

QVINE



Software as a Service (SaaS)

Agreement

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Created By:
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13755 Sunrise Valley Drive
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Herndon, VA 2017



Soar Software as a Service (SaaS) Agreement

By accessing or using the QVine Corporation Soar Software as a Service (SaaS) offering, you (Customer) signify acceptance of and agree to the terms and conditions of this agreement. The parties agree to the following:

1. SaaS Services

1.1. **Grant of Use.** Subject to all of the terms and conditions of this Agreement, and except as set forth in Section 4 (Term and Termination), during the applicable Agreement Term, QVine grants Customer a limited, worldwide, non-transferable, non-sublicensable, non-exclusive right to use the Soar SaaS offering identified in the Soar Order Form, but only in accordance with: (a) the restrictions in Section 1.4 (Restrictions), (b) any restrictions on the applicable Order Form; and (c) the number of Authorized Users and/or permitted number of Cores or Nodes (as applicable).

1.2. **Restrictions.** As a condition of this Agreement, Customer shall not (and shall not allow any third party to): (a) copy or republish the SaaS Services or Software; (b) make the SaaS offering available to any person other than authorized users; (c) use of access the SaaS offering to provide service bureau, time-sharing, or other computer hosting services to third parties; (d) decompile, disassemble, or otherwise reverse engineer the SaaS offering or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the SaaS offering or Third Party Code by any means whatsoever; (e) distribute, sell, sublicense, rent, lease or use the SaaS offering (or any portion thereof) for time sharing, hosting, service provider or like purposes; (f) remove any product identification, proprietary, copyright trademark, service mark, or other notices contained in the SaaS offering; (g) modify any part of the SaaS offering, create a derivative work of any part of the SaaS offering, or incorporate the SaaS offering into or with other software, except to the extent expressly authorized in writing by QVine; (h) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the SaaS offering; (i) utilize any equipment, device, software, or other means designed to circumvent or remove any form of Product Key or copy protection used by QVine in

connection with the SaaS offering, or use the SaaS offering together with any authorization code, Product Key, serial number, or other copy protection device not supplied by QVine; (j) use the SaaS offering to develop a product which is competitive with any QVine product offerings; (k) use unauthorized Product Keys or keycode(s) or distribute or publish keycode(s) except as may be expressly permitted by QVine in writing; (l) as applicable to User-Based licenses, enable access to the SaaS offering for a greater number of Authorized Users than the sum quantity of licenses purchased on the applicable Ordering Form(s); (m) as applicable to User-Based licenses, reassign license rights between Authorized Users so frequently as to enable a single license to be shared between multiple users; or (n) assert, nor will Customer authorize, assist or encourage any third-party to assert, against QVine or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any SaaS offering or Support and Maintenance or Professional Services you have purchased or used hereunder.

2. **Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited rights expressly provided herein, QVine has and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the SaaS offering, Deliverables, and all copies, modifications and derivative works thereof (including any changes which incorporate any of your ideas, feedback or suggestions). Customer acknowledges that Customer is obtaining only a limited right to the SaaS offering and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder no ownership rights are being conveyed to Customer under this Agreement or otherwise.

3. **Payment.** Customer shall pay all fees associated with the SaaS offering ordered and any services purchased hereunder as set forth in the applicable Order Form. All payments shall be made in

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the currency noted on the applicable Order Form within thirty (30) days of the date of the applicable electronic invoice. Except as expressly set forth herein, all fees are non-refundable once paid. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, QVine will invoice you for all applicable taxes including, but not limited to, VAT, GST, sales tax, consumption tax and service tax. If any withholding tax is required by applicable law to be paid by you in relation to payments due to QVine hereunder, Customer will provide QVine with official receipts and/or certificates from the appropriate taxing authorities to establish that any applicable taxes have been paid.

4. **Term and Termination**

4.1. **Term of Agreement.** The term of this SaaS Agreement shall begin on the Date of the Soar Order Form and shall continue until terminated by either party as outlined in this Section.

