

CUBBIT DS3 CLOUD

TERMS OF SERVICE

These Cubbit DS3 Cloud 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" or "we") and the natural or legal person using the Services (the "Customer"), unless a separate agreement relating to the Services is currently in force between Cubbit and the Customer.

By clicking "I Accept", by executing an Order, or by using the Services, the user confirms having read, understood and fully accepted this Agreement, and declares possessing the legal capacity necessary to accept it as Customer.

Where acceptance of this Agreement occurs on behalf of a legal person, the user declares being duly authorised to represent that entity and to possess the power necessary to bind it to the terms set out herein.

1. DEFINITIONS

In addition to the definitions set out in this Agreement and in the Documentation, the following capitalised terms shall have the meaning specified below.

Acceptable Use Policy or **AUP**: the rules defining prohibited conduct in the use of the Services, published by Cubbit at cubbit.io/legal/acceptable-use-policy and subject to periodic update.

Account: the Customer's account for accessing the Services.

Administrator: the Authorised User designated by the Customer for the management of the Services and Customer Content on its behalf.

Affiliate: any entity that, directly or indirectly, controls, is controlled by, or is under common control with a Party. "Control" means the direct or indirect ownership of a majority of voting rights or the ability to exercise dominant influence over the management of the entity.

Agreement: these Terms of Service and the documents referred to or attached thereto, including, where applicable, the Order and the DPA.

Authorised User: anyone who accesses the Services under the Customer's responsibility, including its employees, collaborators and Affiliates.

Beta Services: the Services or features released for testing and Feedback collection prior to official launch, identified as "alpha", "beta", "preview", "early access", "evaluation" or with expressions of analogous meaning.

Confidential Information: information that is not in the public domain, identified as confidential at the time of disclosure or recognisable as confidential by its nature, disclosed by one Party to the other in any form. Source code, algorithms, development methods, technical and test data, research and development projects, business and marketing plans, customer information, audit results and performance specifications are in any case Confidential Information.

Consumer: the natural person who accesses and uses the Services for purposes unrelated to any trade, business, craft or professional activity.

Credentials: the authentication keys and codes required to access the Account and the Services, including authentication tokens and any second factors, generated by the Services or configured by the Customer through third-party applications.

Cubbit DS3 Cloud: the S3-compatible cloud object storage service, provided by Cubbit through the Cubbit Infrastructure, characterised by geo-redundant architecture and by the storage of Customer Content within the European Union, unless otherwise chosen by the Customer as indicated in the Order.

Cubbit Infrastructure: the set of hardware, software and network resources used by Cubbit to provide the Services.

Cubbit Website: Cubbit's website accessible at cubbit.io and its sub-domains.

Customer Content: the files, data and any other digital material that the Customer or its Authorised Users upload, transfer, store or manage through the Services.

Data Processing Agreement or **DPA**: the agreement governing the processing of Personal Data by Cubbit on behalf of the Customer, which constitutes the instrument for the appointment of Cubbit as data processor pursuant to Article 28 of Regulation (EU) 2016/679, applicable where Customer Content includes Personal Data.

Documentation: the user guides available at docs.cubbit.io, the FAQs published at help.cubbit.io, operating manuals, technical specifications and any other material, in electronic or paper form, provided by Cubbit and relating to the use,

features, integration and configuration of the Services. The Documentation may be updated by Cubbit periodically, without prior notice, unless otherwise provided by the Agreement.

European Economic Area or **EEA**: the territory of the Member States of the European Union, Iceland, Liechtenstein and Norway.

Effective Date: the date on which the Customer accepts the Agreement or, if earlier, the date on which the Customer accesses the Services.

Feedback: any feedback, idea, comment, request for improvement or material relating to the Services that the Customer communicates to Cubbit or publishes on Cubbit's official channels.

Force Majeure: any event beyond the control of the affected Party that prevents or delays the performance of its obligations, including natural disasters, acts of war or terrorism, civil unrest, strikes not involving the Party's own personnel, acts of public authority, interruptions of essential services, and supervening regulatory or legislative changes rendering the provision of the Services impossible or unlawful.

Intellectual Property Rights: all industrial and intellectual property rights, including, without limitation, copyright, rights in software and databases, patents, utility models, trade marks, trade names, logos, distinctive signs, designs, know-how, trade secrets and any analogous right recognised under applicable law, whether registered or unregistered, as well as any renewal, extension or related right.

International Sanctions: the restrictive measures of an economic, financial or commercial nature adopted by the United Nations or the European Union, as well as measures adopted by third States to the extent that they are rendered applicable within the European Union.

Maintenance: the activities of monitoring, updating, correcting and optimising the Services, aimed at anticipating, diagnosing or resolving malfunctions, security vulnerabilities or performance issues.

Order: the contractual document executed by the Customer and accepted by Cubbit, which refers to this Agreement and specifies the conditions for the provision of the Services, including the commercial conditions, the term and the Storage Capacity.

