

QUDINI INDEPENDENT SAAS SUBSCRIBER TERMS

QUDINI LIMITED, a company registered in England and Wales under company number 08121501 whose registered office is at 35 Kingsland Road, London, England, E2 8AA hereinafter referred to as '**Qudini**' or '**We**' set out the following terms and conditions upon which Qudini offers a Qudini Subscriber herein referred to as '**You**' and '**Your**', the right to use via computer, mobile or tablet device, television or self service kiosk the real-time queue management software as a service application (the '**Qudini Platform**') accessible directly on <https://app.qudini.com> (the '**App Site**') or accessible via www.qudini.com (the '**Site**') (the '**Qudini Services**') (the '**Terms**').

These Terms incorporate the Qudini Legal Policies by this reference (collectively called the '**Terms**'). Qudini is one of the UK's leading suppliers of subscription based real-time queue and appointment management software (the "**Qudini Software**") delivered by way of a selected subscription software package ("**Qudini Subscription Software Package**").

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 The definitions to be read with these Terms are set out in full at Clause 23 below.

2 GENERAL

- 2.1 Qudini has agreed to provide the Qudini Services and You have agreed to take and pay for the Qudini Services subject to these Terms.
- 2.2 By using any of the Qudini Services, the Site or the App Site and the Qudini Platform, You expressly agree to be bound by these Terms and all applicable legislation and codes of practice governing the Qudini Services, the Site or the App Site and the Qudini Platform. These Terms form a legally binding agreement between You and Qudini in relation to Your use of the Qudini Services and applies to all Qudini Subscribers.
- 2.3 You should read these Terms carefully and ensure that You understand the effect before proceeding to use the Qudini Services.
- 2.4 If You disagree with any part of these Terms, do not use the Site and the Qudini Platform for the purpose of the Qudini Services. If You violate these Terms, Qudini may terminate Your use of the Site or the App Site and the Qudini Platform, bar You from future use of the Site or the App Site and the Qudini Platform and/or take appropriate legal action against You. Qudini reserves the right to change these Terms at any time without notice, effective immediately upon posting on the Site and the App Site. Please check this page periodically. You agree that Qudini will treat Your use of the Qudini Services, the Site or the App Site and the Qudini Platform as acceptance of these Terms including Your continued use subsequent to any changes being posted on the Site or the App Site.

3 REGISTRATION

- 3.1 All registration details submitted by You must be true, accurate and complete.
- 3.2 When registering on behalf of a business entity, the individual registering represents and warrants that they have authority to bind the entity to these Terms. Qudini reserves the right to ask the individual for written authority from the business entity before registering any business entity.
- 3.3 It is in Qudini's absolute discretion to decide if You shall qualify as a Qudini Subscriber for the purposes of gaining access to the Qudini Services and reserves the right to decline any application to the Qudini subscription, with or without notice or cause, at any time after your registration to the Qudini Platform. You must comply with all requests Qudini may make for proof of identity and business references and/ or financial standing.
- 3.4 Upon registration an Independent Account will be activated and a unique login ("**Qudini Login**") will be issued to You and any other Authorised Users, via an "account activation email".
- 3.5 You and the Authorised Users will keep the Qudini Login(s), relevant to the Qudini Platform and the Qudini Services, confidential and will not reveal them to anyone outside of your organisation. You shall be responsible for all activities that are carried out under the Qudini Login(s). Qudini will not be liable if any Qudini Login is unlawfully used by another. You agree to notify Qudini immediately by email to support@qudini.com of any unauthorised use of your Qudini Login.

4 QUDINI SUBSCRIPTION SOFTWARE PACKAGE

- 4.1 Upon Your successful registration: Qudini hereby grants to You a non-exclusive, non-transferable right to permit the Authorised Users to use the Qudini Services and the Documentation during the Subscription Term solely for Your internal business operations.
- 4.2 Qudini is entitled to make any changes to the specification, functionality and features of the Qudini Software that it desires at its sole discretion but shall provide notice of the same to You where necessary.

