

License Agreement for Q7 Enterprise Edition

Last modified: 6 May, 2014

IMPORTANT – PLEASE READ THIS END USER LICENSE AGREEMENT (THE “AGREEMENT”) CAREFULLY BEFORE ATTEMPTING TO DOWNLOAD OR USE ANY SOFTWARE, DOCUMENTATION, OR OTHER MATERIALS MADE AVAILABLE THROUGH THIS WEB SITE (xored.com). THIS AGREEMENT CONSTITUTES A LEGALLY BINDING AGREEMENT BETWEEN YOU OR THE COMPANY WHICH YOU REPRESENT AND ARE AUTHORIZED TO BIND (THE “LICENSEE” or “YOU”), AND XORED SOFTWARE INC. (“XORED” or “LICENSOR”). PLEASE CHECK THE “I HAVE READ AND AGREE TO THE LICENSE AGREEMENT” BOX AT THE BOTTOM OF THIS AGREEMENT IF YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CHECKING THE “I HAVE READ AND AGREE TO THE LICENSE AGREEMENT” BOX AND/OR BY PURCHASING, DOWNLOADING, INSTALLING OR OTHERWISE USING THE SOFTWARE MADE AVAILABLE BY XORED THROUGH THIS WEB SITE, YOU ACKNOWLEDGE (1) THAT YOU HAVE READ THIS AGREEMENT, (2) THAT YOU UNDERSTAND IT, (3) THAT YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS, AND (4) TO THE EXTENT YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY, YOU HAVE THE POWER AND AUTHORITY TO BIND THAT COMPANY.

1. Software License

1.1 License Grant

Subject to the terms of this Agreement, Xored hereby grants to you, and you accept, a non-exclusive, non-transferable license to install, copy, and use the Software (as defined herein) only as authorized below. Subject to the terms and conditions set forth in this Agreement, Xored hereby grants to Licensee and Licensee hereby accepts, a limited, non-transferable, perpetual, non-exclusive license (the “License”) to use the Xored computer software identified as Q7 Enterprise Edition and any updates, upgrades, modifications and error corrections thereto provided to Licensee (the “Programs”) and any accompanying documentation (the “Documentation”, together with the Programs, collectively the “Software”) solely as specified in this Agreement. You are granted either a Evaluation License pursuant to Section 1.4, or a License with Maintenance and Support pursuant to Section 1.5. Which version of the License applies (i.e., Evaluation License or License with Maintenance and Support) is determined at the time of the License purchase.

1.2 Scope of Use

The Software is licensed on a per-client basis. Client is either End User or Q7 Runner instance using the Software. You may only allow the number of clients in Your organization to use the Software that corresponds to the maximum number of License clients You have purchased from Xored hereunder. This means that at any given time, the number of clients authorized to use the Software under the License (each an “Authorized Client”) cannot exceed the number of clients that You have purchased from Xored and for which You have paid Xored all applicable License fees pursuant to this Agreement.

1.3 Redistribution Rights

1.3.1 You may not redistribute the Software.

1.3.2 The Software and its constituent parts, such as any provided add-ons or other files, may not be reverse engineered, decompiled, disassembled or separated for use on more than one computer, nor placed for distribution, sale, or resale as individual creations by you.

1.3.3 You may not alter, merge, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form.

1.4 Evaluation License

1.4.1 License Grant

If you download the free Evaluation License, then, subject to the terms and conditions set forth in this agreement, Licensor hereby grants to Licensee and Licensee hereby accepts a license for evaluation purposes only. You are authorized to install, copy, and use the Software for the sole purpose of testing its functionality. You are not allowed to use it for any commercial or productive purpose. The Evaluation version of the Software may have limited features and will cease operating after 30 days.

Unless otherwise provided herein, you shall not (A) download the Evaluation Version of the Software under more than one username, (B) alter the contents of a hard drive or computer system to enable the use of the Evaluation Version of the Software for an aggregate period in excess of the trial period for one license to such Evaluation Version, (C) use the Evaluation Version for any application deployment or ultimate production purpose, or (D) use the Evaluation Version of the Software for a purpose other than the sole purpose of determining whether to purchase a license to the Software; provided, however, notwithstanding the foregoing, you are strictly prohibited from installing or using the Evaluation Version of the Software for any commercial training.

1.4.2 Support Package

As part of your Evaluation License you are entitled to the "Evaluation/Free" Support Package as described in greater detail here: <http://www.xored.com/products/q7/q7-support>.

