



# End User License Agreement

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1.3 "Customer Service Data" means all content and other data submitted by you or the End User to the applicable services.

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1.5 "Developer Kits" means software developer kits or XTensions developer kits for Quark Products.

1.6 "Documentation" means the following documentation, in whatever medium provided, which accompanies the Quark Products: the user manual, any technical release notes, Readmes and other technical supporting documentation.

1.7 "End User" means the entity that uses the Quark Products covered by this License Agreement. The rights granted to End User hereunder shall extend to any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, the End User ("End User Affiliates"); provided, however, that End User shall be responsible for End User Affiliates and such companies shall agree to be bound by the terms of this License Agreement. Use of the Quark Products by End User Affiliates shall constitute the agreement and consent of such companies to be so bound.

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3.4.3 End User shall not use any of the materials or know-how contained in the Quark Developer Kits, directly or indirectly, to develop software products that are competitive with any Quark products.

3.4.4 Server Environment. End User shall not develop Integration Code that would allow end user(s) to install, access, or use the Quark Products, except Quark Products specifically designed as server-based applications, on a distributed or multi-user system, such as a local-area or wide-area network, intranet, or multi-user accessible computer, or perform any other action that would be a breach of the terms of the end-user license agreement for the Quark Product.

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## 6. Communication of License Agreement

The parties each agree to take all reasonable steps to ensure that employees, agents and all other persons under the employment, direction or control of the party abide by the terms, provisions and conditions of this License Agreement.

## 7. Term and Termination

7.1 Term. This License Agreement shall commence upon the payment of the License Fees and End User's acceptance of this License Agreement. Quark shall have no obligation to provide the products to End User for which the applicable fees have not been paid.

7.2 Termination.

7.2.1 Desktop Products and Developer Kits. Any failure to comply with the terms and conditions of this License Agreement shall result in automatic termination of this license. Upon termination of this License Agreement for any reason, End User must destroy all copies and cease Use of the Software and Documentation. Licenses granted on a subscription basis will automatically renew at the end of the applicable subscription term in accordance the process described on the platform in which you purchased your subscription Apple's auto renewable subscriptions process, or if no process is specified, by giving notice at least 30 days prior to the end of the then-current subscription term.



## 7.2.2 Enterprise Products

- a. Without prejudice to any rights that Quark or its licensors may have under this License Agreement or under applicable law, Quark may give written notice to End User of End User's material breach of any provision of this License Agreement. Material breach shall include, without limitation, failure to pay the License Fees when due, violation of Quark's intellectual property rights, use of the Quark Products or Quark Product Components contrary to the Currently Licensed Configuration or at an unauthorized location. End User shall have thirty (30) days after the date of such notice within which to remedy the breach. If End User does not remedy the breach or take significant steps to remedy the breach within such period to the reasonable satisfaction of Quark, Quark may elect to terminate this License Agreement.
- b. Quark may terminate this License Agreement immediately upon written notice, without recourse to the court, to End User if all or a substantial portion of the assets of End User are transferred to an assignee for the benefit of creditors, to a receiver or trustee in bankruptcy, or if a proceeding is commenced against End User under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days or if End User is adjudged bankrupt.
- c. End User may terminate this License Agreement at any time by giving written notice to Quark and complying with the other applicable terms and conditions of this License Agreement. In no event will Quark refund any fees paid by End User for the license of the Quark Products provided hereunder upon termination of this License Agreement, except as explicitly set forth herein, as required by applicable law or as the parties expressly agree in a writing signed by both parties.
- d. Upon any termination of this License Agreement, End User shall immediately discontinue use of the Quark Products and each Quark Product Component and shall, no later than thirty (30) days after such termination, return to Quark, or in Quark's discretion destroy, all copies of the Quark Products and all other materials and hardware provided by Quark or an Authorized Integrator; provided, however, that in the event of a material breach by Quark and termination of this License Agreement by End User, End User may continue to use the Quark Products subject to payment of all applicable License Fees until End User implements alternative software.

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8.1 Quark grants the following express limited warranties for Quark Products other than Developer Kits, which End User agrees are commercially reasonable.

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## 9. Limitation of Liability

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## 14. Miscellaneous

### 14.1 Software Transfer

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**14.2 Entire Agreement.** This License Agreement sets forth the entire agreement between the parties and supersedes any and all contemporaneous or prior proposals, agreements and representations between them, whether written or oral with respect to the subject matter hereof. Quark may make changes to this EULA from time to time by posting an updated version at the Quark website, or by providing notice to the End User. That updated EULA will apply to any renewals or new purchases made by End User. Except as expressly provided herein, this License Agreement may be changed or supplemented only by mutual agreement of the parties in writing, executed by persons with authority to enter into such License Agreements. This License Agreement may not be modified by any course of dealing or usage of trade. It is expressly agreed that the terms of this License Agreement shall supersede the terms in any purchase order or other ordering document of End User, or an Authorized Integrator or other agent.

