



# QT9 Software Customer Terms of Service

## PLEASE READ THESE CUSTOMER TERMS OF SERVICE CAREFULLY

Last Modified: January 26, 2024

Our Customer Terms of Service is a Software License (“Agreement”) made between QT9 Software, Inc. (“QT9” or “we”), and the entity identified in the Order Form (“you,” or “your,” or “customer”) with respect to the web-based QT9 licensed product(s) identified in the Order Form (“Software”). The Agreement governs your right to use the Software and QT9’s obligations to you. You accept this Agreement by electronically signing your Order Form. The terms of the Data Processing Agreement (“DPA”) linked below are hereby incorporated by reference and will apply to you to the extent that any Customer Data includes personal data.

### List of Sections

1. Software Subscription
2. Use Restrictions
3. User Information and Data
4. Your Security Measures
5. Support
6. License Fees
7. Term and Termination
8. Limited Warranty and Disclaimer
9. Limitation of Liability
10. Indemnification
11. Governing Law and Venue
12. Miscellaneous

#### **1. Software Subscription.**

Subject to the terms and conditions of this Agreement, QT9 grants you a nonexclusive, nontransferable, right for the number of authorized employees, contractors, and consultants (collectively “Users”) you have paid for to concurrently access, run, execute and display the Software through specified Web browsers solely for your internal purposes for the term of the Software license (“Software Subscription”) shown in your Order Form (defined below). You will issue each User a user name and password required to use the Software. The Software object code will be accessible via web browser or at another designated website or IP address. You acknowledge that QT9 owns all rights in the Software. You agree

to use a reasonable degree of care to protect the confidentiality of the Software. All rights not expressly granted to you are reserved by QT9.

## **2. Use Restrictions.**

You may not: (i) permit access to or otherwise make the Software available to anyone other than Users; (ii) use the Software for someone else's benefit; (iii) copy the Software; (iv) modify the Software or make derivative works based on the Software; (v) create Internet links to the Software or frame or mirror any screen display from the Software on any other server or wireless or Internet-based device; or (vi) reverse engineer, decompile, disassemble or otherwise derive source code from the object code. Each User's right to use the Software cannot be shared with or used by anyone else. You may use the Software only for your internal business purposes and may not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful material, including material harmful to children or that which violates privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (iv) interfere with or disrupt the integrity or performance of the Software; or (v) attempt to gain unauthorized access to the Software.

## **3. User Information and Data.**

You own all of the data, information, and material provided or submitted by you and the Users in the course of using the Software (collectively, "Customer Data"). QT9 takes commercially reasonable measures to safeguard Customer Data and keep it confidential. Customer Data is accessed through a Web browser and stored in a SQL server. You have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and right to use all the Customer Data.

QT9 is not responsible or liable for the deletion, correction, destruction, damage, or loss of any Customer Data resulting from (a) Customer requests to QT9 to modify Customer Data for Customer or (b) any third-party actions, e.g. Customer Data manipulation by a Customer contractor or hacker.

So long as you are not in breach of this Agreement when it terminates, all Customer Data will be exported and returned to you within 30 days of termination. However, QT9 reserves the right to deny access to Customer Data after notice to you if you materially breach this Agreement. In the event of such a breach, Customer Data will be subject to the QT9 inactive data policy and will be deleted if the breach is not corrected within 90 days.

QT9 gathers aggregated Software use data for its own internal use in order to benchmark user performance and inform support decisions. Customer Data is not part of the data gathered by QT9. To the extent that you input any personal data (e.g., employee names, email addresses, and the like) into the Software, that personal data will be subject to the DPA which is a part of this Agreement. You can review the DPA [here](#).

## **4. Your Security Measures.**

You are responsible for what your Users do with the Software. You must comply with all applicable local, state, federal and foreign, laws, treaties, and regulations in connection with using the Software.

You must: (i) immediately notify QT9 of any unauthorized use of any User password or account or any other known or suspected breach of security; and (ii) not permit Users to impersonate any third party or otherwise provide false identity information to gain access to or use the Software.

## **5. Support.**

The Software includes extensive help screens and email support request features to communicate directly with QT9. QT9 will provide telephone support to assist You with the Software capabilities, functionality, and characteristics as described in the specifications and provide basic problem resolution assistance as required. This assistance does not cover training or consulting services.