- 4.3 You will have administration privileges over the accounts of your Authorised users, and You must disable the accounts for Authorised Users, who subsequently terminate their relationship with Your organisation.
- 4.4 Prices for Qudini Subscription Software Packages will be provided to you by email or can be found online at www.qudini.com (for retail and other non restaurant businesses) or <http://restaurant.qudini.com/> (for restaurant businesses) (when accessing the website from your correct geographic region), as may be amended from time to time.
- 4.5 Should you require a Bespoke Rate, this will be sent to you by email. Once agreed to, by Your accessing of the confirmation link within the email, this will be the rate you are charged on an ongoing basis unless updated by you your confirmation to a Bespoke Rate at a later stage.
- 4.6 You shall not access, store, distribute or transmit any Viruses, or any other material during the course of Your use of the Qudini Services that in Qudini's sole discretion is unacceptable or illegal and Qudini reserves the right, without liability or prejudice to its other rights to You, to disable Your access to any material that breaches the provisions of this Clause.
- 4.7 You shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between You and Qudini, and except to the extent expressly permitted under there Terms:
 - i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Qudini Software and/or Documentation (as applicable) in any form or media or by any means; or,
 - ii. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Qudini Software;
 - iii. access all or any part of the Qudini Services and Documentation in order to build a product or service which competes with the Qudini Services and/or the Documentation; or
 - iv. use the Qudini Services and/or Documentation to provide services to third parties; or,
 - v. subject to Clause 19 on Assignment, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Qudini Services and/or Documentation available to any third party except the Authorised Users; or,
 - vi. attempt to obtain, or assist third parties in obtaining, access to the Qudini Services and/or Documentation, other than as provided under this Clause 4.
- 4.8 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Qudini Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Qudini.
- 4.9 The rights provided under this Clause 4 are granted to You only, and shall not be considered granted to any subsidiary or Your holding company.

5 TERM

- 5.1 This Agreement shall take effect from the point of Your completed registration as a Qudini Subscriber. It shall continue for a period of fourteen (14) days ('**Initial Subscription Term**') and thereafter, it shall be automatically renewed for successive one (1) month periods (each a '**Renewal Subscription Term**') unless:
- a. During the Trial Subscription Term, either party notifies the other Party of termination, either via cancellation through the Qudini site, or by email to support@qudini.com, with at least four (4) hours notice; or,
 - b. During the Renewal Subscription Term, either Party notifies the other Party of termination, either via cancellation through the Qudini Site, or by email to support@qudini.com, at least one (1) month notice from the first of the month; or,
 - c. otherwise terminated in accordance with the provisions of these Terms;
- 5.2 Any Renewal Subscription Term will be in accordance with these Terms (as may be updated or amended from time to time), and will be subject to any possible renewal pricing provided for on the Site. The current content and features of the applicable Qudini Subscription Software Package will apply.

6 QUDINI SERVICE AVAILABILITY & SUPPORT SERVICES

6. 1 Qudini shall, during the Subscription Term, provide the Qudini Services and make available the Documentation to You on and subject to these Terms and the SAMSS Terms (available online at: <http://docs.qudini.com/pdf/Qudini-StandardSAMSS.pdf>)

7 QUDINI SERVICES

- 7.1 Qudini undertakes that the Qudini Services will be performed with reasonable skill and care.
- 7.2 The undertaking at Clause 7.1 shall not apply to the extent of any non-conformance which is caused by use thereof or of the Qudini Services contrary to Qudini's Documentation. If the Qudini Services do not conform with the foregoing undertaking, Qudini will, at its expense, use reasonable commercial endeavours to correct any such non-conformance in accordance with our SAMSS Terms, and will make reasonable commercial endeavours to provide You with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Your sole and exclusive remedy for any breach of the undertaking set out in Clause 7.1.
- 7.3 These Terms shall not prevent Qudini from entering into similar agreements with third parties, or from You developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Terms.
- 7.4 Qudini warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms.

8 Client Sites

- 8.1 During the Term of this Agreement, and subject to Clause 8.2, the Qudini Services shall be limited to use by You at the Client Sites submitted by You upon registration.
- 8.2 You may add Client Sites at which You wish to use the Qudini Services, either via the Qudini Platform, or by notifying Qudini in writing in not less than three (3) days prior to the date You wish to start using the Qudini Services at any Additional Independent Site.
- 8.3 You will be able to change the Subscription Fee for any Site at any time, using the Subscription Packages available online at www.qudini.com (within your applicable region of use and as amended from time-to-time), or any Bespoke Rate provided to you by us in email or within the Qudini Platform. You will be able to terminate the use of the Qudini Service in any one or more Client Sites, independently of one another and in accordance with the terms of this Agreement.

