

# SOFTWARE AS A SERVICE AGREEMENT

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Qhero ("Us", "We", or "Our") operates qhero.com (the "Site"). Please read this Software As A Service Agreement (the "Agreement") carefully before utilizing Qhero and the features and functions made available to you ("Services"). By creating an account on the Site, you confirm your acceptance of this Agreement and it becomes a binding legal agreement between any member intending to upload data or materials onto the Site and Qhero. If you are a corporation or other entity or a minor you may be subject to further filing requirements. We encourage you to print a copy of the Agreement for your records. If you do not agree to the terms of this Agreement, you should not create an account or use the Services.

Qhero may revise and update this Agreement anytime and without notice and your continued access or use of the Site after any such changes are posted will constitute your acceptance of these changes.

## 1. Use of the Site

- 1.1. This Site and its contents (the "Content") is intended for customers of Qhero. You may not use this Site or the Content for any purpose not related to your business with Qhero. You are specifically prohibited from:
  - a. Downloading, copying, or re-transmitting any or all of the Site or the Content without, or in violation of, a written license or agreement with Qhero;
  - b. Using any data mining, robots or similar data gathering or extraction methods;
  - c. Manipulating or otherwise displaying the Site or the Content by using framing or similar navigational technology;
  - d. Registering, subscribing, unsubscribing, or attempting to register, subscribe, or unsubscribe any party for any Qhero product or service if you are not expressly authorized by such party to do so; and
  - e. Using the Site or the Content other than for its intended purpose, as determined solely in Qhero's discretion, including but not limited to, to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy) of others, and/or to publish, post, distribute or disseminate any defamatory, infringing, obscene, pornographic, sexual, indecent or unlawful material or information.
- 1.2. You may not interfere with the security of, or otherwise abuse this Site or any system resources, services or networks connected to or accessible through this Site. You may only use this Site for lawful purposes.

## 2. User Warranties

- 2.1. By uploading content to Qhero you are warranting to comply with the relevant iStock Artist Submission Agreement (can be found on [www.istockphoto.com](http://www.istockphoto.com) "iStock") including but not limited to terms like (a) you are the authorized representative of the applicable copyright owner(s) of the uploaded content; (b) you have obtained a valid and binding model release from all required parties (c) you have obtained a valid and binding property release where applicable.

## 3. Trademarks

- 3.1. Qhero and any other product or service name or slogan contained on the Site are trademarks of Qhero, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Qhero. You may not use metatags or any other

"hidden text" utilizing "qhero" or any other name, trademark or product or service name of Qhero without Our prior written permission. In addition, the look and feel of the Site, including all page headers, custom graphics, button icons and scripts, is the service mark, trademark and/or trade dress of Qhero and may not be copied, imitated or used, in whole or in part, without Our prior written permission.

- 3.2. All other trademarks, registered trademarks, product names and company names or logos mentioned in the Site are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof by us.

#### **4. General**

- 4.1. You own your Content Uploaded to the Site, and Qhero owns everything else.
- 4.2. Although this application uses the iStockphoto API it is not endorsed or sponsored by iStockphoto and iStockphoto does not guarantee the security of the information being transferred to or from this application to the iStockphoto server.

#### **5. Consent to use of data.**

- 5.1. You agree that Qhero.com may collect and use information, including but not limited to technical information about your computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Qhero Software and to verify compliance with the terms of this Agreement. Qhero may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you.
- 5.2. The latest Privacy Policy can always be found on [www.qhero.com](http://www.qhero.com)

#### **6. Data security**

- 6.1. Qhero shall exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of your Data.
- 6.2. Qhero will use, at a minimum, industry standard technical and organizational security measures to transfer, store, and process your Data. These measures are designed to protect the integrity of your Data and guard against the unauthorized or unlawful access to, use, and processing of your Data. Your "Data" means Stored Data and Account Data. "Stored Data" means the files and structured data submitted to the Services by you. "Account Data" means the account and contact information submitted to the Services by you.
- 6.3. All your Data uploaded to qHero is backed up once a day.
- 6.4. You are solely responsible for your Data using the Services. You are responsible for backing up data that you store or access via the Services.
- 6.5. Qhero shall not be held responsible in the event of data loss for any reason whatsoever.

