# Terms and Conditions

## Kubify BV

Effective from: 30 June 2020

By clicking the "I Accept" button or otherwise accepting this agreement through an ordering document that incorporates this agreement, you agree to follow and be bound by the terms and conditions of this agreement. If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to the terms and conditions of this agreement and, in such event, "Client" as used in this agreement shall refer to such entity.

## 1. General

These are the Terms and Conditions of Kubify, also trading under the name "Learning Toolbox", that apply to any offer from Kubify, order from the Client, and agreement between Kubify and the Client relating to the provision of the Services by Kubify.

Kubify provides as part of its Services a Platform for the exchange of information, documents, videos, and other multimedia content, which is accessible by Users either through a web browser or a mobile application ('App'). The App is free of charge and its use is subject to the User Conditions available on the Website and in the App.

Kubify provides the Client with a Domain that has a specified number of stacks, authors, registered users, and disk space on the Platform and that can be used by the Client in conformity with these General Terms.

Kubify's Services are targeted at organisations that wish to facilitate the communication and sharing of content between a target group of Users. Clients who intend to acquire the Services for private use, are requested to contact Kubify and notify Kubify of this fact, so that Kubify may take this into account.

## 2.     Definitions

(1) The following terms, whether in singular or plural form, have the following meanings in this document:

Account:                 the permission granted to the Client to access and use the Cloud
                         Services. A Client Account may not be shared by multiple Users.

Agreement:               any agreement between Kubify and a Client.

App:                     "Learning Toolbox" on iOS and Android

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| <u>Author</u>: | a Registered User who has the right to create, edit, and delete stacks. |
| <u>Client</u>: | a party that concludes an Agreement with Kubify regarding the Services. |
| <u>Client Data</u>: | all works and materials uploaded to, stored on, processed using or transmitted via the Services by or on behalf of the Client; and otherwise provided by the Client to Kubify in connection with the Agreement. |
| <u>Cloud Services</u>: | the Kubify software as a service offering listed and defined in the Client order. The term "Cloud Services" does not include Professional Services. |
| <u>Domain</u>: | a limited virtual space on the Platform where the Client and registered Users added to the Domain by the Client can manage stacks, users, and other aspects of the Services. |
| <u>General Terms</u>: | these Terms and Conditions of Kubify that apply to its Agreements with Clients. |
| <u>Kubify</u>: | Kubify B.V., with its registered office in Utrecht and registered with the Dutch chamber of commerce trade register under number 71637761. |
| <u>Offer</u>: | the offer provided by Kubify to the Client, which, inter alia, includes a description of the Service and the commercial terms for the provision of the Service (such as the price and the number of Users). The Offer forms an integral part of the Agreement. |
| <u>Personal Data</u>: | personal data within the meaning of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, or any subsequent or other applicable data protection law. |
| <u>Platform</u>: | online software platform owned by Kubify to which Kubify grants the Client and their Users access through the Website and the App as part of the Services the Client has ordered. |
| <u>Professional Services</u>: | means, collectively, the consulting and other support services which the Client has ordered as part of a support package. Professional Services include any deliverables described in the Offer and delivered by Kubify to the Client under the Offer. The term "Professional Services" does not include Cloud Services. |
| <u>Registered User</u>: | a User who has registered a local account through the Kubify Website. |
| <u>Services</u>: | means, collectively, both the Cloud Services and Professional Services that You have ordered. |

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| Stack: | a virtual space on the Platform, typically located within a Domain, that can hold different content and functions made available to the User through the Website and the App. |
| Subscription Period: | refers to the period of time for which the Client ordered the Cloud Services as specified in the Order. |
| Subscription Plan: | A yearly subscription for a Domain, where the price depends on a pre-set number of stacks, authors, registered users, and disk space. |
| Support Email: | support@stack.services |
| User: | an individual who accesses and/or uses the Cloud Services, whether as (i) a member of the Domain duly authorised by the Client or a Domain administrator designated by the Client, as (ii) registered user but not a member of the Domain, or as (iii) an unregistered user. |
| User Conditions: | the terms and conditions that apply to a User's use of the Cloud Services. |
| Website: | kubify.co and ltb.io, including all subdomains. |

## 3.    Applicability of General Terms

(1)  All Agreements, the Offer, and all subsequent orders by the Client shall be subject to these Terms and Conditions. Terms and conditions of the Client do not apply.

(2)  Client expressly accepts the applicability of these General Terms and any use of the Services implies that the applicability of these General Terms is accepted.

(3)  Kubify reserves the right to change the General Terms unilaterally and will inform the Client that has a current Agreement with Kubify of any future changes. The most current General Terms are available at any time on Kubify's website.

(4)  All rights granted to Kubify under (i) an Agreement, (ii) these General Terms, and (iii) any further Agreements with a Client, may also be invoked by intermediaries and other third parties that are (i) involved in the performance of the Agreement, (ii) involved in (the performance of) related Agreements, or (iii) otherwise connected to Kubify.

