.

## 7. EFFECTS OF TERMINATION.

### 7.1. General Provisions.

On the date of termination of this Agreement for any reason whatsoever:

- (a) Except as provided in Section 7.2 (Survival) below, the rights and licences granted to you under this Agreement shall terminate immediately;
- (b) You remain responsible for all Fees and charges incurred.

### 7.2. Survival.

Termination of this Agreement will have no effect on those provisions that by their nature do not cease to be effective with the termination of the Agreement, such as those contained in the following Articles: 1 (Definitions); 4 (Fees); 7 (Effects of Termination); 8 (Intellectual Property); 9 (Confidentiality); 10 (Limitations of Liability); 11 (Indemnification); 13 (General Provisions); 14 (Governing Law, Dispute Resolution).

## 8. INTELLECTUAL PROPERTY.

### 8.1. Reservation of Rights.

Each party shall retain full and exclusive ownership of all of its intellectual property rights, including but not limited to patents, trademarks, copyrights, trade secrets and any other proprietary rights in software, documentation, processes, algorithms, user interfaces, designs and any other technology or materials provided in connection with this Agreement (the "Intellectual Property Rights"). Except as expressly provided in the limited licences granted under this Agreement, this Agreement does not grant you any right, title or interest in or to the Services or any of the Cubbit Intellectual Property Rights.

### 8.2. Limited Rights.

You only grant us the limited rights necessary to provide the Services. This limited authorisation also extends to our suppliers or data processors.

### 8.3. Suggestions.

We may use Suggestions that you send or share with us without any obligation to you. You agree to irrevocably assign to us on a royalty-free, perpetual basis, without territorial limitation, all rights, titles and interest in and to any Suggestions and agree to provide us with the assistance necessary to document and maintain our rights in the Suggestions.

## 9. CONFIDENTIALITY.

### 9.1. Obligations.

Each Party agrees to maintain the Confidential Information received from the other Party in connection with this Agreement as confidential and not to disclose it to any third party, except where such information is to be disclosed to its own employees, contractors or consultants, provided that such persons need access to the information for the performance of the Agreement and are bound by obligations of confidentiality at least equivalent to those set forth in this Agreement. No Confidential Information shall be disclosed to third parties without the prior written consent of the Party providing it. Confidential Information shall be used solely for the purposes related to the performance of this Contract, and each Party shall take all necessary security measures to protect its confidentiality, applying a level of protection equal to that used for its own confidential information, but not less than a reasonable level of care.

### 9.2. Exceptions.

The confidentiality obligations set forth in Article 9.1 shall not apply to Confidential Information that:

- (a) Is or becomes publicly available through no violation of this Agreement;
- (b) Was already legitimately in its possession and/or known to it on the date of its receipt;
- (c) Was developed independently of the recipient Party and without reference to any information disclosed to the recipient Party by the disclosing Party;
- (d) Was or is obtained by the recipient Party from a third party, provided, that, such third party was not bound by a contractual, legal or fiduciary obligation of confidentiality to the non-disclosing party or any other party with respect to such information or material;
- (e) Has been explicitly approved for disclosure by written authorization from the disclosing Party;

- (f) The receiving Party is required to disclose in accordance with applicable law, regulation, judicial or administrative order, provided that the receiving Party provides timely written notice to the disclosing Party to enable the disclosing Party to take appropriate protective measures.

## 10. LIMITATIONS OF LIABILITY.

### 10.1. Cubbit's Liability.

Cubbit's responsibilities for providing the Services are set out in this Agreement. Where Cubbit has agreed to provide a service level, any payments or credits under the Service Level Agreement shall be your sole and exclusive remedy for failure to meet that service level and shall constitute Cubbit's entire liability in that respect. You acknowledge and agree that, except for the cases provided in the Service Level Agreement and except for willful misconduct or gross negligence, Cubbit's aggregate liability for any breach or legal default under the Agreement shall be limited to the greater of 100 (one hundred) euros or the portion of the Fees paid by you to Cubbit and/or by the relevant authorised reseller to Cubbit with respect to the Services rendered for the past 12 (twelve) months prior the liability arose.

