



Terms of Use

Effective Date: November 11, 2013

These Terms of Use (TOU) govern Your use of the QQ Catalyst™ API (the "API").

By accepting these TOU, either online by clicking a box indicating Your acceptance, or by accessing the website for our API, You agree to the terms herein. If You are accepting these TOU on behalf of a company or other legal entity, You represent that You have the authority to bind such entity and its affiliates to these terms and conditions and that You are the primary contact for such entity and its affiliates, in which case the terms "You" or "Your" shall refer to such entity and its affiliates. If You do not have such authority, or if You do not agree with these TOU, You must not accept this agreement and may not use the API.

This agreement is effective between You and Us as of the date on which You indicated your acceptance of these TOU, as provided herein.

1. Definitions

- "Access Keys" means the confidential security keys provided by US to You for your use of the API, including the security tokens and credentials for use during authentication.
- "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity."
- "Application" means the software You create that uses the API.
- "API" (see Application Programming Interface).
- "Application Programming Interface" means a set of programming instructions, Web services, and standards for programmatically accessing the QQ Catalyst Web-based software application database.
- "Control", means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- "Developer Partner", (see "You").
- "QQ Catalyst API Web Services" means the API.

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- “QQ Catalyst Service” means the QQ Catalyst Web-based agency management system application, along with the storage and maintenance of, and access to, Customer’s data managed by the QQ Catalyst Web application, all of which are hosted for QQ Solutions by the Microsoft® Windows Azure® cloud computing platform, and excludes all Customer and third-party provided hardware, systems, networks, software and peripherals.
- “SLA” means the separate Service Level Agreement for either the QQ Catalyst Service, or QQ Solutions Data Hosting Services, as applicable.
- “Users” means persons who are authorized by You to use the API and who have been supplied Access Keys by Us.
- “We”, “Us”, or “Our” means QQ Solutions, Inc.
- “URI” (Uniform Resource Indicator) means the address of a resource on the Web.
- “URL” (Uniform Resource Locator) means the address of a website as in, for example:
<http://www.myagency.com>.
- “You” or “Your” means the company or other legal entity for which you are accepting these TOU, and Affiliates of that company or entity, or You individually, if you are accepting these TOU in your individual capacity.

2. Licensed Uses and Restrictions

2.1 The API is owned by Us and is licensed to you on a worldwide, non-exclusive, non-sublicenseable, revocable basis subject to these TOU. These TOU define the legal use of the API. All rights not expressly granted to you are reserved by Us.

2.2 Licensing of the API. We shall make the API available to You pursuant to these TOU.

2.3 You must purchase a QQ Catalyst API Developer Account in order to use the API.

2.4 Our Responsibilities. We shall: (i) provide to You basic support for the API at no additional charge, and/or upgraded support if such support is purchased separately, (ii) use commercially reasonable efforts to make the API available according to our SLA, and (iii) provide the API only in accordance with applicable laws and government regulations.

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2.5 Your Responsibilities. You shall (i) register as a QQ Solutions API Developer Partner on our website, (ii) be responsible for Users' compliance with these TOU, (iii) be solely responsible for the accuracy, quality, integrity and legality of Your Code, (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the API, and notify Us promptly of any such unauthorized access or use, and (v) use the API only in accordance with the User's Manual and applicable laws and government regulations. You shall not (a) make the API available to any third party other than Users, (b) sell, resell, rent or lease the API, (c) use the API to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) interfere with or disrupt the integrity or performance of the API, the QQ Catalyst Service, or third-party data contained therein, or (e) attempt to gain unauthorized access to the API or the QQ Catalyst Service or their related systems or networks.

2.6 Usage Limitations. The API may be subject to other limitations, such as, for example, limits on the QQ Catalyst Services or Web service resource limitations.

3. Proprietary Rights

3.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the API, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

3.2 Restrictions. You shall not (i) permit any third party to access the API, or (ii) reverse engineer the API.

3.3 Ownership of Your Application and Data. As between Us and You, You exclusively own all rights, title and interest to your Application and to all of Your Data.

3.4 Your Suggestions for Enhancements to the API. We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the API any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the API.