9 INTELLECTUAL PROPERTY

- 9.1 Qudini and/or its licensors will remain the owners of all Qudini Intellectual Property Rights. For the duration of the Subscription Term, Qudini grants to You a non-exclusive licence to use the Qudini Intellectual Property for the sole purposes of enabling You to avail of the Qudini Services. Except as expressly permitted by this Agreement, you may not use any of our Intellectual Property Rights without our prior written consent. You shall not:
- 9.2 You shall remain the owner of all Your Intellectual Property Rights. For the duration of the Subscription Term, You grant to Qudini a perpetual, irrevocable, non-exclusive, worldwide, royalty-free licence, to use, reproduce, publish, display and communicate to the public the You content, and to modify, adapt, translate, create derivative works from and/or incorporate the same into other works in any form, media or technology, to the extent that this is necessary to enable Qudini to provide the Qudini Services and to perform its obligations under this Agreement.
- 9.3 You shall promptly give notice in writing to Qudini in the event that you become aware of any claim that any of Your Intellectual Property infringes the rights of any third party. In such an event, Qudini shall, at its absolute discretion, determine what action if any it shall take in respect of the matter (including immediately terminating these Terms) and You shall fully indemnify Qudini for and against any damages, losses, costs and expenses (including reasonable legal costs and expenses) or other liabilities incurred by Qudini as a result of such claim.

10 YOUR OBLIGATIONS

- 10.1 You shall (and where applicable shall procure that Authorised Users):
 - a. provide Qudini with:
 - i. all necessary co-operation in relation to these Terms; and,
 - ii. all necessary access to such information as may be required by Qudini;

in order to provide the Qudini Services, including but not limited to Independent Data, security access information and configuration services as applicable;
 - b. operate Your business in accordance with good industry practice and in accordance with any applicable codes, regulations or guidance of any governmental, non-governmental or other applicable regulatory organisation;
 - c. comply with the Qudini Legal Policies when using the Qudini Platform;
 - d. carry out all of Your other responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in Your provision of such assistance, Qudini may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - e. ensure that the Authorised Users use the Qudini Services and the Documentation in accordance with these Terms and shall be responsible for any Authorised User's breach of these Terms;

- f. obtain and maintain all necessary licences, consents, and permissions necessary for Qudini, its contractors, agents, partners to perform their obligations under these Terms, including without limitation the Qudini Services;
- g. be solely responsible for procuring and maintaining that Your network connections, internet connections and telecommunications links from your systems to Qudini's data centres.

11 QUDINI FEES & PAYMENT

- 11.1 You shall pay the Qudini Fees i.e. the Subscription Fees and the Additional Independent Site Fees monthly in advance as they fall due in accordance with the applicable Qudini Subscription Software Package.
- 11.2 Where we, at our sole discretion, have allowed you to pay the Qudini Fees on an invoice and BACS payment basis, as opposed to via online automated direct debit, all invoices must be paid within 30 business days.
- 11.3 If Qudini does not receive payment as such fall due and without prejudice to any other rights and remedies of Qudini:
- a. Qudini may, without liability to You, disable Your Qudini Login to the Independent Account and access to all or part of the Qudini Services and Qudini shall be under no obligation to provide any or all of the Qudini Services while the invoice(s) concerned remain unpaid; and,
 - b. interest shall accrue on such overdue amounts at an annual rate equal to 4% over the then current base lending rate of HSBC Bank PLC at the date the relevant invoice was issued, commencing on the payment due date and continuing until fully paid, whether before or after judgment.
- 11.4 Qudini itself does not charge a fee to You to process payments. Qudini only passes on Payment Processing Fees on the payment of Qudini Fees, payable as follows:

Payment Processor	Fee
Stripe	2%

- 11.5 All Qudini Fees payable under these Terms shall be payable in pounds sterling and are non-refundable.
- 11.6 In the event of any invoice dispute, You shall pay the amount in full pending the resolution of any dispute and, upon resolution, Qudini shall (if necessary) pay any adjustment due within thirty (30) business days.
- 11.7 You must ensure that You have read and understood what Your Qudini Subscription Software Package offers to You and ensure that it suits Your requirements before purchasing it.
- 11.8 You agree to pay all amounts due in full and You shall not, for any reason whatsoever, be entitled to assert any credit, set-off or counterclaim against Qudini in order to justify withholding payment of any such amount in whole or in part.
- 11.9 The Qudini Fees are subject to review and increase by Qudini at any time upon sixty (60) calendar days' prior notice ('**Fee Notice Period**'). If You do not wish to accept the increase, You may terminate Your use of the Qudini Services on notice to Qudini (such notice to be served during (and prior to the expiry of) the Fee Notice Period).