Party or **Parties**: Cubbit and the Customer, jointly or severally.

Personal Data: has the meaning defined in Article 4 of Regulation (EU) 2016/679 ("GDPR").

Privacy Notice: the notice concerning the processing of Personal Data provided by Cubbit, accessible at cubbit.io/legal/privacy-policy

Service Level Agreement or **SLA**: the document describing the Service objectives and the related service credits. The standard SLA is published by Cubbit at cubbit.io/legal/service-level-agreement. Where the Order provides for a specific SLA, the latter prevails over the standard SLA for the Customer concerned.

Services: the set of services provided by Cubbit under Cubbit DS3 Cloud, including the storage and management of Customer Content through the Cubbit Infrastructure and the features described in the Documentation.

Site: the place where the Customer Content is physically stored.

Storage Capacity: the storage capacity available to the Customer under the Subscription, as specified in the Order.

Subscription: the Customer's commitment to access and use a specific configuration of Services for the term and under the conditions specified in the Order.

2. SERVICES

2.1. Scope of Application

This Agreement governs access to and use of the Services, provided through the Cubbit Infrastructure, which the Customer accesses via web console or API.

2.2. Security and data protection

2.2.1. Security measures

Cubbit implements appropriate technical and organisational measures to protect Customer Content from accidental or unlawful loss, destruction, access or disclosure, in conformity with international industry standards.

To that end, the Services are designed on a geo-distributed architecture, capable of ensuring the durability of Customer Content, according to the characteristics described in the Documentation, and the resilience of the Services to localised failures. The distribution of Customer Content across one or more Sites is specified in the Order.

The confidentiality of Customer Content is ensured by advanced encryption and fragmentation methods, as described in the Documentation.

2.2.2. Location of the Customer Content

Customer Content is stored within the European Union, unless the Customer selects a different location as indicated in the Order.

2.2.3. Confidentiality of and Access to the Customer Content

Cubbit does not access or use the Customer Content, save in the following cases:

- (a) where strictly necessary for the provision, maintenance or restoration of the Services;
- (b) at the Customer's request, in particular within the scope of support services;
- (c) in performance of a binding order of the competent judicial or administrative authority, within the limits of applicable law.

In the cases set out above, where the Customer has adopted client-side encryption measures with independently managed keys, access to the Content in intelligible form remains in any event technically excluded.

Access requests originating from authorities of countries outside the European Union are performed by Cubbit only if recognised or enforceable under the law of the European Union or of Italy.

Cubbit promptly informs the Customer of the requests referred to in point (c) above, unless prohibited by law.

The Customer's responsibilities under Articles 3.3 and 3.5, and the limitations of liability under Article 10, remain unaffected.

2.3. Updates to the Services

Cubbit may modify the Services over time, including by activating, deactivating or updating features, in order to improve their performance, strengthen their security or adapt them to supervening technical or regulatory requirements.

Where a modification entails a substantial reduction in the features of the Services, Cubbit shall notify the Customer no less than 30 (thirty) days in advance. In such case, the Customer is entitled to terminate the Agreement by written notice to be sent within the notice period, with the right to a pro rata refund of the Fees paid for Services not yet used.

Where the Services have been purchased through a commercial partner, the notice referred to in this Article shall be sent to the partner, who shall inform the end Customer in accordance with the terms of the agreement between those parties.

2.4. Sub-contractors

Cubbit makes use of sub-contractors for the provision of the Services, including data centre, network, energy, hardware, software and technical services providers. Upon the Customer's written request, Cubbit provides information on the principal sub-contractors used, remaining in any event responsible for their conduct as for its own.

The provisions of the DPA governing sub-processors for the processing of Personal Data remain unaffected.

2.5. Data Portability

The Customer may export its Customer Content at any time during the Subscription through the Services' API or the web console, provided that it has fulfilled all certain and due payment obligations under the Agreement. Cubbit places no technical, contractual or commercial obstacles to the exercise of this right and provides the information necessary to facilitate its exercise, in accordance with the methods described in the Documentation. Article 7.2 applies to the export of Customer Content upon termination of the Subscription.

Where the Services have been purchased through a commercial partner, the end Customer exercises the right to portability in accordance with the methods provided for in the agreement with the partner, without prejudice to the prohibition on the partner to place obstacles to the exercise of that right.

3. CUSTOMER OBLIGATIONS

3.1. General Obligations

The Customer uses the Services in good faith, in compliance with the Agreement and applicable law.

3.2. Account

3.2.1. [Registration](#)

To access the Services, the Customer creates an Account associated with a valid e-mail address, providing truthful, accurate and complete information which it undertakes to keep updated for the duration of the Agreement. Such information is processed in accordance with the Privacy Policy. It is prohibited to create multiple Accounts for the purpose of obtaining promotions or other commercial advantages.

3.2.2. [Credentials and Security Measures](#)

The Customer is responsible for safeguarding its Credentials and for implementing such protective measures for its Customer Content as it deems necessary in addition to those guaranteed by the Services. Cubbit shall not be liable for the consequences of the disclosure, loss or unauthorised use of the Customer's Credentials.