3.5 Injunctive Relief. You acknowledge that aspects of the API are unique, confidential and valuable assets and trade secrets of Ours, and We shall have the right to obtain all equitable and legal redress which may be available to Us for the breach or threatened breach of these TOU, including, without limitation, injunctive relief.

4. Confidentiality

4.1 Confidential Information Definition. As used herein, "Confidential Information" means all Confidential Information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in

writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Application and Your Data; Our Confidential Information shall include the API and the QQ Catalyst Service; and Confidential Information of each party shall include the terms and conditions contained in these TOU and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

4.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these TOU, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these TOU and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

4.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

5. Warranties And Disclaimers

5.1 Our Warranties. We warrant that the API shall perform materially in accordance with the Technical Documentation and SLA.

5.2 Mutual Warranties. Each party represents and warrants that it has the legal power to enter into these TOU.

5.3 Disclaimer. Except as expressly provided herein, neither party makes any warranties of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any

warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.

6. Mutual Indemnification

6.1 Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding ("Claim") made or brought against You by a third party alleging that the use of the API as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney's fees incurred by You in connection with any such Claim, provided, that You (a) promptly give Us written notice of the Claim and (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability) and (c) provide to Us all reasonable assistance, at Our expense.

6.2 Indemnification by You. You shall defend Us against any Claim made or brought against Us by a third party alleging that Your Data, or Your use of the API in violation of these TOU, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Us for any damages finally awarded against, and for reasonable attorney's fees incurred by, Us in connection with any such Claim; provided, that We (a) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally release Us of all liability); and (c) provide to You all reasonable assistance, at Our expense.

6.3 Exclusive Remedy. This Section 6 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

7. Limitation Of Liability

7.1 Limitation of Liability. In no event shall either party's aggregate liability arising out of or related to these TOU, whether in contract, tort or under any other theory of liability, exceed the amount paid by You hereunder in the 12 months preceding the incident.

7.2 Exclusion of Consequential and Related Damages. In no event shall either party have any liability to the other party for any lost profits or revenues or for any indirect, special, incidental, consequential, cover or punitive damages however caused, whether in contract, tort or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages. The foregoing disclaimer shall not apply to the extent prohibited by applicable law.

8. Notices, Governing Law And Jurisdiction

8.1 Addressing of Notices. Notices should be addressed to:

QQ Solutions, Inc.
350 Fairway Drive, Suite 101
Deerfield Beach, FL 33441
Attention: Chief Operating Officer

8.2 Manner of Giving Notice. Except as otherwise specified in these TOU, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to You as primary contact using the contact information You have provided Us for Your relevant API account, and in the case of billing-related notices, to the relevant billing contact designated by You.

8.3 These TOU is governed by the laws of the State of Florida. Each party agrees to the applicable governing law without regard to choice or conflicts of law rules. In the event that any legal proceedings are commenced in any court with respect to any matter arising under these TOU, the parties hereto specifically consent and agree that (1) the courts of the State of Florida and/or the United States Federal Courts located in the Southern District of Florida shall have exclusive jurisdiction over each of the parties hereto and over the subject matter of any such proceedings; and (2) the venue of any such action shall be in Broward County, Florida and/or the United States District Court for the Southern District of Florida; provided, however, that We may bring an action to enforce Your obligations or to protect its Confidential Information or proprietary content in any other jurisdiction.

8.4 Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to these TOU.

9. General Provisions

9.1 Relationship of the Parties. The parties are independent contractors. These TOU do not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

9.2 No Third-Party Beneficiaries. There are no third-party beneficiaries to these TOU.

9.3 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under these TOU shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

9.4 Severability. If any provision of these TOU is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these TOU shall remain in effect.

9.5 Attorney Fees. You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under these TOU.

9.6 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign these TOU in its entirety without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of these TOU upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, these TOU shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

9.7 Entire Agreement. These TOU, along with the QQ Catalyst Terms of Service Agreement, constitute the entire Agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of these TOU shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of these TOU and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of these TOU, and all such terms or conditions shall be null and void.