12 DATA PROTECTION, OWNERSHIP & DATA LOSS

- 12.1 Both parties agree that Qudini acts as the Processor and Client is the Controller pursuant to Clause 12.4. Where a Data Processing Addendum has been executed by the Client and Qudini, Clause 12 shall be read in conjunction with any Data Processing Addendum albeit that where there is a conflict between the terms of this Agreement and the Data Processing Addendum, the terms of this Agreement shall prevail.
- 12.2 In respect of any Personal Data (as defined in the Data Protection Laws processed by Qudini on behalf of Client pursuant to these Terms including Client Data (as defined) (together, 'Data'), where applicable, Client and Qudini warrant that it:
- (a) has made all necessary notifications of its particulars (which are all accurate, complete and up-to-date) in accordance with the applicable Data Protection Laws and any regulations made thereunder;
 - (b) complies and will continue to comply with the applicable Data Protection Laws and any regulations made thereunder; and
 - (c) shall co-operate fully with Controller in complying with subject access requests and rights made pursuant to the applicable Data Protection Laws.
- 12.3 Subject to all applicable Data Protection Laws, Client shall own all right, title and interest in and to all of the Data including that inputted and uploaded by Client or its Customers to or via the Qudini Site or Qudini Platform, and Client shall have sole responsibility for the legality, reliability, integrity, accuracy, quality and use of the Data.

- 12.4 Where Qudini processes any Data on Client's behalf when performing its obligations hereunder, the Parties hereby record their intention that Client shall be the Data Controller and Qudini shall be a Data Processor and in any such case:
- (a) Client shall ensure that Qudini is entitled to transfer the relevant Data so that Qudini may lawfully use, process and transfer the Data in accordance with these Terms on Client's behalf; and
 - (b) Client shall ensure that the relevant third parties have been informed of, and have given their consent to such use, processing, and transfer as required by all applicable Data Protection Laws.
- 12.5 In performing the Qudini Services, Qudini will only act on Client's reasonable and lawful instructions in relation to the processing of that Data to the extent necessary to perform its obligations under this Agreement PROVIDED THAT such instructions shall not prevent or hinder Qudini from performing its express obligations hereunder.
- 12.6 Qudini shall follow its archiving procedures for Client Data as set out in its Data Retention Policy as such document may be amended by Qudini in its sole discretion from time to time. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy against Qudini shall be for the Qudini to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Qudini in accordance with the archiving procedure described in its Data Retention Policy.
- 12.7 Qudini shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by Qudini to perform services related to Client Data maintenance and back-up).
- 12.8 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 12.9 Qudini shall, in relation to any Personal Data processed in connection with the performance by Qudini of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Client unless Qudini is required by the laws of any member of the European Union or by the laws of the European Union applicable to Qudini to process Personal Data (Applicable Laws). Where Qudini is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Qudini shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Qudini from so notifying the Client;
 - (b) not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - i. the Client or Qudini has provided appropriate safeguards in relation to the transfer;
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. Qudini complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. Qudini complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (c) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (d) notify the Client without undue delay on becoming aware of a Personal Data breach;
 - (e) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 12.
 - (g) Customer Data added to the Qudini Platform shall be retained for a maximum period of six (6) months after the individual Customer is first added to the Qudini Platform by the Authorised Users of your business.
- 12.10 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of

implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

- 12.11 The Client consents (with prior notice and in principle) to Qudini appointing agreed third-party processors of Personal Data under this agreement. Qudini confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms substantially similar to those set out in this clause 12. As between the Client and Qudini, Qudini shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.
- 12.12 Either party may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 12.13 Client hereby grants to Qudini a non-exclusive, royalty-free licence to analyse the Data and to create other data anew for its own business purposes provided that the derived data concerned is anonymised so that it cannot be used to identify any individual ('**Anonymised Data**').
- 12.14 Where any individual is, or becomes, a direct customer of Qudini (for example, where the individual registers with Qudini with the intention of obtaining services from Qudini), then, provided that Qudini have consent from the relevant individual to do so, a copy of any such data which is inputted or uploaded by Customer and which relates to that individual may be aggregated by Qudini to the profile that Qudini holds on that individual ('**Profile Data**').
- 12.15 All Anonymised Data and Profile Data and all Intellectual Property Rights in the same shall be owned by Qudini who shall be the Data Controller in respect of the same. Qudini shall have the right to copy, adapt, use and exploit the Anonymised Data and the Profile Data in any way it sees fit, without any obligation or liability to Client.