3.2.3. [Configuration and Use](#)

The Customer is responsible for the configuration and use of the Services, as well as for all activities carried out through its Account. The designation of an Authorised User as Administrator confers on that user the ability to access, share, restrict access to or delete Customer Content. Cubbit shall not be liable for any losses or damages arising from the management of the Services by the Customer or its Authorised Users.

3.3. Customer Content

The Customer is solely responsible for the lawfulness, integrity and conformity of Customer Content. The Customer represents and warrants that it holds all necessary authorisations, including copyright and other intellectual property rights, to upload, transfer or make Customer Content available through the Services.

The Customer shall not upload, transfer or share Customer Content that infringes third-party rights or that is unlawful, fraudulent, harmful or that may compromise the security or integrity of the Cubbit Infrastructure or other users.

In the event of a breach of these obligations, Cubbit may suspend or interrupt the Customer's access to the Services and, where necessary, remove Customer Content that is in breach of the Agreement or applicable law, with or without prior notice, in accordance with the Acceptable Use Policy.

3.4. Authorised Users

The Customer is responsible for the access to and correct use of the Services by its Authorised Users. In the event of a breach of contractual obligations by an Authorised User, the Customer immediately suspends that user's access to Customer Content and to the Services.

3.5. Use Restrictions

Unless expressly permitted by applicable law or provided for in the Order, the Customer may not, directly or indirectly:

- (a) transfer, resell, licence or otherwise make available, in whole or in part, the Services to third parties other than Authorised Users, without Cubbit's written authorisation;
- (b) copy, modify or create derivative works from the Services;
- (c) carry out reverse engineering, disassembly or decompilation of the Services, or attempt to derive the source code;
- (d) access the Services fraudulently or by circumventing the Storage Capacity;
- (e) use the Services for the purpose of developing or marketing a service that replicates or imitates the substantial functionalities of the Services;
- (f) carry out comparative or benchmarking assessments of the Services intended for publication, without Cubbit's prior written consent;
- (g) tamper with, disable or circumvent any technical protection measure implemented in the Services, or use tools to enable disabled functionalities.

4. FEES

For Services purchased through an authorised commercial partner, Article 4.4 applies.

4.1. Subscription and Fees

The Services are provided pursuant to a Subscription, under the conditions and at the fees indicated in the Order (the "Fees"). The Subscription is subject to the Storage Capacity specified in the Order. Unless otherwise provided by the Agreement or applicable law, Fees paid are non-refundable and the Storage Capacity purchased may not be reduced during the term of the Subscription.

4.2. Invoicing and Payments

The Fees are paid by the Customer within 30 (thirty) days of the date of issue of the relevant invoice, unless different payment terms are indicated in the Order. All amounts are understood to be exclusive of VAT and any other applicable tax, levy or charge, which shall be borne entirely by the Customer.

In the event of the Storage Capacity being exceeded, the Customer may regularise excess usage by taking out an additional Subscription, under the minimum conditions indicated in the Order or in the Documentation, or by paying for excess usage at the consumption-based rate indicated therein.

The Fees are subject to annual review. With effect from the first day of the second contractual year and each subsequent year, the Fees shall be automatically adjusted by an amount equal to the change in the ISTAT FOI index (Italian consumer price index excluding tobacco) recorded in the preceding year. Failure to apply the adjustment in one or more years does not preclude the application of the adjustment in subsequent years.

Where supervening, extraordinary and unforeseeable events significantly affect the costs of providing the Services, altering the economic equilibrium of the Agreement, Cubbit may adjust the Fees proportionately, giving the Customer written notice no less than 60 (sixty) days in advance. In such case, the Customer is entitled to terminate the Agreement by written notice to be sent within the notice period, with the right to a pro rata refund of the Fees paid for Services not yet used.

4.3. Late payment

Failure to pay or partial payment of the Fees by the deadline indicated on the invoice shall entail the application of default interest pursuant to applicable law on late payment in commercial transactions, accruing from the day following the due date, in addition to the flat-rate indemnity for recovery costs provided for by the same legislation.

Without prejudice to the foregoing, Cubbit reserves the right to suspend the provision of the Services, pursuant to Article 5, after 10 (ten) days from the dispatch of written notice pursuant to Article 14.5. If payment is not regularised within 30 (thirty) days of suspension, Cubbit may terminate the Agreement pursuant to Article 6, with consequent deletion of Customer Content as provided for in Article 7.

Cubbit may decline new Orders from a defaulting Customer. The Customer is liable for any additional recovery costs incurred by Cubbit, including legal fees.

4.4. Purchase through a Commercial Partner

Where the Customer has purchased the Services through a commercial partner authorised by Cubbit, the Fees and the related payment terms are governed by the agreement between the Customer and the commercial partner. Cubbit reserves the right to suspend or terminate the Services in the event that it has not received from the commercial partner the payments due in connection with the Customer's Subscription.