4.2. **Termination.** Either party may terminate this SaaS Agreement immediately upon a material breach by the other party that has not been cured within thirty (30) days after receipt of notice of such breach.

4.3. **Suspension for Non-Payment.** QVine reserves the right to suspend delivery of the SaaS offering if Customer fails to timely pay any undisputed amounts due to QVine under this SaaS Agreement, but only after QVine notifies Customer of such failure and such failure continues for fifteen (15) days. Suspension of the SaaS offering shall not release Customer of its payment obligations under this SaaS Agreement. Customer agrees that QVine shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the SaaS Services resulting from Customer's nonpayment.

4.4. **Suspension for Ongoing Harm.** QVine reserves the right to suspend delivery of the SaaS offering if QVine reasonably concludes that Customer or an user's use of the SaaS offering is causing immediate and ongoing harm to QVine or others. In the extraordinary case that QVine must suspend delivery of the SaaS offering, QVine shall immediately notify Customer of the suspension and the parties shall diligently attempt to resolve the issue. QVine shall not be liable to Customer or to any third party

for any liabilities, claims or expenses arising from or relating to any suspension of the SaaS offering in accordance with this Section 4.4. Nothing in this Section 4.4 will limit QVine's rights under Section 4.5 below.

4.5. **Effect of Termination.** (a) Upon termination of this Agreement or expiration of the Agreement Term, QVine shall immediately cease providing the SaaS offering and all usage rights granted under this Agreement shall terminate; (b) if QVine terminates this Agreement due to a breach by Customer, then Customer shall immediately pay to QVine all amounts then due under this Agreement and to become due during the remaining term of this Agreement, but for such termination.

4.6. **Survival.** Sections 1.4 (Restrictions), 2 (Ownership), 3 (Payment), 4 (Term and Termination), 5.4 (Disclaimer of Warranties), 7 (Limitation of Remedies; Indemnification and Damages), 9 (Export Compliance) and 10 (General) shall survive any termination or expiration of this Agreement.

5. **Warranties and Disclaimers**

5.1. **Limited Warranty.** QVine represents and warrants that it will provide the SaaS offering in a professional manner consistent with general industry standards and that the SaaS offering will perform substantially in accordance with the Documentation. For any breach of a warranty, Customer's exclusive remedy shall be as provided in Section 4, Term and Termination.

5.2. QVine warrants that the SaaS offering will perform in all material respects in accordance with the Documentation. QVine does not guarantee that the SaaS offering will be performed error-free or uninterrupted, or that QVine will correct all SaaS offering errors. Customer acknowledges that QVine does not control the transfer of data over communications facilities, including the Internet, and that the SaaS offering may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. This section sets for the sole and exclusive warranty given by QVine (expressed or implied) with respect to the subject matter of this Agreement. Neither QVine nor any of its suppliers warrant or guarantee that the operation of the SaaS offering will be uninterrupted, virus-free

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or error-free, nor shall QVine or any of its service providers be liable for unauthorized alteration, theft or destruction of Customer's or any user's data, files, or programs.

5.3. Exclusions. The above warranty shall not apply: (a) if the SaaS offering is used with hardware or software not authorized in the Documentation; (b) if any modifications are made to the SaaS offering by Customer or any third party; (c) to defects in the SaaS offering due to accident, abuse or improper use by Customer; or (d) to any Evaluation Version or other SaaS offering provided on a no charge or evaluation basis, such functionality is provided purely for reference purposes.

5.4. Mutual Warranties. Both parties each hereby warrant to the other that: (a) it has the authority to enter into the Agreement, to grant the rights granted by it under the Agreement, and to perform its obligations under the Agreement; and (b) it will comply with all applicable laws and regulations in effect during the term of the Agreement as they apply to such party's rights obligations under the Agreement.

5.5. Disclaimer of Warranties. THIS SECTION 5 IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, THE SAAS OFFERING AND ALL SERVICES ARE PROVIDED "AS IS". QVINE MAKES NO OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

6. Support and Maintenance

6.1. Assembly and Configuration. QVine will assemble and configure the SaaS offering to meet the Customer's specified requirements.