## 4.    Term and termination

(1)  The Client accepts entering into an Agreement in relation to the provision of the Services:

(i) either by clicking the "I Accept" button during online registration

(ii) or by signing and returning the previously sent Offer for the provision of the Services to Kubify. Returning such a signed copy of the Offer will be considered an irrevocable offer of the Client to conclude an agreement based on the terms and conditions thereof and will not constitute a binding agreement between Kubify and the Client. Kubify will only be bound by the Offer if the Offer has been countersigned for acceptance by a duly authorised person of Kubify. Upon acceptance Kubify will send the Client a signed copy of the Offer as well as the corresponding invoice.

(2) The Cloud Services under this Agreement is automatically extended for an additional Subscription Period at the end of the Subscription Period unless such Services are otherwise terminated in accordance with the terms of the Offer or this Agreement.

(3) After termination of the Agreement Kubify may, or may not, continue to provide all or part of the Services, or may provide limited access to the Services. However Kubify is under no obligation to continue providing the Services after termination of the Agreement.

## 5.    Description, access, and use of the Cloud Services

(1) The Cloud Services consist of the availability of and access to the Platform as a web-based application (i.e. through the Internet) as further described in the Offer.

(2) An Internet connection is necessary for obtaining access to the Service. Kubify is not responsible for the technical operation and maintenance of the Client's internet connection, internal network(s) and all other (information technology) systems that are required for the use of the Cloud Services. Sending data and information via the Internet and/or other telecommunications networks is the sole responsibility and risk of the Client.

(3) The Client acknowledges that the Cloud Services are provided as generic, web-based services for all customers of Kubify. Kubify therefore does not guarantee that the Cloud Services meet the specific requirements and objectives of the Customer.

(4) Upon conclusion of the Agreement, Kubify will provide the information required to access the Cloud Services.

(5) If the Agreement concluded between the Client and Kubify concerns the acquisition of a Domain, then:

(i) Kubify will provide the Client with a Domain that can hold up to and including the agreed upon number of Stacks, Authors, and Registered Users, and content using up to the agreed upon disk space. The Client may grant administrative or editing rights to selected individual Registered Users for some or all Stacks in the Domain.

(ii) The Client can upgrade to a bigger Subscription Plan with more stacks, authors, registered users, and disk space at any time. The new Subscription Plan runs from the date of the upgrade to the end of the Subscription Period of the previous Subscription Plan. The price the client has to pay for the new Subscription Plan is calculated by

dividing the remaining days in the Subscription Period by 365 and multiplying this number by the difference between the price of the new Subscription Plan and that of the previous Subscription Plan.

(iii) The Client can downgrade to a smaller Subscription Plan at any time, but is not entitled to a refund.

(iv) If the maximum number of Stacks in a Domain is reduced, for instance after a downgrade, and the Domain contains more Stacks than the new limit, Kubify may block the use of the Stacks in that Domain so that they can only be viewed and can no longer be managed or changed in any way and the Client will have to remove Stacks before new Stacks can be added. If the Client does not remove sufficient Stacks and exceeds the limit of Stacks for more than 60 days, Kubify may remove at its own discretion as many Stacks from the Domain as is necessary for the Client's Domain to comply with the Agreement.

(v) The Client can add Registered Users to the Domain up to the maximum stipulated in the Subscription Plan acquired through the Order. The Client can give some or all of these Registered Users the right to create and edit Stacks. The Client can also give some or all of these Registered Users the right to manage the Domain, for instance by adding new Registered Users or giving particular rights to Registered Users in the Domain.

(vi) A Registered User who has been authorised by the Client to create and edit Stacks can set other Users' access and editing rights to Stacks they are an Author of. There are three visibility levels for Stacks: (i) 'Private' means that the Stack can only be accessed by its Authors, (ii) 'Hidden' means that the Stack does not show up in search results, (iii) 'Public' means that the Stack shows up in the search results for Users who have the appropriate access level. There are three access levels: (i) 'restricted to the domain' means that only Registered Users can access the Stack who are a member of the Domain in which the Stack is located, (ii) 'authenticated users' means that only Registered Users who are signed into their Account can access the Stack, (iii) 'anonymous access' means that any User can access the Stack.

(vii) On termination of Agreement between the Client and Kubify, the Domain together with all its Stacks may be removed by Kubify. No back-ups will be provided to the Client.

(viii) The Client acknowledges that each Registered User must agree to User Conditions before being granted access to the Platform and the Client's Domain and/or Stack(s).

(ix) The Client is responsible for the Domain, the Stacks in the Domain, and the content in the Stacks. Kubify reserves the right to (i) block any User's access to the Platform or block access to all or part of a Domain and (ii) take any action (reasonably in accordance with the nature of a particular violation), including the termination of any and all Agreements, if there is a reasonably suspicion that there is a violation of law, the Agreement, the General Terms, or the User Conditions.

## 6.    Availability and maintenance of the platform

(1) Kubify strives, on a best-efforts basis, to provide access to the Platform 24 hours a day during 7 days a week for the duration of the Agreement with the Client.