### 10.2. Exclusion of Liability.

To the extent permitted by applicable law, Cubbit shall not be liable for any damage, of whatever nature or amount, that may be caused to the Customer and/or third parties, in respect of which the Customer shall indemnify and hold Cubbit harmless, as a result of:

- (a) Improper or non-compliant use of the Services by you or your Authorised Users;
- (b) Modifications, alterations or customisation of the Services carried out by the Customer or a third party without Cubbit's prior consent;
- (c) Breaches of legal obligations caused by you or your Authorised Users, or arising out from Your Content;
- (d) Non-performance, failure, malfunction or unavailability of the Services due to actions taken by you or third parties (other than Cubbit's subcontractors), software or hardware provided by third parties and used by you and/or due to malfunction of the internet, power and/or telephone lines;
- (e) Loss of profits, revenue, customers, business opportunities, reputation, goodwill, the value of Your Content, payment of penalties, delays or other liabilities of the Customer to third parties;;
- (f) Disclosure, loss or theft of your Credentials caused by you or a third party authorised by you, resulting in unauthorised access to, alteration, deletion, destruction, damage, loss or failure to store Your Content or other data;
- (g) Damages, expenses, losses and/or costs that may result from cyber-attacks, hacking and, in general, unauthorised access by third parties to the Services and your computer systems;
- (h) unforeseeable circumstances or events of Force Majeure.

### 10.3. Beta Services

Cubbit may make available to you certain services and features that are still in the testing and evaluation phase, referred to as 'Beta Services'. You acknowledge and agree that the Beta Services, because they are not yet subject to the same security measures and control as the ordinary Services, may not function properly or may contain errors, design flaws or present other problems. The use of the Beta Services is optional and left to your free choice. Beta Services are provided for the purpose of collecting Suggestions. In the event that you decide to use the Beta Services, you accept the possibility of being contacted by Cubbit to provide such Suggestions. The Beta Services contain confidential information until their official launch. As a tester of the Beta Services, should you opt to use them, you agree not to disclose any information regarding such services to third parties without Cubbit's written consent.

### 10.4. Force Majeure.

Except for the obligations to pay the fees, the Parties shall not be liable for any loss, damage, delay, non-performance or partial performance arising directly or indirectly from a Force Majeure event. In such circumstances, the Party affected by the Force Majeure event shall promptly notify the other Party in writing, providing details of the circumstances and expected duration of the Force Majeure event, keeping the other Party regularly informed. If, despite the efforts of the Affected Party, the period of delay or non-performance persists for a period of more than thirty (30) consecutive days, the unaffected Party shall have the right to terminate the Contract, by notice to be given in writing by a means of transmission that assures proof and date of receipt of such notice, and shall not be held liable for further damages to the other Party.

## 11. INDEMNIFICATION

### I. By You

Without prejudice to any further indemnification provided for in the Contract, you agree to defend, indemnify and hold Cubbit harmless from any claim, complaint or action brought by a third party arising out of or in connection with: (i) the use of the Services by you or your Authorised Users; (ii) any dispute arising between you and your Authorised Users; (iii) the Suggestions provided by you. You will indemnify us against all costs, damages and charges, including legal fees, finally awarded against us or for any amounts paid by us as part of a settlement agreed and authorised by you. The above defence and indemnification obligations shall not apply if a claim against us arises from our breach of this Agreement, the Documentation or the relevant Order.