12.16

12.17

13 PROFESSIONAL SERVICES

- 13.1 Where You choose to avail of the Qudini Professional Services, by doing so You agree to the Qudini Professional Services Terms (available online at: <http://docs.qudini.com/pdf/Qudini-Professionalserviceterms.pdf>)

14 HARDWARE

- 14.1 Where requested by you within the App Site or agreed with us in writing, and subject to the applicable Hardware Fees Qudini shall provide You with certain Hardware on a loan or purchase basis, You agree that by purchasing or loaning Hardware from us you agree to our Hardware Terms (available online at: <http://docs.qudini.com/pdf/Qudini-Hardwareterms.pdf>)

15 CONFIDENTIALITY

- 15.1 Save as is otherwise required by law or any regulatory authority, each Party undertakes to the other that during the Subscription Term and thereafter it shall keep secret and shall not without the prior written consent of the other Party disclose to any third party (except to its legal and professional advisors) any Confidential Information learned by the recipient Party or disclosed to the recipient Party by such other Party pursuant to, or otherwise in connection with these Terms, except to the extent that any Confidential Information:
- a. is (otherwise than by breach of these Terms) in the public domain; or,
 - b. is already known by the recipient Party other than pursuant to disclosure from the other Party;
 - c. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 15.2 To the extent that it is necessary to give effect to these Terms, the recipient Party may disclose Confidential Information to its employees as may reasonably be necessary provided that the recipient Party shall:
- a. before disclosure, make such employees aware of their obligations of confidentiality under these Terms;
 - b. at all times procure compliance with such obligations of confidentiality; and
 - c. if requested by the disclosing party, procure named employees to execute a confidentiality agreement directly in favour of the disclosing party.
- 15.3 You shall not issue any press release or other public announcement relating to the subject matter of these Terms without the prior written consent of Qudini.
- 15.4 This Clause shall survive termination of these Terms howsoever arising.

16 TERMINATION

16.1 Either Party may terminate this Agreement with immediate effect without liability by service of written notice on the other and without prejudice to its other rights, if the other Party:

- a. is in material breach of this Agreement where the breach is incapable of remedy; or
- b. is in material breach of this Agreement where the breach is capable of remedy and fails to remedy that breach within thirty (30) days after receiving written notice of such breach or other default from the non-defaulting Party;

or if any of the following events occur:

- c. it is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due for payment;
- d. a petition is presented or documents filed with a court or any registrar or any resolution is passed for its winding-up, administration or dissolution or for the seeking of relief under any applicable bankruptcy, insolvency, company or similar law;
- e. any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, supervisor, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets; or
- f. any event analogous to the events listed in (c) to (e) above takes place in respect of it in any jurisdiction.

16.2 Clause 14.1 c to Clause 14.1 f above does not apply to a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and which is discharged or struck out within twenty-one (21) days.

16.3 Qudini may suspend access to the Qudini Services with immediate effect at any time during the Subscription Term if You are in material breach of any obligation in this Agreement. You will continue to be charged for and be liable for all Qudini Fees during any period of suspension. Where either Party initiate termination of this Agreement in accordance with this Clause, You will continue to be obligated to pay all balances lawfully due and payable.

16.4 On termination of these Terms for any reason:

- a. all rights granted under these Terms shall immediately terminate;
- b. each Party shall return and make no further use of any property including any Intellectual Property Rights (and all copies of them) belonging to the other Party;
- c. Qudini may destroy or otherwise dispose of any of the Data in its possession unless Qudini receives, no later than fourteen (14) calendar days after the effective date of the termination of these Terms, a written request for the delivery to You of the then most recent back-up of the Data. Qudini shall use reasonable commercial endeavours to deliver the back-up to You within thirty (30) days of its receipt of such a written request, provided that You have, at that time, paid all Qudini Fees outstanding at, and resulting from, termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by Qudini in returning or disposing of Data; and,
- d. the accrued rights of You and Qudini as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.

17 WARRANTIES AND INDEMNITIES

17.1 You hereby warrant, represent and undertake to Qudini that these Terms have been duly authorised and signed by You and constitute Your valid, legal and binding agreement, enforceable in accordance with its Terms.

17.2 Qudini shall defend You against any Claim that the Qudini Software, Qudini Services or Documentation infringes any patent, copyright, trade mark, database right or right of confidentiality, and shall indemnify You for any amounts awarded against You in judgment or settlement of such Claims, provided that:

- a. Qudini is given prompt notice of any such Claim;
- b. You provide reasonable co-operation to Qudini in the defence and settlement of such Claim, at Qudini's expense; and,
- c. Qudini is given sole authority to defend or settle the Claim.

