QUBOLE TERMS OF SERVICE

Last Updated: September 17, 2019

Subject to the applicable Service Order entered into between the Parties or accepted by Customer, and in consideration of the mutual undertakings herein contained, the Parties hereby agree as follows:

1. **Definitions**

1.1. "**Affiliate**" means with respect to a Party, any entity which (i) is controlled by, (ii) controls, or (iii) is under common control with such Party, where the term "control" means the ownership, directly or indirectly, of more than fifty percent (50%) of the shares entitled to vote for the election of directors.

1.2. "**Agreement**" means these Qubole Terms of Service and all Service Orders which incorporate these Qubole Terms of Service, and all attachments thereto or agreements incorporated by reference therein.

1.3. "**Applicable Data Protection Law**" means, where Customer (acting as data controller) is established in an European Economic Area ("**EEA**") member state or where Users access the Service from an EEA member state, the EU Regulation 2016/679 General Data Protection Regulation ("**GDPR**").

1.4. "**Cloud Provider**" means the applicable third-party hosting provider which Customer has separately contracted with which stores Customer's data pursuant to the agreement between Customer and such Cloud Provider (such as Amazon Web Services, Google Cloud Platform, Microsoft Azure, or such other pre-approved platform, as applicable).

1.5. "**Customer**" means a Party that has entered into a Service Order for the provision of the Service by Qubole which incorporates this Agreement, or which has otherwise executed this Agreement in writing or via the Site.

1.6. "**Customer Data**" means any data input into, processed by, and/or stored by the Service by or for Customer or Customer's Users.

1.7. "**Implementation Services**" means any services performed by Qubole to configure and rollout the Service to Customer, as described in an applicable Service Order.

1.8. "**Intellectual Property Rights**" means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, moral rights know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.9. "**Materials**" means the visual interfaces, graphics, design, compilation, information, computer code (including source code or object code), products, software, services, and all other elements of the Service provided by Qubole.

1.10. "**Party**" means Customer or Qubole as a party to this Agreement and "**Parties**" means Customer and Qubole collectively.

1.11. "**Quantum**" means Qubole's proprietary serverless SQL engine that allows users to query data directly from cloud storage without setting up infrastructure or managing clusters.

1.12. "**Qubole**" means Qubole, Inc. and its Affiliates.

1.13. "**Service**" means the online and hosted services, including downloadable software applications APIs, and websites, provided by Qubole through the Site or otherwise.

1.14. "**Service Order**" means an online or written order for the Service that is mutually agreed between the Parties, which incorporates this Agreement by reference.

1.15. "**Site**" means the Qubole website located at www.qubole.com.

1.16. "**User**" means an employee, advisor, or agent of Customer that has been assigned a unique username-password combination to access and use the Service on Customer's behalf.

2. Scope of Service

2.1. <u>Accounts and Registration</u>. To access most features of the Service, Customer must register for a Qubole account (**"Account"**). Customer agrees that the information it provides to Qubole is and will be accurate and up-to-date at all times. Except for a breach of Qubole's obligations hereunder or acts by Qubole, Customer is solely responsible for maintaining the confidentiality of its Account and passwords of its Users, and Customer agrees to accept responsibility for all activities that occur under its Account. If Customer has reason to believe that its Customer Account is no longer secure, then Customer agrees to notify Qubole as soon as possible at support@qubole.com.

2.2. <u>Updates to Service</u>. Qubole may develop and provide updates, upgrades, enhancements, bug fixes and workarounds for the Service on a regular basis ("**Updates**"). Updates are deemed to be a part of the Service and are included at no additional charge. Qubole distributes its security related patches, bug fixes and other maintenance to the Service through the Updates. Notwithstanding anything to the contrary in this Agreement, in the event Customer does not implement the latest Update released by Qubole in the use of the Service, Qubole (a) disclaims any representation and warranty in this Agreement or any Service Order, Schedule, Exhibit or Addendum hereto that (i) the Service complies with industry standard security practices with respect to the protection of Customer Data, or (ii) the Service maintains appropriate technical measures for protection of the security of Customer Data (including protection against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Customer Data) and (b) disclaims any guarantees regarding system availability or support services.