### II. By Cubbit

We will defend, indemnify and hold you harmless from any third-party claim against you based on the allegation that the Services and/or Documentation infringe or misappropriate the intellectual property rights of such third parties. We will indemnify you against all costs, damages and expenses, including legal fees, finally awarded against you or paid by you as part of a settlement agreed to and approved by us. The aforementioned defence and indemnification responsibilities shall not apply in the following cases: (i) if the legal dispute does not clearly specify that the claim for compensation is due to your use of the Services provided by us; (ii) if the claim is caused by the use or combination of the Services provided by us with software, hardware, data or procedures that are not provided by us, where the Services or the use thereof would not result in any infringement without such combination; (iii) if the claim relates to Services for which no charge has been made to you; (iv) if the claim relates to content, applications not provided by us or to your breach of this Agreement, the Documentation or the applicable Order Forms.

### III. Remedies.

If we believe or suspect that the Services infringe the intellectual property rights of any third party, we may at our discretion, in good faith: (i) obtain the right for you, at our expense, to continue using the Services; (ii) provide a substantially equivalent substitute solution that does not infringe the rights of any third party; (iii) modify the Services so that the infringement ceases. If, in our judgement, the options described in this paragraph are unduly burdensome, we reserve the right to suspend or terminate your use of the Services and refund to you on a pro rata basis any advance payments made by you.

### IV. General obligations

Party requesting indemnification, pursuant to this Article 11, shall (i) promptly notify the other Party of such request, (ii) cooperate in good faith with the other Party in the defence, give the Party responsible for the indemnification exclusive control and authority over the handling of the defence, except where the settlement involving an admission of liability by the Party requesting the indemnification requires prior written consent (which may not be unreasonably withheld or delayed) and the other Party may participate in the defence with its own counsel at its own expense. It is hereby specified that the indemnification set forth herein constitutes the sole remedy available to both Cubbit and Customer under the Agreement in the event of infringement by the other Party of third party Intellectual Property Rights.

## 12. PROCESSING OF PERSONAL DATA.

The processing of the Personal Data provided by you to us for the performance of this Agreement and the provision of the Services will be carried out in accordance with EU Regulation 2016/679 ("GDPR") and the Privacy Notice. Where Your Content includes Personal Data, you represent and warrant that you have complied with your information and obtained consent to processing obligations under applicable data protection law to enable your use of the Services and our access, storage and processing of such data in accordance with this Agreement. Each Party mutually acknowledges that, with respect to such processing, Cubbit shall act as a data controller or sub-processor in accordance with the Processing of Personal Data Agreement.

## 13. GENERAL PROVISIONS.

### 13.1. Changes to the Agreement.

We reserve the right to change this Agreement and the documents referred to therein at any time by publishing the updated version on the Cubbit Website or by notifying you of the changes pursuant to Section 13.5. Such changes will apply immediately to any new Order signed after publication. In the case of material changes affecting Services already in use, we



will notify you by email to the email address you have provided to us. Changes to this Agreement will become effective 15 (fifteen) days after they are posted on the Cubbit Website or after you receive notice, whichever occurs first. By continuing to use the Services after the changes take effect, you agree to the updated terms and conditions of the Agreement.

### **13.2. Waiver.**

Any acquiescence or tolerance in exercising or enforcing a right under this Agreement does not constitute a waiver of the right to enforce such rights at a later stage.

### **13.3. Assignment.**

You may not assign or otherwise transfer this Agreement without our prior written consent, except that you may assign this Agreement to your Affiliates or to the surviving entity as a result of a merger, acquisition or sale of all or substantially all of your business by giving us written notice. You hereby consent to our assignment of all or any part of this Agreement to a third party.

### **13.4. Severability.**

If any provision of this Agreement is held to be invalid or unenforceable, in whole or in part, (i) such provision shall be construed, interpreted or reformed to the extent reasonably necessary to render it valid, enforceable and consistent with the original intent underlying such provision, and (ii) such invalidity or unenforceability shall not affect any other provision of the Agreement.