17.3 In no event shall any Qudini Party be liable to You to the extent that the alleged infringement is based on:

- a. a modification of the Qudini Software, Qudini Services or Documentation by anyone other than Qudini; or,
- b. Your use of the Qudini Software, Qudini Services or Documentation in a manner contrary to the instructions given to You by Qudini; or,
- c. Your use of the Qudini Software, Qudini Services or Documentation after notice of the alleged or actual infringement from Qudini or any appropriate authority.

17.4 Clause 15 states Your sole and exclusive rights and remedies and the entire obligations and liability of the Qudini Parties, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

18 LIMITATION OF LIABILITY

- 18.1 This Clause 16 sets out the entire financial liability of Qudini (including any liability for the acts or omissions of its employees, agents and sub-contractors) to You:
- a. arising under or in connection with these Terms;
 - b. in respect of any use made by You of the Qudini Software, Qudini Services and Documentation or any part of them; and,
 - c. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.
- 18.2 Subject to Clause 16.4, Qudini shall not be liable to You in contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms.
- 18.3 Qudini's total aggregate and maximum liability, in contract (including in respect of the indemnity at Clause 16.3), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the total Subscription Fees paid to Qudini during the 12 *continuous* months immediately preceding the date on which the Claim arose.
- 18.4 Nothing in this Clause 16 shall however exclude or restrict Qudini's liability for (i) fraudulent misrepresentations, (ii) any liability where the law does not permit such exclusion of liability, and (iii) death or personal injury arising from negligence.
- 18.5 Subject to Clauses 15.4, 16.3 and 16.4, Qudini's sole and exclusive liability and Your sole and exclusive remedy, for any failure of the Qudini Services shall be Service Credits where applicable.
- 18.6 Qudini shall not be in breach of any of its obligations under these Terms which arise or occur due to the act, omission, and default of You or Your failure to comply with any of its obligations under these Terms. Except as expressly set out in these Terms:
- a. no conditions, warranties or other terms, including any implied terms relating to satisfactory quality or fitness for any purpose, will apply to the Qudini Software, Documentation, Qudini Services or to anything supplied or provided by Qudini under this Agreement which are all provided to You on an 'as is' basis. In particular, Qudini do not give or enter into any condition, warranty or other term to the effect that the operation of the Qudini Software or Qudini Services will meet specific requirements and does not warrant that Your use of the Site or the App Site will be uninterrupted or error-free and Qudini is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the service may be subject to limitations, delays and other problems inherent in the use of such communications facilities
 - b. You assume sole responsibility for the results obtained from the use of the Qudini Services and the Documentation and for conclusions drawn from such use; and,
 - c. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms.
- 18.7 No action arising out of or in connection with these Terms may be brought by You more than twelve (12) months' after the date of the event from which the Claim (or series of related Claims) arose.

19 FORCE MAJEURE

Qudini shall have no liability to You under these Terms if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by one or more Force Majeure Events provided that You are notified of such and the expected duration.

20 NOTICES AND DISPUTES

- 20.1 Any notice given or made under these Terms shall be in writing and in English and signed by or on behalf of the Party giving it. You and Qudini agree that the provisions of this Clause shall not apply in relation to the service of any process in any legal action or proceedings arising out of or in connection with these Terms or the legal relationships established by these Terms. Any notice required to be given under these Terms shall be:
- a. delivered by hand;
(A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery).)
 - b. sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in these Terms, or such other address as may have been notified by that Party for such purposes; or,
(A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.)
 - c. by email to sales@qudini.com
(A notice sent by email shall be deemed to be received as verified by automated receipt or electronic log.)
- 20.2 All disputes between the Parties arising out of or relating to this Agreement or the breach, termination or validity thereof shall be referred by either Party in writing, first to each Party's authorised representative who shall

endeavour to resolve the dispute within a period of fifteen (15) Business Days from the date of referral of the dispute to them. Failing resolution, the Party's respective chief officers shall be informed who shall endeavour to resolve the dispute within a period of fifteen (15) Business Days. Failing a resolution, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ('**ADR notice**') to the other party to the dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start no later than fourteen (14) days after the date of the ADR notice.

20.3 No Party may commence any court proceedings under Clause 23 in relation to the whole or part of the dispute until fourteen (14) days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

20.4 If the dispute is not resolved within twenty-eight (28) days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of twenty-eight (28) days, or the mediation terminates before the expiration of the said period of twenty-eight (28) days, the dispute shall be finally resolved by the courts of England and Wales in accordance with Clause 23 in this Agreement.

