

# **DING DING SOFTWARE AS A SERVICE (SAAS) AGREEMENT**

Document Reference 0002

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**ISSUED BY**  
DING DING AUSTRALIA PTY LTD

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# Terms and Conditions

## Date

The date on which the Customer as outlined below in the Parties section consented to the Terms and Conditions outlined in this document by signalling their acceptance of the Terms and Conditions during the registration process.

## Parties

1. **Ding Ding Australia Pty Ltd** (the "**Provider**"); and
2. Individual or Registered Company which the Individual represents whom has signed up to use ding ding (the "**Hosted Service**") and as such signalled their acceptance (by ticking the confirmation box for the terms and condition acceptance during the registration process) of the Terms and Conditions outlined in this document (the "**Customer**").

## Registration Process

The act of signing up on the ding ding website to use the "**Hosted Services**" as defined and outlined in this document and ticking the box labelled 'I confirm my acceptance of the ding ding terms and conditions here'.

## Agreement

### 1. Definitions

In this Agreement, except to the extent expressly provided otherwise:

**"Access Credentials"** means the usernames, passwords and other credentials enabling access to the Hosted Services, including both access credentials for the User Interface and access credentials for the API

**"Agreement"** means this agreement including any Schedules, and any amendments to this Agreement from time to time

**"API"** means the application programming interface for the Hosted Services defined by the Provider and made available by the Provider to the Customer

**"Business Day"** means any weekday other than a bank or public holiday in NSW

**"Business Hours"** means the hours of 09:00 to 17:00 AEST/AEDT on a Business Day

**"Charges"** means the following amounts:

- the amounts specified in the subscription contract
- such amounts as may be agreed in writing by the parties from time to time
- amounts calculated by the Provider when the Customer elects to switch between valid subscription types

**"Customer Confidential Information"** means:

Any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:

- was marked described as "confidential"; or
- should have been reasonably understood by the Provider to be confidential

**"Customer Data"** means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services

by the Customer (but excluding analytics data relating to the use of the Platform and server log files).

**"Customer Personal Data"** means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement.

**"Data Protection Laws"** means all applicable laws relating to the processing of Personal Data.

**"Documentation"** means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer

**"Effective Date"** means the date of execution of this Agreement

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars)

**"Hosted Services"** means *ding ding*, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement

**"Hosted Services Defect"** means a defect, error or bug in the Platform having an adverse effect on operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services
- any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer
- a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or

- an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification

**Hosted Services Specification**" means the specification for the Platform and Hosted Services set out in Agreement (Hosted Services particulars) and in the Documentation

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)

**"Mobile App"** means the mobile application known as ding ding that is made available by the Provider through the Apple App Store and intended to be used by the Customer's customers.

**"Mobile Web App"** means the mobile web application known as ding ding that is made available by the Provider as a mobile web application and intended to be used by the Customer's customers.

**"Personal Data"** means personal data under any of the Data Protection Laws

**"Platform"** means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed

**"Schedule"** means any schedule attached to the main body of this Agreement

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement

**"Support Services"** means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services

**"Supported Web Browser"** means the current release from time to time of Mozilla Firefox, Google Chrome or Apple Safari or any other web browser that the Provider agrees in writing shall be supported

**"Subscription"** means the Customer's access to the Hosted Services for a specified period at a specified price, according to the subscription type selected by the Customer as detailed in the Hosted Services Specification attached to this Agreement. A Subscription allows the Customer to use the Hosted Services as outlined in the Hosted Services Specification. The Hosted Services Specification specifies the features, duration, renewal terms, and other relevant details for each subscription type.

**"User Interface"** means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

**"Customer Interface"** means the interface for the Hosted Services designed to allow customers of the Customer to access and use the Hosted Services. The Customer Interface includes the Mobile App and the Mobile Web App.

## **2. Term**

This Agreement shall come into force upon the Effective Date.

This Agreement shall continue in force until the customer is no longer subscribed to The Hosted Services, upon which this Agreement shall terminate automatically, subject to termination in accordance with any other provision of this Agreement.

### 3. Hosted Services

The Provider shall ensure that the Platform will provide, to the Customer upon the Effective Date the Access Credentials necessary to enable the Customer to access and use the Hosted Services.

The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of the User Interface and the API for the internal business purposes of the Customer in accordance with the Documentation during the Term.

The licence granted by the Provider to the Customer is subject to the following limitations:

- the User Interface may only be used through a Supported Web Browser
- the User Interface may only be used by the officers, employees, agents and subcontractors of the Customer
- the User Interface may only be used by the named users, providing that the Customer may change, add or remove a designated named user in accordance with the user change procedure defined by the Hosted Services
- The Customer Interface may only be used through a Supported Web Browser in the case of the Mobile Web App or via the Mobile App.
- The Customer Interface can be used by any customer of the Customer.

Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer is subject to the following prohibitions:

- the Customer must not sub-license its right to access and use the Hosted Services
- the Customer must not permit any unauthorised person or application to access or use the Hosted Services
- the Customer must not use the Hosted Services to provide services to third parties
- the Customer must not republish or redistribute any content or material from the Hosted Services
- the Customer must not make any alteration to the Platform, except as permitted by the Documentation



- the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Hosted Services by means of the Access Credentials.