4.5. Disputed invoices

A Customer wishing to dispute the amount of an invoice shall give Cubbit written notice, pursuant to Article 14.5, within 30 (thirty) days of receipt, stating the reasons for the dispute and attaching the relevant supporting documentation. Disputes raised after that deadline shall not be admissible.

4.6. Free Trial

Cubbit may make available a free trial of the Services, for the duration and within the capacity limits from time to time indicated on the Cubbit Website (the "Free Trial"). Use of the Services during the Free Trial is subject to this Agreement and, in the event of conflict, the provisions of this Article shall prevail over others.

Upon expiry of the Free Trial, Customer Content uploaded during the trial period shall be permanently deleted. The Customer is therefore responsible for exporting its Customer Content before expiry. The Account remains active.

Cubbit reserves the right to modify the conditions of the Free Trial or to discontinue it, giving the Customer reasonable notice.

5. SUSPENSION

5.1. Grounds for Suspension

Without prejudice to suspension for Maintenance, Cubbit reserves the right to suspend, in whole or in part, the provision of the Services in the following cases:

- (a) the use of the Services by the Customer or its Authorised Users, or Customer Content, infringes the Acceptable Use Policy, applicable law, or may expose Cubbit or third parties to liability;
- (b) the use of the Services may compromise the security or stability of the Cubbit Infrastructure, the Services or the content of other users;
- (c) the Customer breaches the provisions of the Agreement, in particular the payment obligations under Article 4.3 or the use restrictions under Article 3.5;
- (d) Cubbit has received a binding order or measure to that effect from the competent judicial or administrative authority;
- (e) the Customer is subject to insolvency proceedings other than judicial liquidation, to the extent that suspension is permitted by applicable law.

Once the grounds for suspension have ceased, Cubbit shall promptly restore the Customer's access to the Services.

5.2. Notice

Cubbit shall give the Customer prior notice of the suspension of the Services, unless doing so is prohibited by law or by an authority measure, or is incompatible with the need to prevent imminent damage to the Services or to third parties.

5.3. Effects of Suspension

During the suspension period, the Customer remains obliged to pay the due Fees and Customer Content remains stored in the Services, unless otherwise provided by the Acceptable Use Policy or at the Customer's express request for deletion.

6. TERM AND TERMINATION

6.1. Term

The Agreement is perfected on the Effective Date and remains in force until the deletion of the Account by the Customer or termination pursuant to this Article.

The Subscription runs from the date and for the term indicated in the Order. Where the Subscription is not renewed, the Services shall cease and Customer Content shall be deleted pursuant to Article 7, without prejudice to the Customer's Account remaining active.

6.2. Renewal

Upon expiry, the Subscription shall renew automatically for successive periods of the same duration as the initial period, and in any event not exceeding one year each (the "Renewal Period"). Either Party may prevent renewal by giving written notice of non-renewal, pursuant to Article 14.5, at least 30 (thirty) days before the expiry of the current period.

Cubbit may apply updated Fees for the Renewal Period, giving the Customer no less than 30 (thirty) days' notice before expiry. A Customer that does not wish to accept the new Fees shall give notice of non-renewal within the same period. Absence of such notice constitutes acceptance of the communicated Fees.

The Order may provide for renewal terms different from those set out in this Article, including departing from automatic renewal where required by the law applicable to the Customer.

Where the Services have been purchased through a commercial partner, the renewal terms are governed by the agreement between the end Customer and the commercial partner.

6.3. Termination on notice

6.3.1. [Termination by the Customer](#)

The Customer may terminate the Subscription early in the following cases:

- (a) materially detrimental modification of the Services, pursuant to Article 2.3;
- (b) extraordinary adjustment of the Fees, pursuant to Article 4.2;
- (c) objection to a modification of sub-processors, in the cases and under the conditions provided for by the DPA.

In each of these cases, with effect from the date on which the termination takes effect, the Customer shall benefit from a migration period of 60 (sixty) days (the "Migration Period"), during which it may continue to access the Services solely for the purpose of extracting and migrating its Customer Content. The Migration Period is provided without charge. During the Migration Period, Cubbit shall provide technical assistance limited to the standard export tools and the Documentation generally made available; any additional or bespoke assistance shall be subject to a separate written agreement and the applicable fees. The Migration Period replaces the recovery period referred to in Article 7.2 and, upon its expiry, Customer Content shall be deleted pursuant to Article 7.2 and the DPA.

The Customer may request an extension of the Migration Period. Where completion of migration within the Migration Period is technically not feasible, Cubbit shall grant an extension to the extent necessary, up to a total maximum duration of seven months; any further extension shall be at Cubbit's discretion and subject to written agreement. For the duration of any extension, the Customer shall pay the fee for the continuation of the storage services relating to Customer Content stored on the Cubbit Infrastructure, calculated on the storage actually occupied in accordance with Cubbit's list prices for such storage as from time to time in force. No fee shall be due for data traffic inbound or outbound for the purpose of extracting or migrating Customer Content, whether during the Migration Period or during any extension.