### **13.5. Notices.**

All notices under this Contract shall be in writing and shall be valid and effective on the date of delivery and shall be sent:

- (a) to Cubbit S.r.l.: by registered mail with acknowledgement of receipt to the registered office at Via della Zecca 1 - 40121, Bologna;
- (b) To you: one of the addresses provided by you on the Order or the email address associated with your Account.

### **13.6. Language of the Agreement.**

The Parties agree that the language of the Contract is Italian. However, for the better understanding of the Customer, an English translation is available on the Cubbit Website. If there is any inconsistency or conflict between a translation and the Italian version, the Italian version will apply.

### **13.7. Entire Agreement.**

This Agreement cancels and replaces any other previous agreement that may have occurred between the Parties and shall constitute the entire agreement with respect to the Services in object. The Agreement comprises the following documents to be construed and applied in the following order of precedence: (i) the Order; (ii) the Documentation; (iii) the Terms of Service; (iv) the Acceptable Use Policy.

### **13.8. Trade Compliance.**

In connection with this Agreement, each Party will comply with all applicable import and export laws and regulations, including Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items, as well as U.S. regulations such as the Export Administration Regulations (EAR) and International Traffic In Arms Regulations (ITAR). You have the sole obligation and responsibility to verify the manner in which you use the Services, including the transfer and processing of Your Content, and the country in which this occurs. You, or any entity who owns or controls you and your financial institutions, represent and warrant that you are not subject to restrictions or other sanctions. Your access to and use of the Services shall not be permitted if you are located in countries subject to trade restrictions or other sanctions, nor shall you provide access to the Services to any third party, entity or individual located in or subject to such sanctions.

### **13.9. Independent Contractors.**

Parties are independent contractors. Nothing contained in this Agreement shall be construed as constituting a partnership, joint venture, franchise, employment or agency relationship between the Parties. Parties shall have no right, power, or authority to assume or create an obligation, express or implied, on behalf of the other Party except as specified in this Agreement.

**13.10. Marketing.**

You authorise us to use your trade name, logo, and/or other distinctive signs (collectively referred to as the “Trademarks”) in our customer lists, on the Cubbit Website, and in our marketing materials, in a manner substantially similar to how we use the Trademarks of other customers. We may also use your Trademarks in connection with the exercise of our rights under this Section 13.10. Upon receipt of your written request, we will cease the use of your Trademarks within 10 (ten) working days. Such cessation includes the removal of all published or distributed materials that feature your Trademarks, except where such materials have already been sent to third parties prior to receipt of the request for cessation.

**14. GOVERNING LAW, SETTLEMENT OF DISPUTES.****14.1. Governing Law.**

This Agreement shall be governed solely by Italian law, excluding any application of the Italian conflict of law rules. Parties specifically exclude applicability of (i) the United Nations Convention on the Sale of Goods and (ii) any Incoterms. If Customer is a European Economic Area-based consumer and ordinarily resides in the European Union, this clause does not affect the protection provided by the mandatory provisions of the Customer's law of residence.

**14.2. Informal Resolution of Disputes.**

Before taking any formal action, each Party agrees to attempt to resolve the dispute by contacting the other Party in accordance with section 13.5 above. In the event that a satisfactory resolution is not reached within 30 (thirty) days of notification, formal legal action may be initiated by you or us.

**14.3. Online dispute resolution in the European Economic Area**

If you are a European Economic Area-based consumer, the European Commission has made available the Online Dispute Resolution (ODR) platform, which can be accessed through the following link: <https://ec.europa.eu/consumers/odr>

**14.4. Disputes**

Any dispute arising in connection with the interpretation and/or application and/or execution of this Agreement and the documents annexed or referred to herein shall be referred to the Italian Judicial Authority and to the exclusive jurisdiction of the Court of Bologna. If the Customer has acted and concluded the Agreement as a consumer and habitually resides in one of the countries of the European Economic Area, United Kingdom or Switzerland, or other where the laws recognize the consumer's right to bring disputes before the court of the country of residence, this clause does not affect such rights.