(2) Kubify may regularly take offline the Platform or part of it, including complete Domains or specific functionalities, for maintenance. In principle, maintenance will be scheduled outside office hours (meaning between 17:00 and 09:00), but may occur during office hours if such is reasonably necessary.

(3) Kubify reserves the right to modify the Platform and the App by removing or adding features and functionalities, which may impact the Services or part of them.

(4) Kubify does not guarantee that the Platform, or its Services, or any part thereof, are faultless. The Client will inform Kubify as soon as possible of any faults or other problems with the Services via the Support E-mail. Kubify will then try to resolve the problem as quickly as possible.

## 7.     Professional Services

(1) Kubify offers the Professional Services as a complementary service to the use of the Platform and the Cloud Services.

(2) Kubify shall provide the Professional Services at the request of the Client on the basis of a best-efforts obligation.

## 8.     Prices and payment

(1) The price(s) for the Services offered are in Euros and excluding VAT and other governmental fees and taxes, unless expressly stated otherwise.

(2) Kubify may at any time change the standard price(s) for the Services offered. Any such price change will come to affect only in the following Subscription Period.

(3) Advance payment by the Client is generally requested before the Services are provided or made available to a Client (and if applicable: to the Users).

(4) If the Client is in default of any payment relating to an Agreement, Kubify is entitled to suspend (i) the Agreement with the Client, (ii) the Services, and (iii) any other Agreements with the Client or related agreements.

## 9.     Force majeure

(1) In the event of force majeure Kubify has the right to suspend any Agreements as well as the performance of any Services without Kubify being liable for any compensation, unless this would be unacceptable by standards of reasonableness and fairness under the circumstances.

(2) Force majeure is understood to mean any inadequacy which cannot be attributed to Kubify because the inadequacy is beyond the control of Kubify.

## 10.    Exclusion of warranties

(1) As far as permitted by Dutch law, Kubify provides no warranties regarding the Services, implicit or explicit, including but not limited to performance, merchantability, fitness for a particular purpose, accuracy, omissions and completeness.

(2) Information obtained from Kubify or available on the Platform do not provide and should not be understood as any warranty provided by Kubify.

## 11.    Liability and indemnity

(1) Any liability on the part of Kubify is excluded, unless such liability has arisen due to serious fault (*ernstige nalatigheid*) or gross negligence (*grove schuld*) on the part of Kubify.

(2) In so far as it is established that the aforementioned (full) exclusion of liability cannot be maintained, the amount of the compensation due by Kubify to the Client shall never exceed the net invoice value of the Services delivered to the Client during the last (financial) year.

(3) The Client indemnifies Kubify for all damages resulting from third party claims resulting from the Client's or a User's violation or non-compliance with these General Terms, the User Conditions, or an Agreement as well as against any third party claims relating to or derived from the Agreements concluded by the Client with Kubify. The indemnity also covers all damages and (legal) costs Kubify has incurred or shall incur in connection with such claims.

## 12.    Intellectual property rights

(1) Kubify (or its licensors or suppliers) are the exclusive owners of all existing and future intellectual property rights, such as copyrights, trademarks, source code and know-how that are part of the Services provided to the Client. Kubify has and shall make no claim to any and all of the Platform's content as generated by the Platform's Users and its Clients.

(2) The Client agrees that it shall only (allow the) use (of) the Services for purposes that are permitted under its Agreement with Kubify and any applicable law or regulation. Use or sharing of (a back-up of) the Services, in so far as this use or sharing would constitute a breach of the intellectual property rights reserved under article 11.1 of these General Terms, after termination of the Agreement is prohibited and constitutes a violation of Kubify's intellectual property rights.

(3) Client shall be liable for the (content of the) Domain made available to them by Kubify and all that Domain's content (including its Stacks' content), whether or not the content is generated by the Client or by any of the Users of the Client's Domain.

## 13.    Privacy policy

(1) Personal data will be processed by Kubify in accordance with its privacy policy, which can be found on the website and the mobile app.

## 14.    Other provisions

(1) If one or more provisions in these General Terms are, or become, (partially) invalid, the remaining provisions will remain in force. In such a case, Kubify and Client agree to replace the invalid part of the General Terms with valid provisions that legally, in as far as possible and with regard for the entire content and meaning of these General Terms and the Agreement, correspond best with the invalid provision(s).

(2) Any oral Agreements, including amendments or current Agreements, between the Kubify and the Client shall have no effect, unless they have been confirmed in writing.

(3) The provisions relating to liability, intellectual property and dispute resolution shall survive termination of the Agreement between Kubify and the Client.

(4) The Client is not permitted to transfer any rights or obligations related to an Agreement between the Client and Kubify to a third party without the written consent of Kubify.

(5) These General Terms, as well as all rights, obligations, offers, orders and Agreements to which these General Terms apply, are governed by Dutch law only and all disputes relating thereto shall be submitted exclusively to the competent court in Utrecht, the Netherlands.