The Customer is entitled to a pro rata refund of the Fees paid for the portion of Services not used in the residual period of the Subscription following the date on which the termination takes effect, excluding the Migration Period. Fees accrued up to the date on which the termination takes effect shall not be refunded. The exercise of the rights under this Article does not release the Customer from Fees already due, which Cubbit remains entitled to claim, without prejudice to Article 5; however, Cubbit shall not make the recovery or migration of Customer Content conditional upon prior payment of such amounts.

Without prejudice to the foregoing, the Customer may freely delete its Account. Voluntary deletion does not release the Customer from the payment of Fees, which shall remain due for the entire residual period of the Subscription until its natural expiry pursuant to the applicable Order.

The termination rights provided for by the law applicable to the Customer shall in any event remain unaffected, including those recognised to public authorities under the law on public contracts.

Where the Services have been purchased through a commercial partner, the end Customer's termination is governed by the agreement between the end Customer and the commercial partner, without prejudice to the partner's obligation to guarantee the end Customer the migration conditions provided for in the agreement with Cubbit.

6.3.2. [Termination by Cubbit](#)

Cubbit reserves the right to terminate this Agreement, upon written notice with no less than 3 (three) months' advance notice. In such case, the Customer is entitled to a pro rata refund of the Fees paid for Services not yet used as at the date on which the termination takes effect. Cubbit guarantees the Customer access to the Services for the entire duration of the notice period, in order to allow the export of Customer Content.

This Article governs Cubbit's termination vis-à-vis the Customer. The termination terms in the relationship between the Customer and the commercial partner are governed by the agreement between those parties, without prejudice to Cubbit's right to terminate pursuant to this Article.

6.4. Termination for Cause

6.4.1. [Termination for Non-performance](#)

Without prejudice to the provisions of Article 4.3, either Party may terminate the Agreement or a Subscription by written notice where the other Party commits a non-performance of material importance and fails to remedy it within 30 (thirty)

days of receipt of the relevant formal notice to perform. Termination does not prejudice the performing Party's right to compensation for damages suffered.

Where the Services have been purchased through a commercial partner, the effects of termination on the end Customer are governed by the agreement between the end Customer and the commercial partner.

6.4.2. [Express Termination Clause](#)

Cubbit is further entitled to terminate the Agreement with immediate effect by written notice to the Customer, without prejudice to the right to compensation for damages, in the following cases:

- (a) 30 (thirty) days have elapsed since the suspension of the Services pursuant to Article 5 and the grounds for suspension have not been removed;
- (b) the Customer has committed a serious breach of the Acceptable Use Policy;
- (c) breach of the obligations set out in Articles 3.3 (Customer Content), 3.5 (Use Restrictions), 8 (Intellectual Property), 9 (Confidentiality), 11 (Indemnification), 12 (Processing of Personal Data), 13 (International Sanctions and Export Controls), as well as of the obligations under the DPA, where applicable;
- (d) the Customer is subject to judicial liquidation or equivalent proceedings under applicable law;
- (e) a final decision of the competent judicial or administrative authority prevents the continuation of the Services.

7. EFFECTS OF TERMINATION

7.1. General Provisions

Upon termination of the Subscription, for any reason whatsoever:

- (a) the rights of access to and use of the Services granted to the Customer shall expire, without prejudice to Article 7.2;
- (b) the Customer remains obliged to pay all Fees accrued up to the date of termination and, where applicable, for the entire residual period of the Subscription pursuant to the Order, without prejudice to the rights provided for by the law applicable to the Customer.

Where the Services have been purchased through a commercial partner, the effects of termination on the end Customer are governed by the agreement between the end Customer and the commercial partner.

7.2. Retrieval and deletion of the Customer Content

The Customer is obliged to export its Customer Content before the expiry of the Subscription.

Unless a Migration Period applies pursuant to Article 6.3.1, and unless the Agreement is terminated by Cubbit for the Customer's default pursuant to Article 6.4, for a period of 30 (thirty) days from the date of termination: (i) Cubbit shall not take any measure to remove Customer Content from its systems; and (ii) Cubbit shall allow the Customer to recover its Customer Content through the Services' API or the web console, provided that the Customer has paid all certain and due amounts pursuant to the Agreement. Where completion of the export within that period is technically not feasible, Cubbit shall grant an extension to the extent necessary, up to a total maximum duration of seven months; any further extension shall be subject to written agreement between the Parties.

Upon expiry of the recovery period or the applicable Migration Period, Cubbit shall delete Customer Content definitively and irreversibly, including any backups, without undue delay and in any event within 30 (thirty) days, without prejudice to retention obligations provided for by applicable law or by a binding order of the competent authority. Where the Agreement is terminated by Cubbit for the Customer's default pursuant to Article 6.4, Cubbit may delete Customer Content immediately upon termination.