3. Invoicing and Payment

Access to the Service or to certain features of the Service may now or in the future require the payment of fees such as subscription fees ("**Fees**"). Fees shall be set forth on a Service Order agreed between the Parties which describes such Fees. Qubole will charge Fees in US dollars or such other method specified in the Service Order. Except as otherwise provided herein, all Fees are non-refundable. Qubole may add features to the Service on a going forward basis at any time and may charge additional Fees separately for such additional features if Customer elects to use such features. Qubole reserves the right to change the Fees charged for any subscription upon the renewal of such subscription and in any event not by more than the Consumer Price Index from year to year. Qubole will invoice Customer in accordance with the relevant Service Order. Unless otherwise stated in the Service Order, invoiced charges are due thirty (30) days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information and notifying Qubole of any changes to such information. If Customer's payment method fails or its accounts are past due, (a) Customer agrees to pay all amounts due upon demand by Qubole, (b) Qubole may collect Fees owed using other collection mechanisms (including charging other payment methods Customer may have on file with Qubole), (c) Qubole reserves the right to either suspend or terminate Customer's Account or access to the Service, and/or (d) Customer agrees to pay a late fee of one and one half percent (1.5%) per month, or the maximum charge permitted by law, whichever is less. In the event that Customer fails to pay undisputed overdue Fees, Qubole reserves to right to pursue all legal remedies available to Qubole in order to collect such Fees, including, but not limited to referring Customer invoices to a third party for collection. Qubole shall not exercise its rights under the foregoing two sentences with respect to those Fees that are under reasonable and good faith dispute and for which Customer is cooperating diligently to resolve the dispute.

Qubole shall not be responsible for any fees and charges incurred by Customer from its Cloud Providers, including any data transfer costs incurred by Customer's Cloud Provider for any Customer Data transferred from one Cloud Provider region to another in connection with Quantum. It will be Customer's responsibility to enable Quantum only if the Customer Data resides in the same Cloud Provider region in which Quantum is provided. The list of Cloud Provider regions and environments where Quantum is available is located at https://docs.qubole.com/en/latest/user-guide/billing/.

4. Licenses

4.1. <u>License from Qubole to Customer</u>. Subject to this Agreement, Qubole grants to Customer a worldwide, non-exclusive, non-transferable, terminable license to use the Service

4.2. <u>Customer Data</u>. If Customer provides any Customer Data for processing through the Service or hosts any application ("**Customer Application**") within the Service, then Customer grants to Qubole a worldwide, non-exclusive, royalty-free license, for the duration of this Agreement, to such Customer Data and Customer Applications for the sole purpose of providing the Service to Customer in accordance with this Agreement and Qubole's Privacy Policy located at https://www.qubole.com/privacy-policy (the "**Privacy Policy**"). Qubole shall not, now or in the future, sell any Customer Data to any third party. Customer is solely responsible for storing and maintaining backups and copies of all Customer Data and Customer Applications, each of which are stored within Customer's applicable Cloud Provider. Other than in connection with Quantum, Qubole does not and is not responsible for storing any Customer Data or Customer Applications and disclaims all liability in connection with any claims that the Customer Data or Customer Applications have been lost, deleted, corrupted, or otherwise rendered unusable. To the extent Quantum is used by the Customer, Customer grants Qubole access to read Customer Data into one or more Qubole managed cloud clusters for the sole purpose of processing Customer's workloads.

4.3. <u>Customer Reference</u>. Customer agrees that Qubole may use Customer's name and logo on the website located at www.qubole.com and for the purpose of marketing the Service, and to identify Customer as a customer of Qubole in a press release. Customer agrees to do a Case Study.

5. Confidentiality

5.1. <u>Definition</u>. As used herein, "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or written, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information shall include the Customer Data; Qubole's Confidential Information shall include the Service; and Confidential Information of each Party shall include the terms and conditions of this Agreement and all Service Orders, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party.