**14.3 Waiver.** The waiver of, or failure to enforce, by either party any breach or default hereunder by the other shall not constitute the waiver of any other or subsequent or continuing breach or default.

**14.4 Enforcement and Severability.** This License Agreement is intended to be interpreted in such a manner as to render it enforceable. In the event that any court, arbitration panel, or other competent authority determines that any provision of this License Agreement is not enforceable, such provision may be modified or limited in its effect to the extent necessary to cause it to be enforceable. If any provision cannot be so modified or limited, then such provision shall be severed, and the remainder of this License Agreement shall remain in full force and effect.

**14.5 Notices.** All notices provided for in this License Agreement shall be in writing and shall be deemed effective (a) when delivered personally or (b) when delivered by express courier service (with a receipt) addressed to Quark, Legal Department, 1600 East Beltline Ave NE, Suite 210 Grand Rapids, Michigan, 49525 USA

**14.6 U.S. Government End Users.** The Quark Products and the Quark Product Components are “commercial items” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), all U.S. Government End Users acquire Quark Products with only those rights set forth herein.

**14.7 Counterparts.** This License Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



14.8 Survivability on Termination. The parties' rights and obligations under Sections 3, 7-9, 11, 13-16, and any other provisions of this License Agreement which contemplate continuing obligations of a party, shall survive termination of this License Agreement.

## 15. Governing Law/Jurisdiction/Dispute Resolution

15.1 End Users in the United States – Arbitration. Any dispute, controversy, or claim arising out of or related to this License Agreement shall be settled by arbitration by a single neutral arbitrator who is a former state or federal judge. Unless the parties agree otherwise, the arbitration shall be conducted by Judicial Arbitrator Group ("JAG") or any similar arbitration organization using retired state or federal judges if JAG is no longer in existence or is unable to conduct an arbitration in the venue selected by the parties. Venue shall be Grand Rapids, Michigan. The decision of the arbitrator shall be final, nonpeelable and binding upon the parties, and it may be entered in any court of competent jurisdiction. The arbitrator shall be bound by the laws of the state of Michigan and all rules relating to the admissibility of evidence, including, without limitation, all relevant privileges and the attorney work product doctrine. The arbitrator shall have the power to grant equitable relief including attorney's fees and costs, where applicable under law and shall not be entitled to make an award of punitive damages. The obligation of the parties to submit any dispute arising under or related to this License Agreement to arbitration as provided in this Section shall survive the expiration or earlier termination of this License Agreement.

15.2 End Users in the United States – Governing Law. Notwithstanding Section 15.1, for End Users whose principal place of business is in the United States, this License Agreement shall be governed in all respects by the laws of the State of Michigan, without regard to conflict of laws principles. As to such End Users, the U.S. District Court for the State of Michigan, or if federal jurisdiction does not exist, then the appropriate courts of the State of Michigan located in the City and County of Grand Rapids shall have sole and exclusive jurisdiction and venue over any dispute arising out of or in connection with this License Agreement, and the parties hereby submit themselves to the jurisdiction of said courts.

15.3 All other End Users – Governing Law and Arbitration. For all other End Users whose principal place of business is outside of the United States, this License Agreement shall be governed in all respects by the laws of England. Any dispute, controversy, or claim arising out of or related to this License Agreement shall be referred to and finally resolved by arbitration by the London Court of International Arbitration (LCIA) and in accordance with the LCIA rules of arbitration in force at the time of the opening of the proceedings by one arbitrator. The place of the arbitration shall be London, England. The language to be used in the arbitral proceedings

shall be English. The obligation of the parties to submit any dispute arising under or related to this License Agreement to arbitration as provided in this Section shall survive the expiration or earlier termination of this License Agreement.

15.4 Injunction – All End Users Worldwide. Quark may seek and obtain an injunction or other appropriate relief from a court to preserve or protect intellectual property rights, but no such application to a court shall in any way be permitted to stay or otherwise impede the progress of any arbitration proceeding. NOTWITHSTANDING ANYTHING IN THIS LICENSE AGREEMENT TO THE CONTRARY, QUARK AND ITS LICENSORS SHALL NOT BE PREVENTED FROM ENFORCING THEIR RESPECTIVE OR COLLECTIVE INTELLECTUAL PROPERTY RIGHTS OR REMEDIES IN ANY APPROPRIATE JURISDICTION.

15.5 Attorneys' Fees. In the event of a dispute related to this License Agreement, the prevailing party shall recover its costs and reasonable attorneys' fees in conjunction with such proceeding.

## 16. Controlling Agreement/Translations

This License Agreement is prepared and executed in the English language. The English language version shall govern the parties' relationship. Any translation of this License Agreement into any other languages shall be for convenience of reference only and shall have no legal effect, and the English language text shall in any event prevail.

Rev. 27/02/2025