For North and South America, remote Software support is provided from 8:00 a.m. through 5:00 p.m., Central Standard Time, Monday through Friday, excluding QT9 holidays. You may access technical support: directly through the Software's onscreen support request feature, by calling US toll-free at **1-866-913-5022** or **(630) 892-5022**, or by e-mailing [support@qt9software.com](mailto:support@qt9software.com).

For Europe and Africa, remote Software support is provided from 8:00 a.m. through 5:00 p.m., UTC Time, Monday through Friday, excluding QT9 holidays. You may access technical support: directly through the Software's onscreen support request feature, by calling (00353) 646 656 594, or by e-mailing [support@qt9software.com](mailto:support@qt9software.com).

The Software has the following security and recovery features: (a) SSL Certificate – 256-bit encrypted certificate provided for secure data transfer; (b) Disaster Recovery – multiple daily backups of site data and files to a secondary web server for complete failover capability; (c) 99.9% Uptime – our servers are leased in 24/7 data centers that guarantee 99.9% uptime, excluding scheduled downtime; (d) Scheduled Downtime – you will be notified of all scheduled downtime for server maintenance via email and/or new feeds into web subscription software interface; and (e) Antivirus – industry standard antivirus software runs on all servers hosting the Software.

## **6. License Fees.**

QT9 will provide an Order Form to you that displays the details about the Software Subscription you have requested, including the subscription term, the authorized number of concurrent Users, the license fee ("Subscription Fee"), and any additional service fees. The Subscription Fee will remain fixed during the initial Software Subscription term unless you upgrade products, subscribe to additional products, or otherwise change your Order.

QT9 will invoice you in advance of your Software Subscription term, and each subsequent renewal term, and other times during the Software Subscription term when fees are payable. All amounts invoiced are due and payable within 30 days from the date of the invoice, unless otherwise specified in the Order Form or invoice.

The Subscription Fee may increase annually when you renew your Software Subscription. If the increase applies to you, QT9 will notify you at least 45 days in advance of your renewal date and the increased fees will apply at the start of your next renewal term. QT9 will issue a renewal invoice to you at the new Subscription Fee and the invoice will be due and payable by the date specified on the invoice.

You are responsible to determine and pay all taxes of any kind (excluding QT9'S income tax), including any new taxes implemented during the term of this Agreement, which result from this Agreement, including but not limited to the use of the Software or any service provided.

You agree to pay interest on any past due balance at the rate of 1.5% per month, or portion of a month, until fully paid.

You agree to pay QT9 all expenses of collection and enforcement of this Agreement incurred by QT9, including reasonable attorneys' fees and costs.

For North and South America, all payment obligations are in US Dollars. For Europe and Africa, all payment obligations are in Euros. Payments cannot be canceled, and all fees paid are non-refundable. If this Agreement is terminated early, you will not be entitled to a prorated refund of any license fee.

## **7. Term and Termination.**

This Agreement and the initial 12-month Software Subscription term begin on the date set forth in your Order Form. The initial term of the Agreement is 12 months, and it will automatically renew for successive 12-month terms unless it is terminated according to this Section.

- You may terminate this Agreement at any time with 30 days' written notice to QT9.
- If any Subscription Fee is not paid by the due date specified on the invoice, QT9 reserves the right to terminate your access to the Software. QT9 may also terminate this Agreement upon notice if payment is not received by the date specified on the invoice.
- If QT9 has notified you of an increase to your annual Subscription Fee and you do not want to renew at the increased Subscription Fee, you may terminate your Software Subscription by giving written notice to QT9. Your Software Subscription will be terminated and your access to the Software will be denied after the last day of your then-current Software license term.
- Except for non-payment of the Subscription Fee, either party may terminate this Agreement if the other party does not cure a material breach within 30 days' written notice from the non-breaching party.
- In addition to terminating for an uncured breach, QT9 may also terminate this Agreement for cause with 30 days' written notice to you if we determine your conduct in any way has or may negatively reflect on or affect us, our prospects, or our customers.