6.2. Acceptance Testing. QVine will perform acceptance testing for Customer approval to ensure the delivered SaaS offering meets the specified requirements.

6.3. Deployment. QVine will deploy the SaaS offering to the Customer specified cloud infrastructure.

6.4. Code Corrections. If during the Term of this Agreement, Customer notifies QVine of a substantial

program error with respect to the SaaS offering, or QVine has reason to believe that error exists in the SaaS offering and so notifies Customer, QVine will at its expense verify and attempt to correct such error within thirty (30) working days after the date of notification.

6.5. Operations and Monitoring. QVine will operate and monitor the SaaS offering in the host environment.

6.6. Information Assurance. QVine will ensure the SaaS offering meets the information assurance requirements of the Customer.

6.7. Service Desk. QVine will provide telephone or electronic support during business hours to assist the Customer locate and correct technical difficulties. Business hours is defined as 9:00 a.m. thru 5:00 p.m. Eastern Standard Time (EST), Monday thru Friday, except U.S. Federal holidays.

6.8. Training. QVine will provide training to the Customer on the use of the SaaS offering. This training will consist of virtual, online training classes or in-person training classes located at QVine's commercial facility.

7. Limitation of Remedies, Indemnification, and Damages.

7.1. BUT FOR: (A) EITHER PARTY'S BREACH OF SECTION 8.1 (USE OF CONFIDENTIAL INFORMATION), (B) SECTION 1.4 (RESTRICTIONS) OR SECTION 9 (EXPORT COMPLIANCE), OR (C) DAMAGES ARISING OUT CUSTOMER OBLIGATIONS UNDER SECTION 7.5, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS OR COSTS OF COVER), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

7.2. BUT FOR: (A) EITHER PARTY'S BREACH OF SECTION 8.1 (USE OF CONFIDENTIAL INFORMATION), OR (B) 1.4 (RESTRICTIONS), OR SECTION 9 (EXPORT COMPLIANCE), OR (C) DAMAGES ARISING OUT OF CUSTOMER INDEMNIFICATION OBLIGATIONS UNDER SECTION 7.5, EACH PARTY'S ENTIRE LIABILITY UNDER

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THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR OWED BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE CLAIM. IN THE CASE WHERE NO AMOUNT WAS PAID FOR THE SOFTWARE OR SERVICE GIVING RISE TO THE CLAIM, QVINE'S ENTIRE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT SHALL NOT EXCEED USD\$100.

7.3. The parties agree that the limitations specified in this Section 7 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

7.4. Indemnification by QVine. If a third party makes a claim against Customer that the SaaS offering infringes any patent, copyright or trademark, or misappropriates any trade secret, or that QVine's negligence or willful misconduct has caused bodily injury or death, QVine will defend Customer and its directors, officers and employees against the claim at QVine's expense and QVine shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by QVine, to the extent arising from the claim. QVine shall have no liability for any claim based on (a) the Customer Content, (b) modification of the SaaS offering not authorized by QVine, or (c) use of the SaaS offering other than in accordance with the Documentation and this Agreement. QVine may, at its sole option and expense, procure for Customer the right to continue use of the SaaS offering, modify the SaaS offering in a manner that does not materially impair the functionality, or terminate the Agreement Term and repay to Customer any amount paid by Customer with respect to the Agreement Term following the termination date.

7.5. Indemnification by Customer. If a third party makes a claim against QVine that the Customer Content infringes any patent, copyright or trademark, or misappropriates any trade secret, Customer shall defend QVine and its directors, officers and employees against the claim at Customer's expense and Customer shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a

written settlement agreement signed by Customer, to the extent arising from the claim.