5.2. <u>Exclusions</u>. However, Confidential Information (other than Customer Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party as evidenced by the records of the Receiving Party.

5.3. <u>Protection of Confidential Information</u>. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall protect the Disclosing Party's Confidential Information by using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), and shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

5.4. <u>Compelled Disclosure</u>. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

5.5. <u>No License</u>. Except as expressly set forth herein, no license or other rights to Confidential Information are granted or implied hereby by either Party.

6. Security and Privacy

6.1. <u>Data Security and Disaster Recovery Plan</u>. Qubole shall at all times comply with industry standard security practices with respect to the protection of Customer Data. Qubole shall implement and maintain a disaster recovery and business continuity plan to be implemented in the case of a severe or chronic outage of the Service or otherwise in the event of an interruption of its operations or the Service. Qubole shall conduct at least annually a SOC 2 Type 2 audit of its information security programs and provide the findings of such audit to Customer upon request. To the extent applicable, Qubole will certify to and comply with the Privacy Shield Framework Privacy Principles designed by the U.S. Department of Commerce and European Commission (as may be amended from time to time).

6.2. <u>Privacy Policy</u>. Please read the Qubole Privacy Policy carefully for information relating to our collection, use, and disclosure of Customer's personal information. The Qubole Privacy Policy is hereby incorporated by reference into, and made a part of, this Agreement.

6.3. <u>Data Processing Addendum</u>. To the extent Customer Data constitutes Personal Data, Customer and Qubole hereby agree that Customer shall be deemed to be the data controller and Qubole shall be deemed to be the data processor as those terms are understood under the Applicable Data Protection Law. Unless otherwise specifically agreed to by Qubole, Customer Data may be processed by Qubole or its respective authorized third-party service providers in the United States, the EEA or other locations around the world. Under no circumstances will Qubole be deemed a data controller with respect to Qubole Data under Applicable Data Protection Law or any relevant law or regulation of any Member State as defined in Applicable Data Protection Law. If Customer Data is subject to the Applicable Data Protection Laws, then Customer agrees to execute the Qubole Data Protection Addendum ("**DPA**"), available for download at https://www.qubole.com/products/trust/general-data-protection-regulation-gdpr/, and to send the signed DPA to privacy-dpa@qubole.com. In the event that Customer has executed the DPA, then, upon receipt of the executed DPA, Qubole shall process any applicable Customer Data in accordance with the terms of the DPA, and the DPA shall control with respect to any conflict between this Agreement and the DPA.

7. ACCEPTABLE USE

BY USING THE SERVICE CUSTOMER AGREES NOT TO:

7.1. use the Service for any illegal purpose, or in violation of any local, state, national, or international law, or otherwise to engage in or promote harmful, offensive, inappropriate, fraudulent, or deceptive activities;

7.2. violate, or encourage others to violate, the rights of third parties;

7.3. import or collect any Customer Data or other content that is unlawful, defamatory, libelous, or invasive of privacy through Customer's Customer Applications or otherwise;

7.4. sell, sublicense, rent, lease, or otherwise transfer the access granted herein to the Service or any Materials other than to Affiliates, including on a time-share or service bureau basis, or copy, modify or distribute any portion of the Service;

7.5. use or apply, directly or indirectly, the Service in any manner competitive with the business of Qubole.

7.6. use the Service to violate the security or integrity of, or otherwise abuse, or attempt to gain access to any application, computing device, system or network (each a "**System**") of any party, including those Systems that connect to the Service, except as required to access the Service as provided hereunder;

7.7. use the Service to distribute or facilitate the sending of unsolicited mass email or other messages, promotions or solicitations (e.g., "spam"), including advertising or other announcements of any kind;

7.8. disassemble, decompile, reverse engineer or otherwise attempt to discover the source code of the Service or any part thereof, except to the extent that such activity is expressly permitted by applicable law;

7.9. intentionally interfere with or damaging operation of the Service or any user's enjoyment of it, including by uploading or otherwise disseminating viruses or other malicious code; or

7.10. permit or authorize a third party to do any of the foregoing.

