

# QUBITO Terms of Service

LAST UPDATED: October 20, 2017

**THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

Qubito Inc. (a Delaware corporation) ("**Qubito**", "**we**", "**us**", or "**our**") operates www.qubito.com and www.qubibox.com (collectively referred to as the "**Sites**" or to any single one as the "**Site**") and provides users (each user, "**you**") with means to download the QubiBox software application for storing and managing your personal data for any private purpose ("**QubiBox app**" or the "**App**"), purchase the QubiBox or other hardware device (the "**QubiBox**" or the "**Device**", and collectively the "**Devices**") and to access any number of related services (the "**Services**").

When you use any service available at our Site(s), download the App or other material, buy the Device(s) at the Qubito Store or other authorized online store, use the Device(s) to enable specific functions of the App, access any part of our website or use the Services, you agree that you have read, understood, and agreed to be bound by these terms and conditions (the "**Agreement**"), which form a binding agreement between you and us regarding your use of the Sites, the App, the Devices and the Services.

## 1. LICENSE TO DOWNLOAD AND USE

1.1 The Sites provide means and/or instructions for you to freely download the version of the App suitable to execute on the operating system of your computer or mobile device. Subject to the terms of this Agreement, Qubito grants you a personal, limited, non-exclusive, revocable, non-sublicensable, and non-transferable license to download and install the App in object code format, on one or more computer(s) and/or mobile device(s) solely for your own personal or internal business purposes.

1.2 This license does not grant you any rights to receive from Qubito online support, telephone assistance, software updates to the App, or any other assistance, material and information although from time to time we may provide any of the foregoing in our sole discretion. You understand that the App is an evolving product and that Qubito may notify you or require you to accept updates to the App that you have installed on your computer and/or mobile device. However, you acknowledge and agree that Qubito may update the App also without notifying you and without requesting your acceptance. You acknowledge and agree that Qubito has no obligation to correct any defects or errors with the App or provide any support services, regardless of whether you or anyone else informs Qubito of such defects or errors.

1.3 In addition to the other restrictions set forth herein, you may not reverse engineer, decompile, translate, localize or disassemble the App, which is licensed as a single product. Its component parts may not be separated for use on more than one computer or mobile device. You may not unbundle or repackage the App for distribution. You may not rent, license, assign, transfer, time share, host, lend, sublicense, distribute, or lease the App, or any access code or any licenses associated with the same for any purpose. You may not transfer this license under any circumstances without Qubito's prior written consent/approval, any such consented to or approved transferee must acknowledge, accept and agree in writing to be bound by these terms and conditions.

1.4 The App and Qubito's trademarks may not be copied, reproduced, distributed, used, posted, modified, adapted, prepare derivatives of or displayed in any form or manner on any online auction sites or any other site or material of any kind without the express prior written permission of Qubito.

1.5 The Devices may contain certain object code software ("**Firmware**") stored onto the hardware prior to delivery to you and/or object code software provided separately ("**Drivers**") for use with the Devices. Qubito grants you a personal, non-exclusive, non-sublicensable, non-assignable and non-transferable license to use the Firmware and the Drivers solely as part of your use of the Devices and in accordance with these terms and conditions. You may use the Firmware only as originally deployed onto the Devices and you may not separate the Firmware from the remainder of Devices or use it on another device. You may not distribute, license, sell, rent, or otherwise provide the Firmware and Drivers to third parties.

1.6 Once installed, to configure the App you must register with Qubito through the App by providing your name and email address. In registering to the App, you agree to (i) provide true, current and accurate information about yourself as required by the registration form; and (ii) promptly inform Qubito of any changes to the data you provided during the registration step.

## 2. SECURITY FEATURES

2.1 The Qubito Software and Devices are designed to support the secure management of your private digital information through methods, functions and tools that reflect our knowledge in the field of software and hardware security. Where applicable, we provide hints and suggestions on what we know as best practice in security, but in no circumstance do we require that you follow such advice in order to continue using the App or the Devices.

2.2 The automated password generator built into the App (the "**Password Generator**") allows creating complex passwords which we believe are less likely to be guessed or cracked than the passwords generated by humans poorly equipped to both recognize and apply randomness. Still, in no event does Qubito warrant that the strings obtained by using the Password Generator cannot be guessed or cracked, or that you will be able to use them in connection with every site or third-party application.

2.3 The App may allow you to select certain types of data you wish for to store on your computer(s), and/or mobile device(s), and/or on the Devices used in combination with the App. Such data may include email account credentials, website credentials, financial and credit card information, as well as images, movies, and any files containing personal information ("**Saved Data**"). The Saved Data is stored using strong encryption and is protected using various other security measures. Still, in no event does Qubito guarantee the security, completeness, integrity or accuracy of any Saved Data or that the Saved Data will not be corrupted or lost. More generally, you acknowledge that the App, Firmware and Drivers (collectively, the "**Qubito Software**") may have bugs or security vulnerabilities and that in no event does Qubito warrant that the Qubito Software is error-free or that the Qubito Software or the Devices are free of all possible security vulnerabilities.