21 **GENERAL**

Assignment: These Terms shall be binding on and inure to the benefit of each party and their respective successors and assigns. You shall not assign or sub-contract any of its rights or obligations under these Terms (in whole or in part) without the prior written consent of Qudini. Qudini shall be entitled to assign or subcontract any of its rights or obligations under these Terms in whole or in part.

Enforceability: If any one or more of the provisions of these Terms should be held to be invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining provisions contained in these Terms shall not in any way be affected or impaired and You and Qudini shall amend these Terms to add a new provision having an effect as near as legally permissible to the one held to be invalid, illegal or unenforceable.

Entire Licence: These Terms (which include by reference the applicable Qudini Subscription Software Package and the Qudini Legal Policies) constitute the entire agreement and understanding between You and Qudini with respect to the subject matter of these Terms and supersedes any and all prior contracts, licences, arrangements and understandings relating to the matters provided for herein. You and Qudini acknowledge that they have not relied on any oral or written representations made by the other Party or the other Party's representatives in entering into these Terms, including any information or material provided by Qudini personnel and subject to Clause 16.4 of these Terms, each Party irrevocably and unconditionally waives any right it may have to rescind the Terms or claim damages for misrepresentation, whether innocent or negligent, or breach of any warranty not contained in these Terms or implied by operation of law.

Status: These Terms are not intended to create any partnership or joint venture relationship between Qudini and You or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name of, or on behalf of, or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

Variations: Save as expressly provided in these Terms, no variation to, or notice or consent under these Terms shall be effective unless it is in writing and signed by an authorised signatory of each Party. No waiver of any right shall constitute a waiver of any other right or be effective unless made in writing and signed by an authorised signatory of the Party making the waiver. No person other than a director of Qudini is an authorised signatory of Qudini for these purposes.

22 **RIGHTS OF THIRD PARTIES**

Save for a Qudini Party, a person who is not a Party to these Terms has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce of these Terms.

23 **GOVERNING LAW & JURISDICTION**

These Terms and any dispute or claim arising out of or in connection with it or its subject matter, whether of a contractual or non-contractual nature, shall be governed by and construed in accordance with the laws of England and Wales. The Parties agree to submit to the exclusive jurisdiction of the English courts in respect of any dispute arising out of or in connection with these Terms.

24 **DEFINITIONS & INTERPRETATION**

In these Terms and Conditions (except where the context otherwise requires) the following words shall have the following meanings:

Additional Independent Site(s): refers to any new site(s) that may be added from time to time.

Additional Independent Site Fees: the additional fees payable for each Additional Independent Site.

App Site: refers to the Qudini Platform application at <https://app.qudini.com>

Authorised Users: Your employees, agents and contractors who are authorised by You to use the Qudini Services and the Documentation.

Bespoke Rate: A unique pricing rate provided by Us to You as a discount (provided at our sole discretion) or where your usage of the Qudini is expected to exceed the allowances of the rates provided on www.qudini.com

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Claim(s): means all demands, claims and liability (actual and consequential and direct and indirect and whether known and unknown, suspected and unsuspected, disclosed and undisclosed, criminal or civil, in contract, tort or otherwise) for all Losses including any other expenses of any nature whatsoever.

Client Data: the data inputted by Client, your Customers and Authorised Users (or Qudini on Client's behalf) for the purpose of using the Qudini Services (or facilitating Client's use of the Qudini Services) which may or may not represent Personal Data.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 13 or at the time of disclosure by either party. Confidential information shall include any performance tests of the Qudini Services and Independent Data.

Customers: refers to Your customers.

Customer Data: refers to the personal identifiable data of a Customer, (this may include any mobile phone number, surname, postal address, post code, or email address that can be used to identify a Customer as an individual).

Data: refers to Client Data and Personal Data (as defined in Data Protection Laws). **Data Processing**

Addendum: means any agreement between the parties to this Agreement under which the parties agree to provisions relating to the processing of Personal Data pursuant to the requirements of the Data Protection Laws.

Data Protection Laws: up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter, unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then any successor legislation to the GDPR or the Data Protection Act 1998.

Documentation: the policies, procedures and/ or written instructions provided by Qudini to You including the Qudini Subscription Software Package as described on the Site.

Force Majeure Event: any happening or event beyond the reasonable control of the Party concerned including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Qudini or any other party), failure of a utility service or transport or telecommunications network, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, any act of God including fire, flood, earthquake, windstorm or other natural disaster; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination or sonic boom; fire, explosion or accidental damage; extreme adverse weather conditions; mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law) which results in a failure or delay in the performance of that Party's obligations under this Agreement.