The provisions of this Agreement shall apply to any use of the Services following the date of termination and the Customer shall be charged the applicable Fees pursuant to Article 4.

The technical methods of export, the supported formats and any limitations are described in the Documentation.

7.3. Survival

Termination of this Agreement shall not affect the provisions which by their nature are intended to produce effects thereafter, including 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); 12 (Processing of Personal Data); 13 (International Sanctions and Export Controls); 14 (General Provisions); 15 (Governing Law, Dispute Resolution).

8. INTELLECTUAL PROPERTY

8.1. Ownership of Rights

Each Party retains full and exclusive ownership of its own Intellectual Property Rights. The Agreement does not transfer to the Customer any right in the Services or in Cubbit's Intellectual Property Rights, save for the limited licences expressly provided for in the Agreement.

8.2. Licence in Customer Content

The Customer grants Cubbit a limited, non-exclusive and revocable licence in Customer Content, to the extent strictly necessary for the provision of the Services. That licence extends to Cubbit's sub-contractors within the limits of the activities carried out by them on Cubbit's behalf.

8.3. Feedback

The Customer grants Cubbit a royalty-free, non-exclusive, irrevocable and territorially unlimited licence to use, modify and incorporate into the Services any Feedback communicated by the Customer, without any obligation of compensation or attribution.

8.4. Aggregated and Anonymised Data

Cubbit may collect, process and use aggregated and anonymised data derived from use of the Services, for the purposes of improvement, development, statistical analysis and benchmarking. Such data does not allow the identification of the Customer or its Authorised Users and does not constitute Customer Content.

9. CONFIDENTIALITY

9.1. Obligations

Each Party shall keep confidential the Confidential Information received from the other Party, use it solely for the purposes of performing the Agreement and not disclose it to third parties without the prior written consent of the disclosing Party.

Disclosure is however permitted to its own employees, collaborators and advisers who need access to it for the performance of the Agreement, provided that such persons are in turn bound by confidentiality obligations at least equivalent to those set out in this Article. Each Party shall in any event implement protective measures no less stringent than those applied to its own confidential information and adequate to ensure its confidentiality.

9.2. Exclusions

The obligations set out in Article 9.1 do not apply to Confidential Information that:

- (a) is or becomes part of the public domain without breach of the Agreement by the receiving Party;
- (b) was already lawfully known to the receiving Party at the time of its receipt;
- (c) was independently developed by the receiving Party without using the Confidential Information of the disclosing Party;
- (d) was lawfully obtained from a third party not bound by confidentiality obligations;
- (e) was approved for disclosure by written authorisation of the disclosing Party;
- (f) must be disclosed by operation of law or in performance of a measure of the authority, provided that the receiving Party gives prompt written notice to the disclosing Party, to allow it to adopt the appropriate protective measures.

9.3. Duration

The confidentiality obligations under this Article shall remain in force for the entire duration of the Agreement and for a period of 5 (five) years following its termination.

10. LIMITATIONS OF LIABILITY

10.1. Cubbit's Liability

Without prejudice to cases of wilful misconduct or gross negligence, Cubbit shall be liable exclusively for direct and foreseeable damage actually suffered by the Customer and directly arising from a non-performance attributable to Cubbit in the execution of the Agreement. Where Cubbit has assumed specific service levels vis-à-vis the Customer pursuant to the applicable SLA, the service credits or refunds expressly provided for therein shall constitute the Customer's exclusive remedy in relation to failure to comply with such levels.

Cubbit's total liability arising from or connected with the Agreement, with reference to one or more Orders to which the damage relates, except for the indemnification obligations under Article 11.2, may not in any event exceed the total amount of the Fees provided for the Services in relation to such Orders in the 12 (twelve) months preceding the occurrence of the event giving rise to the liability. In respect of users who use the Services free of charge, Cubbit's total liability may not exceed the amount of 100 (one hundred) euros.

10.2. Exclusion of liability

Cubbit shall in no event be liable for indirect or unforeseeable damage, including, without limitation, loss of profits, loss of earnings, loss of business opportunities, loss of goodwill or reputation, business interruption, payment of penalties or other liabilities assumed by the Customer towards third parties.

Cubbit shall further not be liable for damage or claims arising from:

- (a) improper or non-conforming use of the Services by the Customer or its Authorised Users;
- (b) breaches of laws or regulations attributable to the Customer or its Authorised Users, or arising from Customer Content;
- (c) malfunction, vulnerability or inadequacy of software, hardware or network components not provided by Cubbit, including integrations implemented by the Customer;
- (d) disclosure, loss or unauthorised use of the Customer's Credentials;
- (e) unauthorised access or third-party cyberattacks, unless they are directly attributable to a breach of the security obligations assumed by Cubbit pursuant to Article 2.2.

10.3. Beta Services

Cubbit may make available Services or features in a testing and evaluation phase (the "Beta Services"). Beta Services are provided as is, without any guarantee of functioning, availability or security. Their use is voluntary and at the Customer's sole risk.