You must designate in writing where Customer Data should be sent as soon as reasonably possible after notice of termination. If no such designation is received within 30 days after termination, your Customer Data will be exported and sent to the main contact on your account and then deleted without further notice based on our data retention policy.

## **8. Limited Warranty and Disclaimer.**

QT9 represents that the software will function as described in its published documentation and that, to its knowledge, the Software does not infringe any third-party intellectual property right. QT9 MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND OFFERS THE SOFTWARE "AS IS" AND "AS AVAILABLE."

## **9. Limitation of Liability.**

NEITHER PARTY WILL BE LIABLE TO THE OTHER UNDER ANY THEORY OF LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR LIABILITY ARISING FROM VIOLATING INDEMNIFICATION, CONFIDENTIALITY, AND INTELLECTUAL PROPERTY RIGHTS OBLIGATIONS, EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNT PAID BY CUSTOMER TO QT9 UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE PARTY'S FIRST CLAIM, REGARDLESS OF THE NATURE OF THE CLAIM.

## **10. Indemnification.**

QT9 will defend, indemnify and hold you harmless from and against any third party claim that the Software infringes any intellectual property rights, provided that (i) QT9 has sole control of the defense or settlement; (ii) you promptly notify QT9 of such claim or suit and provide QT9 with all information known to you which relates to it; and (iii) you cooperate with QT9 in the settlement or defense. If all or any part of the Software is, or in QT9's opinion may become, the subject of any claim or suit for infringement of any intellectual property rights, QT9 may, at its expense do one of the following: (a) procure for you the right to use the Software; (b) replace the Software or affected part with non-infringing software; (c) modify the Software or affected part to make it non-infringing; or (d) if none of the foregoing remedies is commercially feasible, refund your current annual subscription fee. QT9 will have no obligations under this Section 10 to the extent a claim is based on: (1) the use of any version other than the current, unadulterated release, if infringement would have been avoided by the use of that release; (2) the combination, operation, or use of the Software with other third-party software, if such infringement would have been avoided in the absence of such combination, operation or use; or (3) the use of the Software in a manner not authorized by this Agreement. This Section 10 states QT9's entire obligation with respect to infringement of intellectual property rights and your exclusive remedies if an infringement claim is made.

## **11. Governing Law and Venue.**

This Agreement is governed by and construed in accordance with the laws of the State of Illinois excluding conflict of law provisions. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement or interpretation or validity thereof, shall be resolved by binding arbitration administered by ADR Systems under its Rules of Commercial Arbitration then in effect in or from Chicago before one arbitrator selected from its Commercial Panel in accordance with ADR Systems' procedures for appointment. The award rendered by the arbitrator is final and binding and may be entered into any court having proper jurisdiction thereof. The prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in enforcing this Agreement.

## **12. Miscellaneous.**

This Agreement constitutes the entire Agreement between you and QT9 about the Software and it supersedes all previous discussions, negotiations, and agreements with respect to any matter covered by this Agreement.

If any provision of this Agreement is held to be unenforceable, then each such provision will be deemed stricken from the Agreement and the remaining provisions will continue in full force and effect.

You may not assign or transfer any rights or obligations under this Agreement without prior written consent of QT9, however, QT9 may assign this Agreement and/or its ownership of the Software. This Agreement will inure to the benefit of any successor of QT9 and will not be affected by change in ownership or control of QT9.

Any notice permitted or required to be given under this Agreement will be deemed sufficient if delivered to your QT9 Customer Portal or sent by email or by national overnight carrier (like FedEx or UPS) to the party's address as shown in the Order Form, which may be changed from time to time in writing provided to the other party. All notices are effective when delivered. Failure by a party to take any action or assert any right under this Agreement will not be deemed to be a waiver of any such right in the event of a continuation or repetition of circumstances giving rise to such right.

QT9 may update and amend the terms of this Agreement from time to time and we will notify you at least 30 days before the change is to take effect. If you do not agree with the revised terms of the Agreement and wish to discontinue the use of Services of QT9, you must notify QT9 in writing before its effective date. QT9 will immediately terminate the Agreement with you and export your data as per Section 7.

**YOU ACCEPT THIS AGREEMENT BY ELECTRONICALLY SIGNING YOUR ORDER FORM.**