8. Term; Termination; Discontinuation and Modification of the Service.

8.1. Term. This Agreement commences on the start date specified in the applicable Service Order and shall continue in full force and effect until all Service Orders entered into in accordance with this Agreement have expired or been terminated (the "**Term**"). The term of the subscription under each Service Order shall be as set forth in the applicable Service Order.

8.2. Termination for Cause. A Party may terminate this Agreement for cause: (i) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, Customer shall have no obligation to pay for any Fees covering the remainder of the term of all subscriptions after the effective date of termination. Unless otherwise stated in the applicable Service Order, upon any termination for cause by Qubole, Customer shall pay any unpaid Fees covering the remainder of the term of all Service Orders after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any Fees payable to Qubole for the period prior to the effective date of termination.

8.3. Termination for Convenience. Customer may terminate this Agreement at any time, for reason or no reason, upon thirty (30) days prior written notice to Qubole. Unless otherwise set forth in an applicable Service Order, if Customer terminates its Account, Customer shall not be entitled to any refund and shall remain obligated to pay, as liquidated damages and not as a penalty, all outstanding Fees and charges, if any, not prepaid and owed relating to Customer's use of the Service at the time of such termination for the remainder of the Term under the applicable Service Order.

8.4. Effect of Termination. Upon expiration or termination of this Agreement, (i) Customer's and Users' right to access and use the Service shall immediately terminate, (ii) Customer and its Users shall immediately cease all use of the Service, and (iii) each party shall return or destroy (at the other party's election) and make no further use of any Confidential Information, materials, or other items (and all copies thereof) belonging to the other party.

8.5. Modification of the Service. Qubole reserves the right to make non-material modifications to the Service at any time without notice to Customer, provided that such changes do not materially reduce the functionality of the Service. We will have no liability whatsoever on account of any such non-material change to the Service.

9. Ownership; Proprietary Rights

The Service is owned and operated by Qubole. The Service and the Materials are protected by all relevant intellectual property and proprietary rights and applicable laws. Except for any Customer Data or Customer Applications, all Materials contained in the Service are the property of Qubole or our third-party licensors. Except as expressly authorized by Qubole, Customer may not make use of the Materials. Qubole reserves all rights to the Materials not expressly granted in this Agreement. Customer retains copyright and any other proprietary rights it holds in the Customer Data and Applications that Customer imports to the Service.

10. Indemnity

10.1. <u>Indemnification by Qubole</u>. Qubole shall defend, indemnify and hold Customer, and its respective officers, directors, employees, consultants, affiliates, subsidiaries and agents ("**Customer Indemnitees**") harmless from and against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against any Customer Indemnitee by a third party alleging that the use of the Service as contemplated hereunder infringes the patent, copyright, trade secret or intellectual property or proprietary rights of such third party, provided that Customer (a) gives written notice of the Claim to Qubole; (b) gives Qubole control of the defense and settlement of the Claim (provided that Qubole may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Qubole, at Qubole's cost, all reasonable assistance. Qubole may, at its expense: (i) procure for Customer the right to continue using the Service under the terms of this Agreement; (ii) replace or modify the Service to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the license for the infringing Service and relieve Customer of any obligation to pay Fees for the remainder of the term following the effective date of termination.

10.2. <u>Indemnification by Customer</u>. Customer shall defend, indemnify and hold Qubole and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (collectively, the "**Qubole Entities**") harmless from and against any and all Claims arising out of or in any way connected with (i) Customer's or its Users' access to, use of or alleged use of the Service in violation of Section 7 (Acceptable Use), (ii) Customer's violation of this Agreement or any representation, warranty, or agreements referenced herein, or any applicable law or regulation, or (iii) Customer's violation of any third party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; provided that Qubole (a) gives written notice of the Claim to Customer, (b) gives Customer control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless it unconditionally releases Qubole of all liability), and (c) provides to Customer, at Customer's cost, all reasonable assistance. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer, and in such case, Customer agrees to cooperate with Qubole's defense of such claim.