Use of Beta Services does not give rise to any liability on the part of Cubbit, which reserves the right to modify or discontinue them at any time without notice.

A Customer using Beta Services accepts that it may be contacted by Cubbit for the purpose of collecting Feedback and undertakes not to disclose to third parties any information relating to Beta Services without Cubbit's written consent.

10.4. Force Majeure

Without prejudice to the obligation to pay the Fees, neither Party shall be liable for non-performance of or delay in performing its obligations where this arises from a Force Majeure event. The affected Party shall give the other Party timely notice thereof, indicating the nature, the start date and the anticipated duration of the event, and shall take steps to mitigate its effects.

Where the event continues for more than 30 (thirty) consecutive days, the unaffected Party may terminate the Agreement by written notice pursuant to Article 14.5. Termination for Force Majeure does not give rise to a right to compensation for damages. The Customer's right to a pro rata refund of the Fees paid for Services not used remains unaffected.

11. INDEMNIFICATION

11.1. Customer's Indemnification

The Customer shall indemnify and hold Cubbit harmless from any damage, loss, cost, liability or expense, including documented and reasonable legal fees, arising from third-party claims, to the extent that such claims are a consequence of:

- (a) use of the Services in breach of the Agreement, the Documentation or applicable law;
- (b) unlawfulness or non-conformity of Customer Content;
- (c) infringement of third-party intellectual property rights attributable to acts or omissions of the Customer or its Authorised Users;
- (d) breach of laws or regulations by the Customer or its Authorised Users.

This indemnification does not extend to liabilities directly attributable to Cubbit's wilful misconduct or gross negligence.

11.2. Cubbit's Indemnification

Cubbit shall indemnify and hold the Customer harmless from third-party claims based on the allegation that the Services, provided by Cubbit and used in conformity with the Agreement and the Documentation, infringe third-party Intellectual Property Rights. This indemnification shall not apply where the claim arises from:

- (a) use of the Services not in conformity with the Agreement or the Documentation;
- (b) combination or integration of the Services with products, services or components not provided by Cubbit, where the infringement would not have occurred in the absence of such combination;
- (c) specifications, configurations or instructions provided by the Customer.

In the event of a claim of infringement of Intellectual Property Rights, Cubbit may, at its own reasonable discretion: (i) obtain the rights necessary to allow the Customer continued use of the Services; (ii) provide a substantially equivalent solution not in breach; (iii) modify the Services so as to eliminate the infringement. Where such solutions are not reasonably practicable, Cubbit may suspend or cease the affected Services upon 30 (thirty) days' written notice, unless immediate action is necessary to prevent imminent damage. In such case, the Customer is entitled to a pro rata refund of the Fees paid for Services not used. This clause constitutes the exclusive remedy available to either Party in the event of third-party claims relating to infringement of Intellectual Property Rights connected with the Services.

11.3. Indemnification Procedure

The Party wishing to avail itself of the indemnification shall give the other Party timely written notice of the claim. The indemnifying Party shall assume control of the defence and any settlement. Any settlement involving admissions of liability or obligations on the part of the indemnified Party shall require the latter's prior written consent. The indemnified Party shall provide reasonable cooperation in the defence and may participate therein at its own expense.

12. PROCESSING OF PERSONAL DATA

The processing of Personal Data provided by the Customer to Cubbit for the purposes of managing the contractual relationship shall be carried out by Cubbit as data controller, in compliance with the GDPR, applicable data protection legislation and the Privacy Policy.

To the extent that, in the context of providing the Services, Cubbit processes Personal Data on behalf of the Customer, Cubbit acts as data processor, in accordance with the Customer's documented instructions and the DPA.

The Customer represents and warrants, for the entire duration of the Agreement, that it shall fulfil all obligations provided for by applicable data protection legislation in relation to Personal Data processed through the Services, including identifying an appropriate legal basis for the processing and fulfilling the information obligations towards data subjects.

Cubbit processes Personal Data solely for purposes strictly connected with the performance of the Agreement and for the period necessary for the provision of the Services. In the event of conflict, the DPA shall prevail over the Agreement in respect of all aspects relating to the processing of Personal Data.

Where the Services have been purchased through a commercial partner, the processing of Personal Data of the partner's end customers by Cubbit shall occur in the capacity of sub-processor, in conformity with the DPA concluded between Cubbit and the commercial partner.

13. INTERNATIONAL SANCTIONS AND EXPORT CONTROLS

13.1. International Sanctions

The Customer represents and warrants that:

- (a) neither the Customer nor any of its Affiliates is included in the consolidated lists of International Sanctions, nor operates in the name of or on behalf of entities included therein;
- (b) it will not use the Services, nor will it permit the use or making available of the Services, directly or indirectly, in favour of entities included in the consolidated lists of International Sanctions, or of entities located in or operating in countries or regions to which International Sanctions apply, to the extent that such use is prohibited by the same.