## 3. LINK, SYNC AND BACKUP FEATURES

3.1 When used in combination with the Device(s), the App enables you to mitigate the risk of losing or exposing the private information managed with the App by using the Device(s) as a second factor of authentication and as a hardware storage for keeping the Saved Data protected against unauthorized access and accidental loss.

3.2 Provided you have previously associated (or "**linked**") the App with at least one Device, the App will enable you to select the Saved Data which cannot be decrypted without first connecting the Device with the computer or mobile device running the App and then confirming the instruction to decrypt the information by physically operating on the Device (for example, by pressing a button).

3.3 Linking the App with a Device will enable to synchronize and backup the Saved Data stored on the Device on all the computer(s) and mobile device(s) on which the App is properly installed. After the synchronization has completed, the Saved Data stored on the computer or mobile device running the App will be in sync with the Saved Data stored on the Device, except for the files stored in the App as attachments and except for data related to the information which cannot be decrypted without first connecting and operating on the Device.

3.4 After the backup has completed, an entire copy of the Saved Data stored on the Device will be placed inside of an encrypted backup archive located in the context reserved for the App by the computer or mobile device running the App. Provided you remember the Power Password associated with the backup archive, you will be able to restore the Saved Data by linking the App with another compatible Device.

3.5 Files stored in the App as attachments are not saved in the backup archive and cannot be synced or restored.

3.6 You are solely responsible for selecting and controlling which Device(s) are linked with the App installed on each of your computer(s) and mobile device(s). Your Saved Data may not be available or restorable if: (a) you fail to follow the App's and/or the Devices' technical requirements and instructions, including upgrading the version of the App and/or of the Firmware; (b) you fully uninstall the App, including all the associated backup and personal information, or (c) you forget your Power Password.

## 4. FEEDBACK

4.1 You agree that the submission by you of any ideas, thoughts, criticisms, suggested improvements or other feedback related to Qubito, the Qubito Software or the Device(s) (collectively the "**Feedback**"), is at your own risk and that Qubito has no obligation (including without limitation any obligation of confidentiality) with respect to such Feedback.

4.2 You represent and warrant that you have all rights necessary to submit the Feedback and you hereby grant Qubito a worldwide, royalty-free, fully paid, perpetual, irrevocable license to use, reproduce, modify, translate, distribute, perform, display, import, sell, offer for sale, make, have made and otherwise exploit the Feedback in any form, media, or technology, whether now known or hereafter developed, and to allow others to do the same.

## 5. MOBILE APP STORES

5.1 You acknowledge and agree that the availability of the App may be dependent on the third party from whom you received the App license, e.g., the Apple App Store or Google Play Store ("**App Store**").

5.2 You acknowledge that this Agreement is between you and Qubito and not with the App Store. Qubito, not the App

Store, is solely responsible for the App, the content thereof, maintenance, support services, and warranty thereof, and addressing any claims relating thereto (e.g., legal compliance or intellectual property infringement).

5.3 You agree to pay all fees (if any) charged by the App Store in connection with the App.

5.4 You agree to comply with, and your license to use the App is conditioned upon your compliance with, all applicable third-party terms of agreement (e.g., the App Store's terms and policies) when using the App. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of the Agreement and will have the rights to enforce it.

## **6. TERMINATION AND SURVIVAL**

6.1 This Agreement will commence as of the date you accept it (as described in the preamble above) and remain in full force and effect while you use the Site(s) and/or the Software and/or the Product(s) and/or the Service(s), or until terminated as set forth below:

(a) This Agreement shall terminate automatically without notice or action by Qubito if you breach any material term or condition of this Agreement.

(b) You can terminate this Agreement for any reason upon sending thirty (30) days prior written notice to Qubito at the address set forth below.

6.2 Upon termination, all rights and obligations created by this Agreement will terminate, except that you will continue to be bound by those terms that would by their nature survive such termination, including without limitation those concerning intellectual property rights, disclaimers of warranties and limitations of liability; representations, warranties and indemnity obligations; and general provisions. Please note that upon termination of this Agreement you are solely responsible for the deletion of the Saved Data.

## **8. WARRANTY DISCLAIMER**

YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITES, THE QUBITO SOFTWARE, THE DEVICES OR THE SERVICES (COLLECTIVELY, THE "**QUBITO PRODUCTS**") IS AT YOUR SOLE RISK. THE QUBITO PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER. WITH RESPECT TO THE DEVICES, INCLUDING THE FIRMWARE, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED TO THE DURATION OF THE APPLICABLE EXPRESSED LIMITED WARRANTY. ALL OTHER STATUTORY AND IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, ARE DISCLAIMED. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you. The Limited Warranty gives you specific legal rights, and you may also have other rights which vary by jurisdiction.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL QUBITO OR ITS AFFILIATES BE LIABLE FOR ANY LOST DATA OR UNAUTHORIZED ACCESS TO COMPUTER SYSTEMS, DATA OR OTHER INFORMATION.