11. Warranty; Disclaimers

11.1. <u>Mutual Representations</u>. Each Party represents and warrants that: (i) it has the right to enter into this Agreement and any Service Order, doing so will not interfere with its' contractual obligations to any third party, and the executed Agreement or Service Order shall constitute a valid binding obligation of such party, and (ii) it will comply with all applicable law in performing its obligations under this Agreement.

11.2. <u>Qubole Representations</u>: Qubole further represents and warrants that (i) it is the creator and owner of the Service, or has the necessary licenses, rights, consents, or permissions to authorize Customer and its Users to use the Service in accordance with this Agreement, (ii) it will provide the Service in a professional and workmanlike manner, and (iii) the Service shall substantially conform to the functionality set forth herein, and any applicable documentation and specifications provided by Qubole.

11.3. <u>Customer Representations</u>. Customer further represents and warrants that (i) it is the creator and owner of the Customer Data and Customer Applications, or has the necessary rights, licenses, consents, and permissions to use and authorize Qubole and users of the Service to use and distribute the Customer Data and Customer Applications as necessary to provide the Service, including, but not limited to, Customer's applicable license with its Cloud Provider and (ii) Customer Data and Customer Applications, and the use thereof in connection with providing the Service, does not and will not infringe, violate, or misappropriate any third party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right.

11.4. <u>Use Disclaimer</u>. Qubole shall have no liability for any claims, losses, or damage caused by errors or omissions in any information provided to Qubole by Customer in connection with the Service or any actions taken by Qubole at Customer's direction. Qubole shall have no liability for any claims, losses or damages arising out of or in connection with Customer's or any User's use of any material, information or results available through any third-party products, services, software or web sites that are accessed from within the Service. The Service may also contain links to third-party websites. Such linked websites are not under our control, and we are not responsible for their content.

11.5. <u>Customer Data and Customer Application Disclaimer</u>. Except as otherwise set forth herein, Qubole expressly disclaims any and all liability in connection with Customer Data or Customer Applications. Qubole is under no obligation to edit or control Customer Data or Customer Applications that Customer imports to or makes available through the Service. Qubole reserves the right to

immediately suspend Customer's use of the Service or, at any time, to remove any Customer Data or Customer Applications, with concurrent notice (and provided that Qubole shall endeavor to provide prior notice when possible or permitted), in instances where failure to immediately suspend such access or remove such Customer Data or Customer Applications would violate applicable law, or cause a material and incurable harm to the rights of a third party or Qubole.

11.6. GENERAL DISCLAIMER. EXCEPT AS PROVIDED IN THIS SECTION 11, THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS SECTION 11, THE QUBOLE ENTITIES SPECIFICALLY (BUT WITHOUT LIMITATION) DISCLAIM (i) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT; AND (ii) ANY WARRANTIES ARISING OUT OF COURSE-OF-DEALING, USAGE, OR TRADE. CUSTOMER ASSUMES ALL RISK FOR ALL DAMAGES THAT MAY RESULT FROM CUSTOMER'S USE OF OR ACCESS TO THE SERVICE.

11.7. No Sensitive Use. Customer acknowledges that the Service is not designed, intended, or authorized to process sensitive information or data, including, but not limited to, protected health information as defined under the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), or other sensitive data of Customer, a User, or a third party (collectively "**Sensitive Information**"). Customer shall not use the Service for such purposes or under such circumstances or to process or store Sensitive Information. Qubole is not aware of and has no method of detecting whether or not any Customer Data constitutes Sensitive Information. QUBOLE EXPRESSLY DISCLAIMS ANY LIABILITY IN CONNECTION WITH ITS ACCESS TO, STORAGE OF, OR PROCESSING OF ANY SENSITIVE INFORMATION. Customer shall indemnify Qubole for any claims arising from Customer breach of this Section 11.7.