Hardware: refers to physical equipment sold or loaned out by us to you as our recommended hardware solutions to enable you to use the Qudini Software, this term includes reference to Device Hardware, and may in addition include, but it is not limited to: kiosk furniture, tablet fixtures, tablet stands and data routers.

Hardware Fees: refers to fees payable by you in respect of any Hardware purchased or loaned by you from us.

Hardware Terms: refers to the terms by which Qudini provides Hardware on a loan or purchase basis which are agreed by you upon your request to purchase hardware from us, these can be found online at:

<http://docs.qudini/pdf/Qudini-Hardwareterms.pdf>

Independent Account: refers to the online account accessible by way of a Qudini Login.

Independent Data: the data inputted by You, Authorised Users (or Qudini on Your behalf) for the purpose of using the Qudini Services (or facilitating Your use of the Qudini Services) which may or may not represent Personal Data.

Client Site(s): Your sites submitted upon registration.

Initial Subscription Term: the initial term applicable to the relevant Qudini Software Subscription Package.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses: claims, losses, demands, actions, third party claims, damages, costs (including court costs and legal fees), fines, liabilities, obligations, liens and expenses.

Payment Processing Fees: as set out at Clause 11.3.

Personal Data: as defined in the Data Protection Act 1998.

Professional Services: refers to the IT Professional Services and Non-IT Professional Services that are offered by Qudini in exchange for the Professional Services Fees, or at no cost, at our sole discretion only.

Professional Services Terms: refers to the terms by which You may use the Qudini Professional Services offering, which can be found at: <http://docs.qudini.com/pdf/Qudini-Professionalserviceterms.pdf>

Professional Services Fees: refers to the fees payable by you to make use of the Qudini Professional Services, as set out in an applicable: Commercial Terms & Order Form, a Professional Services Quote, the Qudini App Site or as otherwise agreed in writing between You and us.

Qudini Fees: includes Subscription Fees and the Client Site Fees, as well as any applicable Hardware Fees or Professional Services Fees.

Qudini Intellectual Property: refers to all Intellectual Property Rights present on or in the Site and the App Site including all of the text, images, trademarks, business names, domain names, Qudini Software (including source code), media, other materials and other content within the same but excluding Your Intellectual Property.

Qudini Legal Policies: refers to the policies applicable to the Qudini Site and the Qudini Platform such as the Cookie Policy, the Site & App Site Terms of Use and the Privacy Policy as amended, superseded or replaced by Qudini from time to time. All Qudini Legal Policies can be found online at: <http://pages.qudini.com/qudini-legal-policies/>

Qudini Parties/Party: includes Qudini and its affiliated or related companies and subsidiaries and their respective joint venturers, successors, assigns, directors, sub-contractors, officers, employees and agents.

Qudini Platform: refers to the mobile or tablet device, television or self service kiosk real-time queue management software as a service application inclusive of the Qudini Software as applicable which is accessible via the Site or by directly accessing the App Site by way of the Qudini Login.

Qudini Services: the subscription based Qudini Software as a service provided by Qudini to You via the Qudini Platform under these Terms.

Qudini Software: refers to all human readable, machine operable and all other forms of the proprietary software comprised at the Site and the App Site which is provided to You as software as a service as part of the Qudini Services (incorporating all forms of any modifications made to it by Qudini from time to time);

Qudini Software Subscription Package: refers to the type of package purchased by You as set out on the Site at <http://www.qudini.com>

Qudini Subscriber: refers to the subscriber who has registered on the Site and subscribed to the Qudini Services.

Renewal Subscription Term(s): refers to the renewal period(s).

SAMSS Terms – Refers to the Qudini Independent Service Availability, Maintenance and Support Services Terms (“SAMSSs”) that can be found online at: <http://docs.qudini.com/pdf/Qudini-StandardSAMSS.pdf>

Site: refers to the website at www.qudini.com and any sub-domain or any domain that may be included from time to time.

Subscription Fees: the subscription fees payable by You to Qudini for use of the Qudini Services, these can be found online at www.qudini.com.

Subscription Term: refers to the Initial Subscription Term together with any subsequent Renewal Subscription Terms.

Terms: refers to these Terms and Conditions.

Virus: anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Your Intellectual Property: Your trademarks, business names and branding and all other Intellectual Property Rights owned by or licensed to You.