WITHOUT LIMITING THE SCOPE OF THE FOREGOING, QUBITO DOES NOT WARRANT THAT THE PRODUCT OR THE SERVICE WILL FUNCTION WITHOUT DEFECTS OR THAT THE PRODUCT OR THE SERVICE IS OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL MECHANISMS OR THAT ALL PROGRAMMING ERRORS CAN BE FOUND IN ORDER TO BE CORRECTED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND CONSISTENT WITH THIS AGREEMENT, QUBITO DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, ERRORS, OMISSIONS, COMPLETENESS, OR USEFULNESS OF THE PRODUCT, THE SERVICE, AND ANY SOFTWARE, PROCEDURE, METHOD, APPARATUS, TECHNICAL SUPPORT OR PROCESS PROVIDED TO YOU IN ASSOCIATION WITH THIS AGREEMENT. QUBITO, ITS AFFILIATES, LICENSORS, EMPLOYEES, DISTRIBUTORS AND RESELLERS DO NOT ASSUME ANY RESPONSIBILITY FOR LOSS OR DAMAGES RESULTING FROM THE USE OF THE QUBITO PRODUCTS OR ANY INFORMATION CONTAINED IN ANY DOCUMENTATION PROVIDED TO YOU.

## **9. LIMITATION OF LIABILITY**

IN NO EVENT WILL QUBITO'S AND ITS AFFILIATES', AND ITS AND THEIR SUPPLIERS', DISTRIBUTORS', RESELLERS' AND EMPLOYEES' TOTAL CUMULATIVE LIABILITY RELATING TO THIS AGREEMENT OR THE USE OF THE QUBITO PRODUCTS EXCEED THE AMOUNT PAID FOR THE QUBITO PRODUCTS. IN NO EVENT WILL QUBITO, ITS AFFILIATES, AND ITS AND THEIR SUPPLIERS, DISTRIBUTORS, RESELLERS AND EMPLOYEES BE LIABLE FOR DAMAGES IN RESPECT OF LOST

REVENUE, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF ANY OF THEM HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION, LOST BUSINESS REVENUE, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, ECONOMIC LOSS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY OR ANY CLAIM AGAINST USER BY ANY OTHER PARTY. The foregoing limitations will apply even if any warranty or remedy provided under this Agreement fails of its essential purpose. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

#### **10. INDEMNITY**

You agree to indemnify, defend and hold Qubito and its affiliates harmless from and against any third party claim, demand, cause of action, damage, loss, liability, suit, proceeding, judgment, or cost (including attorney fees), brought against Qubito, its affiliates, employees, resellers or distributors which is based on your use of the Qubito Products or the Services.

#### **11. FORCE MAJEURE**

In no event shall Qubito or our licensors be responsible or liable for any failure or delay in the performance of obligations under this Agreement arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

#### **12. OTHER TERMS**

12.1 This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of State of Delaware, United States, without giving effect to any choice of laws principles that would require the application of the laws of a different country of state. You consent to personal jurisdiction and venue in, and agree to service of process issued or authorized by, any court located in the State of Delaware.

12.2 The terms of this Agreement are personal to you, and you may not transfer, assign or delegate your right and/or duties under this Agreement to anyone else and any attempted assignment or delegation is void. Any delay or failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

12.3 The terms of this Agreement constitute the complete and exclusive agreement between you and us with respect to the subject matter hereof, and supersedes all prior oral or written understandings, communications or agreements. If any part or parts of this Agreement is found to be invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remainder of this Agreement will continue in full force and effect.

12.4 You agree that a material breach of this Agreement adversely affecting Qubito's proprietary rights in the Qubito Products would cause irreparable injury to Qubito for which monetary damages would not be an adequate remedy and that Qubito shall be entitled to equitable relief in addition to any remedies it may have hereunder or by law.

#### **13. NOTICES**

13.1 We may give notice to you by email, a posting on the Site, or other reasonable means. You must give notice to us in writing via email to support@qubito.com or as otherwise expressly provided.

13.2 You consent to receive communications from Qubito for any purposes related to this Agreement in an electronic form and agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were in writing.

#### **14. CLASS ACTION WAIVER**

WHERE PERMITTED UNDER THE APPLICABLE LAW, YOU AND QUBITO AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION. Unless both you and Qubito agree, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding.