11.8. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. THEREFORE, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

12. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED TE TOTAL FEES PAID TO QUBOLE BY CUSTOMER FOR ACCESS TO AND USE OF THE SERVICE DURING THE PRECEDING TWELVE (12) MONTH PERIOD.

THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF WARRANTIES OR LIMITATION OF LIABILITY SET FORTH IN THIS AGREEMENT IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY.

13. Governing Law

This Agreement shall be governed by the laws of the State of California without regard to conflict of law principles. To the extent that any lawsuit or court proceeding is permitted hereunder, Customer and Qubole agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Santa Clara County, California for the purpose of litigating all such disputes.

14. General

14.1. Entire Agreement. This Agreement, together with the Privacy Policy, the Service Order, the Exhibits, and any other agreements expressly incorporated by reference herein, as applicable, constitutes the entire and exclusive understanding and agreement between Customer and Qubole regarding Customer's use of and access to the Service and, except as expressly permitted above, may only be amended by a written agreement signed by authorized representatives of the Parties.

14.2. Assignment. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety (including all Service Orders), without consent of the other Party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.3. Aggregated Anonymous Data. Qubole may collect aggregate data about Customer's use of the Service that is non-personally identifiable with respect to Customer or any User or individual ("**Aggregated Anonymous Data**") and may use and disclose the Aggregated Anonymous Data for the purpose of providing and enhancing the Service. Aggregated Anonymous Data that is derived from Customer Data shall not be considered Customer Data for the purposes of this Agreement.

14.4. Waiver. Any waiver by a Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision hereof. All waivers shall be in writing.

14.5. Headings. Use of paragraph headers in this Agreement is for convenience only and shall not have any impact on the interpretation of particular provisions.

14.6. Severability. In the event that any part of this Agreement is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect.

14.7. Survival. Upon termination of this Agreement, any provision which, by its nature or express terms should survive, will survive such termination or expiration.

14.8. Notices. Any notices provided by Qubole under this Agreement, including those regarding modifications to this Agreement, will be given: (i) via email; or (ii) by posting to the Service. Any other notices or other communications required hereunder shall be in writing and shall be deemed given when delivered in person or when mailed, by certified or registered first class mail, postage prepaid, return receipt requested, addressed to the parties at their addresses specified in the Service Order or to such other addresses of which a party shall have notified the others in accordance with the provisions of this Section 14.8, and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b), if sent by electronic mail or facsimile (with electronic confirmation of receipt) on the recipient's next business day, (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt"

14.9. Force Majeure. Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of events beyond the reasonable control of such Party, which may include without limitation denial-of-service attacks, strikes (except by its own employees), shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from any further performance of its obligations effected by the Force Majeure Event for so long as the event continues and such Party continues to use commercially reasonable efforts to resume performance.

14.10. Compliance with Laws. Each Party agrees to comply with all applicable laws, including U.S. export laws, and regulations with respect to its activities hereunder.

14.11. Relationship Between the Parties. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the Parties. Neither Party will have the power to bind the other or to incur obligations on the other's behalf without such other Party's prior written consent.

14.12. Feedback. If Customer or Customer's Users submit suggestions, ideas, comments, questions, or post any information through the Service ("**Feedback**"), Customer grants Qubole and its Affiliates a worldwide, non-exclusive, royalty-free, perpetual, and irrevocable right to use (and full right to sublicense), reproduce, modify, adapt, publish, translate, create derivative works from, distribute, transmit, and display such Feedback in any form.

14.13. Equitable Relief. Each Party acknowledges that a breach by the other Party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching Party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching Party may institute an action to enjoin the breaching Party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a Party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, specific performance or other equitable relief to prevent the violation or threatened violation of the other party's obligations hereunder, in addition to any other relief to which the non-breaching Party may be entitled at law or in equity.

14.14. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the signatories and are not intended to benefit any third party.