7.6. Conditions for Indemnification. A party seeking indemnification under this section shall (a) promptly notify the other party of the claim, (b) give the other party sole control of the defense and settlement of the claim, and (c) provide, at the other party's expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim

8. Confidential Information

8.1. Use of Confidential Information. Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software (including SaaS offering), pricing, documentation or technical information provided by QVine (or its agents), performance information relating to the SaaS offering, and the terms of this Agreement shall be deemed Confidential Information of QVine without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not disclose any Confidential Information to anyone other than its affiliates, employees and consultants ("Representatives") who have a need to know and who agree in writing to keep the information confidential on terms no less restrictive than those contained in this Agreement. Both QVine and Customer will ensure that their respective Representatives comply with this Agreement and will be responsible for any unauthorized use or disclosure of Confidential Information by such Representatives. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has

become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

9. Export Compliance. Customer acknowledges that the SaaS offering is subject to United States export control and economic sanctions laws, regulations, and requirements, and to import laws, regulations, and requirements of foreign governments. Customer agrees that (1) all use, exports, and imports related to this Agreement will be in compliance with these laws and regulations and (2) Customer shall not allow any third party to export, re-export, or transfer any part of Software in violation of these laws and regulations. The foregoing obligations include but are not limited to Customer or a third party exporting, transferring, or importing the SaaS offering to: (a) to any country subject to export control embargo or economic sanctions implemented by any agency of the U.S. or foreign governments; (b) any person or entity on any of the U.S. Government's Lists of Parties of Concern (<http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>) or applicable international specially-designated parties or economic sanctions programs; (c) to any end-user for any known end use related to the proliferation of nuclear, chemical or biological weapons or missiles, without first obtaining any export license or other approval that may be required by any U.S. Government agency having jurisdiction with respect to the transaction; or (d) otherwise in violation of any

export or import laws, regulations or requirements of any United States or foreign agency or authority

10. General

10.1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. QVine may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of QVine's assets or voting securities. Customer may not assign or transfer this Agreement, in whole or in part, without QVine's written consent.

10.2. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

10.3. Governing Law; Jurisdiction and Venue. Excluding conflict of laws rules, this Agreement shall be governed by and construed under: (a) the laws of the Commonwealth of Virginia, U.S. All disputes arising out of or in relation to this Agreement shall be submitted to the exclusive jurisdiction of the courts of Fairfax County, Virginia. Nothing in this section shall restrict QVine's right to bring an action (including for example a motion for injunctive relief) against Customer in the jurisdiction where Customer place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

10.4. Attorney's Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

10.5. Notices and Reports. Any notice or report hereunder shall be in writing by mail, such notice or report shall be sent to QVine at 13755 Sunrise Valley Drive, Suite 400, Herndon, VA 20171 to the attention of "Legal Department". If to Customer, such notice or report shall be sent to the mailing or email address Customer provided in the Order Form. Notices and reports sent by mail shall be deemed given: (a) upon

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receipt if by personal delivery; (b) upon receipt if sent by certified or registered mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service. Any notices and reports sent by email shall be effective upon receipt of the same.

10.6. Amendments: Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form, including any electronic invoicing portals, vendor registration processes, or forms related to individuals being on Customer premises for Professional Services, employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

10.7. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Notwithstanding the foregoing, if Customer has entered into a separate written license agreement signed by QVine for use of the SaaS offering, the terms and conditions of such other agreement shall prevail over any conflicting terms or conditions in this Agreement.

10.8. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

10.9. Audit Rights. Upon QVine's written request, Customer shall certify in a signed writing that Customer use of the SaaS offering is in full compliance

with the terms of this Agreement (including any User-Based and Core-Based limitations) and provide a current list of Authorized Users for User-Based licenses. With reasonable prior notice, QVine may audit your use of the SaaS offering and compliance with this Agreement, software monitoring system and records, provided such audit is during regular business hours. If such inspections or audits disclose that Customer has installed, accessed or permitted access to or use of the SaaS offering in a manner that is not permitted under this Agreement, then QVine may terminate this Agreement pursuant to Section 4 and Customer is liable for the reasonable costs of the audit in addition to any other fees, damages and penalties QVine may be entitled to under this Agreement and applicable law.

10.10. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.