14.1 Arbitration Agreement. If you are located in, are based in, have offices in, or do business in a jurisdiction in which this Section 14.1 is enforceable, the following mandatory arbitration provisions apply to you:

#### 14.1.1 Dispute resolution and arbitration

You and Qubito agree that any dispute, claim, or controversy between you and Qubito arising in connection with or relating in any way to this Agreement or to your relationship with Qubito as a user of the Qubito Products and Services (whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and whether the claims arise during or after the termination of the Agreement) will be determined by mandatory binding individual arbitration. Arbitration is more informal than a lawsuit in court. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. There may be more limited discovery than in court. The arbitrator must follow this agreement and can award the same damages and relief as a court (including attorney fees), except that the arbitrator may not award declaratory or injunctive relief benefiting anyone but the parties to the arbitration. This arbitration provision will survive termination of this Agreement.

#### 14.1.2 Exceptions

Notwithstanding clause (14.1.1) above, you and Qubito both agree that nothing herein will be deemed to waive, preclude, or otherwise limit either of our rights, at any time, to (1) bring an individual action in small claims court, (2) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available, (3) seek injunctive relief in a court of law, or (4) to file suit in a court of law to address intellectual property infringement claims.

#### 14.1.3 Arbitration rules

Either you or we may start arbitration proceedings. Any arbitration between you and Qubito will be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "ICC") then in force (the "ICC Rules") by one or more arbitrators appointed in accordance with the ICC Rules, as modified by this Agreement, and will be administered by the International Court of Arbitration of the ICC. Any arbitration will be conducted in the English language and unless otherwise required by a mandatory law of a member state of the European Union or any other jurisdiction, the law to be applied in any arbitration shall be the law of the State of Delaware, United States, without regard to choice or conflicts of law principles.

#### 14.1.4 Time for filing

Any arbitration must be commenced by filing a demand for arbitration within ONE (1) YEAR after the date the party asserting the claim first knows or reasonably should know of the act, omission, or default giving rise to the claim; and there shall be no right to any remedy for any claim not asserted within that time period. If applicable law prohibits a one-year limitation period for asserting claims, any claim must be asserted within the shortest time period permitted by applicable law.

#### 14.1.5 Notice; Process

A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or other courier service (signature required), or in the event that we do not have a physical address on file for you, by electronic mail ("Notice"). Qubito's address for Notice is: Qubito Inc., Attn: General Counsel, 128 Mott Street, Suite 508, New York, NY 10013, USA. The Notice must (1) describe the nature and basis of the claim or dispute; and (2) set forth the specific relief sought ("**Demand**"). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 (thirty) days after the Notice is received, you or Qubito may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Qubito shall not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. All documents and information disclosed in the course of the arbitration shall be kept strictly confidential by the recipient and shall not be used by the recipient for any purpose other than for purposes of the arbitration or the enforcement of arbitrator's decision and award and shall not be disclosed except in confidence to persons who have a need to know for such purposes or as required by applicable law. Except as required to enforce the arbitrator's decision and award, neither you nor Qubito shall make any public announcement or public comment or originate any publicity concerning the arbitration, including, but not limited to, the fact that the parties are in dispute, the existence of the arbitration, or any decision or award of the arbitrator.

#### 14.1.6 Modifications

In the event that Qubito makes any future change to this arbitration provision (other than a change to Qubito's address for Notice), you may reject any such change by sending us written notice within 30 days of the change to Qubito's address for Notice, in which case this arbitration provision, as in effect immediately prior to the amendments you reject, shall survive.

#### 14.1.7 Litigation in Court

In any circumstances where the Arbitration Agreement at Section 14.1 permits the parties to litigate in court, the parties hereby agree that the exclusive jurisdiction and venue described in Section 12 shall govern any action arising out of or related to this Agreement.

### 15. CHANGES TO THIS AGREEMENT

15.1 Should any changes be made to this Agreement by Qubito, we will make a new copy available at the Site(s) and from within the App, and will also update the "Last Updated" date of the Agreement. If any material changes are made to the Agreement, we will notify you by sending you an e-mail to the last e-mail address you provided to us. Any changes to this Agreement will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you or, thirty (30) calendar days following our posting of notice of the changes at the Site(s).

15.2 You are responsible for updating your email address with us. If the last e-mail address that you provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will constitute effective notice of the changes described in the notice.

15.3 If you do not agree to any change(s) after receiving notice of such change(s), you shall immediately stop using the Qubito Products and Services.

### 16. EXPORT CONTROL AND PROHIBITED USE

16.1 You may not use, export, import, or transfer the Qubito Products and Services except as authorized by U.S. law, the laws of the jurisdiction in which you obtained them, and any other applicable laws. In particular, but without limitation, the Qubito Products may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List.

16.2 By using the Qubito Products and Services, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

16.3 You will not use the Qubito Products and Services for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

16.4 You acknowledge and agree that products, services or technology provided by Qubito are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer the Qubito products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.