1.4.3 Updates

You are not eligible to receive any updates for the Software.

1.5 Enterprise License with Maintenance and Support

1.5.1 License Grant

If You purchase a License with Maintenance and Support, then, subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee and Licensee hereby accepts, a limited, non-transferable, perpetual, non-exclusive License to install and use the Software in executable, object code form only. The Software is licensed per-client. Maximum number the License clients is determined at the time of the License purchase. In addition, you will receive a one (1) year update subscription that will provide you with updates for the Software as well as the "Standard" Support Package, each as described in further detail below.

1.5.2 Support Package

As part of your Enterprise License you are entitled to the "Standard" Support Package as described in greater detail here: <http://www.xored.com/products/q7/q7-support>.

1.5.3 Update Subscription

You are eligible to receive all Major Updates and Minor Updates for the version of the Software that you license hereunder for a period of one (1) year from the date on which you purchase the License for the Software. Updates replace and/or supplement (and may disable) the version of the Software that formed the basis for your eligibility for the Update. You may use the resulting updated Software only in accordance with the terms of this License.

2. Software Activation and License Metering

2.1 Software Activation

The Software may use your internal network and internet connection for the purpose of transmitting license-related data at the time of installation, registration or update to a license server and validating the authenticity of the license-related data in order to protect Xored and its licensors against unlicensed or illegal use of the Software and to improve customer service. Activation is based on the exchange of license related data between your computer and a license server. You agree that Xored and its licensors may use these measures and you agree to follow any applicable requirements

2.2 License Metering

Xored may use license metering software to help you avoid any unintentional violation of this LICENSE. The license metering software may use your internal network for license metering between installed versions of the Software.

3. License Limitations

3.1 Except as required by law, you may not use, copy, modify, alter, merge, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form.

3.2 You may not modify the Software or create derivative works based upon the Software.

3.3 You may not redistribute the Software.

3.4 You may not rent, lease, or sublicense or permit the use of the Software on a timeshare or service bureau basis. You may not host, on a subscription basis or otherwise, the Software to permit a third party to use the Software for any reason.

4. Delivery

Xored shall deliver to Licensee a master copy of the Software licensed hereunder in electronic files only. Documentation shall also be provided in electronic format.

5. Term and Termination

5.1 Term and Termination

This Agreement and the License granted hereunder shall last as long as you use the Software in compliance with this Agreement. Xored may terminate this Agreement and the License granted hereunder if you fail to comply with any of the terms and conditions of this Agreement. Upon termination of this Agreement for any reason the License granted to you hereunder shall terminate automatically and You shall immediately cease use and distribution of the Software. You must also destroy all copies of the Software, and any product and company logos provided by Xored in connection with this Agreement.

5.2 Additional Termination Rights of Xored

Unless otherwise prohibited by law and without prejudice to Xored's other rights or remedies, Xored shall have the right to terminate this Agreement and the License granted hereunder immediately in the event that any of the below occurs:

5.2.1 If You materially breach any of the material terms of this Agreement, and You fail to cure such material breach within thirty (30) days of receipt of notice from Xored of such material breach;

5.2.2 If You breach any of the License restrictions set forth herein, or engage in, or participate with any third party in the unauthorized manufacture, duplication, reverse-engineering, distribution of any software of Xored (including the Software), or engage in any activities prohibited by law; or

5.2.3 If You engage in the unauthorized use of any software of Xored (including the Software) or infringe upon any intellectual property right of Xored.

6. Product Discontinuance

Xored reserves the right to discontinue at any time any component of the Software, whether or not it is offered as a standalone product or solely as a component of the Software. However, Xored is obligated to provide support in accordance with the terms set forth in this Agreement for all such discontinued components for a period of 1 (one) year after the date of discontinuance.

7. Intellectual Property

All title and ownership rights in and to the Software (including but not limited to any images, photographs, animations, video, audio, music, text embedded in the Software), the intellectual property embodied in the Software, and any trademarks or service marks of Xored that are used in connection with the Software are and shall at all time remain exclusively owned by Xored and its licensors. All title and intellectual property rights in and to the content that may be accessed through use of the Software is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement grants you no rights to use such content.