#### **7. Internet software or computer viruses**

- 7.1. Due to technical difficulties with the Internet, Internet software or transmission problems could produce inaccurate or incomplete copies of information contained on the Site. Computer viruses or other destructive programs may also be inadvertently downloaded from this Site.
- 7.2. Qhero shall not be responsible or liable for any software, computer viruses or other destructive, harmful or disruptive files or programs that may infect or otherwise impact

your use of your computer equipment or other property on account of your access to, use of, or browsing on this Site or your downloading of any of the Materials from this Site.

7.3. Qhero recommends that you install appropriate anti-virus or other protective software.

## **8. The Qhero Services**

8.1. Qhero gains access to your iStock account by using a Token Login as described in the API documentation available at iStockphoto.

8.2. Qhero will never gain access to your iStock password as described in Our Privacy Policy which can always be found on [www.qhero.com](http://www.qhero.com).

8.3. The Qhero Services requires Internet access and has been granted the following basic permissions by iStock:

- a. Search image, video, flash and vector files;
- b. Get forum content;
- c. Get public information about images;
- d. Create lightboxes and manage lightbox content;
- e. Authenticate members against the iStockphoto server using one of the available procedures;
- f. Allow members to get limited information about their account;
- g. Allow contributors to get available royalty statistics for their account;
- h. Allow contributors to get limited information about files in their portfolio, and update meta-data information on their files; and,
- i. Allow contributors to upload files of the type that they are approved for along with releases and associated meta-data.

8.4. You agree to use the Services at your sole risk and that Qhero shall have no liability to you for content that may be found to be offensive, indecent, or objectionable.

8.5. Qhero reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event shall Qhero be liable for the removal of or disabling of access to any such Services. Qhero or iStock may also impose limits on the use of or access to certain Services, in any case and without notice or liability.

**9. Feedback.** If you provide or communicate any suggestions for improvements or enhancements to the Services ("Feedback"), Qhero will own all right, title, and interest in and to the Feedback, and Qhero will be entitled to use the Feedback without restriction or any obligation of compensation to you. You hereby irrevocably assign all right, title, and interest in and to the Feedback to Qhero.

**10. Disclaimer of Warranties.** YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE QHERO SOFTWARE AND SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. EXCEPT FOR THE LIMITED WARRANTY ON MEDIA SET FORTH ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE QHERO SOFTWARE AND SERVICES ARE PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND QHERO HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE QHERO SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. QHERO DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE QHERO SOFTWARE OR SERVICES, (i)

THAT THE FUNCTIONS CONTAINED IN THE QHERO SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THAT THE OPERATION OF THE QHERO SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR (iii) THAT DEFECTS IN THE QHERO SOFTWARE OR SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY QHERO OR A QHERO AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE QHERO SOFTWARE OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

**11. Controlling Law and Severability.** This Agreement will be governed by and construed in accordance with the laws of South Africa.

**12. Complete Agreement; Governing Language.**

12.1. This Agreement constitutes the entire agreement between the parties with respect to the use of the Qhero Software licensed hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter.

12.2. No amendment to or modification of this Agreement will be binding unless in writing and signed by Qhero. Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English versions; the English version of this Agreement shall govern.

**13. Limitation of Liability.**

IN NO EVENT WILL QHERO BE LIABLE TO YOU OR YOUR END USERS OR LICENSEES, WHETHER UNDER CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY, FOR ANY DAMAGES ARISING OUT OF YOUR USE OF THE WEB SERVICES OR LICENSED MATERIAL, WHETHER DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE, OR OTHERWISE, EVEN IF QHERO HAS BEEN GIVEN ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, AND INCLUDING ANY DAMAGES THAT RESULT FROM DISCONTINUANCE OF YOUR ACCESS TO THE WEB SERVICES.

**14. Indemnification.**

You agree to defend, indemnify and hold Qhero and its corporate affiliates, and its and their directors, officers, employees, successors, assigns and agents, harmless from and against any loss, damage, settlement, penalty, cost, expense or any other liability (including but not limited to reasonable attorney fees and expenses) arising out of any breach of this Agreement by you, or any claim of intellectual property infringement based on your trademarks or any software application that you use in connection with the Services; provided, that Qhero provides prompt written notice to you of any such indemnifiable claim and reasonably cooperates with you in connection with any indemnifiable claim.