The Customer warrants that equivalent obligations are complied with by its Authorised Users and shall promptly notify Cubbit of any circumstance that renders inaccurate or compromises even one of the representations and warranties set out in this Article.

Where performance of Cubbit's obligations would entail a breach of International Sanctions, Cubbit may suspend performance of the affected services and, where necessary, terminate the Agreement in whole or in part by written notice to the Customer, without any liability on Cubbit's part.

13.2. Export Controls

The Customer is responsible for compliance with applicable laws and regulations on export controls and dual-use goods, including Regulation (EU) 2021/821, in relation to the use of the Services and the transfer of Customer Content. The Customer represents and warrants that it is not subject to export restrictions that would prevent or limit the use of the Services pursuant to this Agreement.

14. GENERAL PROVISIONS

14.1. Entire Agreement and Amendments

This Agreement constitutes the entire agreement between the Parties in relation to the Services and supersedes and replaces any prior understanding reached between them on the same subject matter. The documents comprising the Agreement shall be interpreted and applied in the following order of precedence: (i) the Order; (ii) the DPA, where applicable; (iii) these Terms of Service; (iv) the Documentation; (v) the Acceptable Use Policy.

Cubbit reserves the right to amend this Agreement and the documents referred to therein, by publishing the updated version on the Cubbit Website. Amendments shall apply immediately to new Orders executed after publication.

For material amendments affecting Services already in use, Cubbit shall give notice by publishing the updated version on the Cubbit Website, no less than 30 (thirty) days before the date of publication. Without prejudice to the right to terminate pursuant to Article 6.3, continued use of the Services after the amendments enter into force shall constitute acceptance thereof, unless otherwise agreed in writing between the Parties.

14.2. Assignment

The Customer may not assign or transfer, in whole or in part, the Agreement or the rights and obligations arising therefrom, without Cubbit's prior written consent. An exception is made for assignment in favour of its own Affiliate or the entity resulting from a merger, acquisition or sale of all or a substantial part of the Customer's business, upon written notice to Cubbit.

Cubbit may assign the Agreement, in whole or in part, to any third party, including its own Affiliates and commercial partners, upon notice to the Customer. In the event of assignment, all rights and obligations arising from the Agreement shall be automatically transferred to the assignee.

Assignment by Cubbit in respect of contracts subject to public procurement legislation shall be subject to compliance with applicable provisions.

14.3. Waiver

Failure to exercise or delay in exercising a right arising from the Agreement shall not constitute a waiver thereof, nor preclude the possibility of exercising it at a later time, without prejudice to any forfeiture periods expressly provided for in the Agreement.

14.4. Severability

Should one or more provisions of this Agreement be declared invalid or ineffective, this shall not affect the validity of the remaining provisions. The Parties undertake to replace the invalid or ineffective provision with another lawful and effective provision that achieves, as far as possible, the same economic and legal purpose.

14.5. Notices

Notices under this Agreement shall be made in writing and are deemed received on the date of delivery. Notices to Cubbit shall be sent:

- (a) by PEC (certified electronic mail) to cubbit@pec.it; or
- (b) by registered letter with acknowledgement of receipt to the registered office at Via della Zecca 1, 40121 Bologna.

Notices to the Customer shall be sent to the e-mail or PEC address associated with the Account or indicated in the Order.

Notices sent by e-mail shall be deemed received on the date of dispatch to the address associated with the Account or indicated in the Order.

14.6. Commercial References

The Customer authorises Cubbit to use its name and trade mark to identify it as a Customer of the Services, for example in customer lists, on the Cubbit Website or in promotional materials. This authorisation applies exclusively to Customers who have entered into the Agreement directly with Cubbit. Cubbit shall comply with any guidelines communicated by the Customer relating to the use of its distinctive signs and shall cease such use upon the Customer's written request. This authorisation does not entail any transfer of rights in the Customer's trade mark.

14.7. Language of the Agreement

This Agreement is drawn up in Italian. Cubbit makes available an English translation on the Cubbit Website. In the event of conflict between the two versions, the Italian version shall prevail.

15. GOVERNING LAW, DISPUTE RESOLUTION

15.1. Governing law

This Agreement is governed by Italian law. Where the Customer is a Consumer resident in the European Union, this clause does not affect the protection provided by the mandatory provisions of the law of the Customer's country of residence.

15.2. Amicable resolution

Before bringing proceedings before a judicial authority, each Party shall attempt to resolve the dispute by direct contact with the other Party pursuant to Article 14.5. Where no solution is reached within 30 (thirty) days of the notice, either Party may commence formal legal proceedings.

15.3. ODR Platform

Where the Customer is a Consumer resident in the EEA, the European Commission makes available the online dispute resolution platform, accessible at <https://ec.europa.eu/consumers/odr>.

15.4. Jurisdiction

Any dispute relating to the interpretation, application or performance of this Agreement shall be submitted to the exclusive jurisdiction of the Court of Bologna. Where the Customer is a Consumer, the mandatory provisions on territorial jurisdiction under the law of the Customer's country of residence shall apply.