8. Limited Warranty

Xored warrants solely that the Software will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days after the date on which You purchase the License for the Software. Xored does not make any warranties with respect to portions of the SOFTWARE that are owned by Xored's licensors; however, Xored will pass through to you any warranties made by such licensors, to the extent such warranties are transferable. Xored does not warrant the use of the Software will be uninterrupted or error free at all times and in all circumstances, nor that program errors will be corrected. This limited warranty shall not apply to any error or failure resulting from (i) machine error, (ii) Licensee's failure to follow operating instructions, (iii) negligence or accident, or (iv) modifications to the Software by any person or entity other than Xored. In the event of a breach of warranty, Licensee's sole and exclusive remedy and Xored's sole and exclusive obligation, is repair of all or any portion of the Software. If such remedy fails of its essential purpose, Licensee's sole remedy and Xored's maximum liability shall be a refund of the paid purchase price for the defective Software only. This limited warranty is only valid if Xored receives written notice of breach of warranty no later than thirty (30) days after the warranty period expires. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 7, XORED DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. Limitation of Liability

To the maximum extent permitted by applicable law, in no event will Xored be liable for any indirect, special, incidental, or consequential damages arising out of the use of or inability to use the Software, including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, even if advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based. In any case, Xored's entire liability under any provision of this agreement shall not exceed in the aggregate the sum of the license fees Licensee paid to Xored for the Software giving rise to such damages, notwithstanding any failure of essential purpose of any limited remedy. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this exclusion and limitation may not be applicable. Xored is not responsible for any liability arising out of content provided by Licensee or a third party that is accessed through the Software and/or any material linked through such content. Any data included in the Software upon shipment from Xored is for testing use only and Xored hereby disclaims any and all liability arising therefrom. The extent of Xored's liability for the limited warranty section shall be as set forth therein.

10. Indemnity

You agree to indemnify, hold harmless, and defend Xored and its resellers from and against any and all claims, lawsuits and proceedings (collectively "Claims"), and all expenses, costs (including attorney's fees), judgments, damages and other liabilities resulting from such Claims, that arise or result from Your use or misuse of the Software.

11. Confidentiality

Except as otherwise provided herein, each party expressly undertakes to retain in confidence all information and know-how transmitted or disclosed to the other that the disclosing party has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential, and expressly undertakes to make no use of such information and know-how except under the terms and during the existence of this Agreement. However, neither party shall have an obligation to maintain the confidentiality of information that (i) it received rightfully from a third party without an obligation to maintain such information in confidence; (ii) the disclosing party has disclosed to a third party without any obligation to maintain such information in confidence; (iii) was known to the receiving party prior to its disclosure by the disclosing party; or (iv) is independently developed by the receiving party without use of the confidential information of the disclosing party. Further, either party may disclose confidential information of the other party as required by governmental or judicial order, provided such party gives the other party prompt written notice prior to such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. Without limiting the foregoing, Licensee shall treat any source code for the Software as confidential information and shall not disclose, disseminate, or distribute such materials to any third party without Xored's prior written permission. Each party's obligations under this Section 10 shall apply at all times during the term of this Agreement and for two (2) years following termination of this Agreement.

12. Governing Law

This License will be governed by the law of the State of Texas, U.S.A., without regard to the conflict of laws principles thereof. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. If any provision of this Agreement is to be held unenforceable, such holding will not affect the validity of the other provisions hereof. Failure of a party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

13. Entire Agreement

This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous communications regarding the subject matter hereof.

14. No Assignment

You may not assign, sublicense, sub-contract, or otherwise transfer this Agreement, or any rights or obligations under it, without Xored's prior written consent.

15. Survival

Sections 1.5, 1.6, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 shall survive the expiration or termination of this Agreement.

16. Severability

If a particular provision of this Agreement is terminated or held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, this Agreement shall remain in full force and effect as to the remaining provisions.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND THIS AGREEMENT, AND UNDERSTAND THAT BY CONTINUING THE INSTALLATION OF THE SOFTWARE PRODUCT, BY LOADING OR RUNNING THE SOFTWARE PRODUCT, OR BY PLACING OR COPYING THE SOFTWARE ONTO YOUR COMPUTER HARD DRIVE, YOU AGREE TO BE BOUND BY THIS AGREEMENT'S TERMS AND CONDITIONS. YOU FURTHER AGREE THAT, EXCEPT FOR WRITTEN SEPARATE AGREEMENTS BETWEEN XORED AND YOU, THIS AGREEMENT IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE RIGHTS AND LIABILITIES OF THE PARTIES.