The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the Hosted Services but does not guarantee 100% availability.

For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:

- a Force Majeure Event
- a fault or failure of the internet or any public telecommunications network
- a fault or failure of the Customer's computer systems or networks
- any breach by the Customer of this Agreement; or
- scheduled maintenance carried out in accordance with this Agreement.

The Customer agrees to comply with the Provider's Acceptable Use Policy, which is incorporated into this Agreement by reference and available at the Provider's website' and attached below. The Acceptable Use Policy forms part of this Agreement and any breach of the Acceptable Use Policy will be considered a breach of this Agreement.

The Customer must comply with Acceptable Use Policy and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of the Access Credentials comply with Acceptable Use Policy.

The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

The Customer must not use the Hosted Services in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to its other customers using the Platform; and the Customer acknowledges that the Provider may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.

The Customer must not use the Hosted Services:

- in any way that is unlawful, illegal, fraudulent or harmful; or
- in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

#### **4. Scheduled maintenance**

The Provider may from time to time suspend the Hosted Services for the purposes of scheduled maintenance to the Platform, providing that such scheduled maintenance must be carried out.

The Provider shall where practicable give to the Customer at least 5 Business Days' prior written notice of scheduled maintenance that will, or is likely to, affect the availability of the Hosted Services or have a material negative impact upon the Hosted Services.

The Provider shall ensure that all scheduled maintenance is carried out outside Business Hours.

The Provider shall ensure that, during each calendar month, the aggregate period during which the Hosted Services are unavailable as a result of scheduled maintenance or

negatively affected by scheduled maintenance to a material degree, does not exceed 8 hours.

## **5. Support Services**

The Provider shall provide the Support Services to the Customer during the Term.

The Provider shall make available to the Customer a helpdesk.

The Provider shall provide the Support Services with reasonable skill and care.

The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

The Provider shall respond promptly to all requests for Support Services made by the Customer through the helpdesk.

The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue or the Customer's Subscription has terminated in accordance with the Term.

## **6. Customer Data**

The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.

The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation.

## **7. Mobile App**

The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions of the Mobile App, and accordingly this Agreement shall not govern any such use, rights, obligations or liabilities.

## **8. No assignment of Intellectual Property Rights**

Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

**Provider's Ownership:** The Provider retains all right, title, and interest in and to the Hosted Services, including all underlying software, technology, documentation, trademarks, copyrights, patents, trade secrets, and other intellectual property rights ("Provider IP"). No rights in the Provider IP are granted to the Customer except as expressly set forth in this Agreement.

**Customer Data:** The Customer retains all right, title, and interest in and to its data ("Customer Data"). The Customer grants the Provider a non-exclusive, worldwide, royalty-free license to use, copy, transmit, store, and process the Customer Data solely for the purpose of providing the Hosted Services and as otherwise permitted under this Agreement.

**License Grant:** The Provider grants the Customer a non-exclusive, non-transferable, revocable license to access and use the Hosted Services during the Term solely for the Customer's internal business operations and in accordance with this Agreement. This license does not grant the Customer any ownership rights in the Provider IP.

**No Implied Rights:** Except as expressly stated in this Agreement, no other licenses or rights are granted to the Customer, either expressly, impliedly, by estoppel, or otherwise. The Customer shall not attempt to reverse engineer, decompile, disassemble, or otherwise derive the source code of the Hosted Services.

Feedback: Any feedback, suggestions, or recommendations provided by the Customer regarding the Hosted Services are considered non-confidential and the Provider is free to use them without restriction.

Third-Party Software: The Hosted Services may incorporate or utilize third-party software or libraries. The Customer's use of such third-party software is governed by the applicable license agreements accompanying such software, which may be separate from this Agreement.

## **9. Charges**

The Customer shall pay the Charges to the Provider in accordance with this Agreement for any Subscription.

If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach.

All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated inclusive of any applicable value added taxes.

The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation.

## **10. Payments**

The Customer must pay the Charges to the Provider as specified when purchasing any Subscription. The Customer's subscription will commence upon successful processing of their payment. The Customer's initial subscription payment is due upon purchase. Subsequent payments for subscription renewals are due on the respective renewal dates.

The Hosted Services will be activated upon successful processing of the initial payment and will remain active as long as renewal payments are successfully processed.

If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:

- Suspend the Customers access to the Hosted Services.

The Customer must pay the Charges by debit card or credit card or by such payment details as are notified by the Provider to the Customer from time to time.

## **11. Provider's Confidentiality Obligations**

The provider must:

- keep the Customer Confidential Information strictly confidential
- not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer
- use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care
- act in good faith at all times in relation to the Customer Confidential Information; and
- not use any of the Customer Confidential Information for any purpose other than as is required to reasonably provide the Hosted Services.

Notwithstanding Clause, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

This Clause imposes no obligations upon the Provider with respect to Customer Confidential Information that:

- is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality
- is or becomes publicly known through no act or default of the Provider; or
- is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

The restrictions in this Clause do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

The provisions of this Clause shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

## **12. Data Protection**

Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.

The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause.

The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including transfers of the Customer Personal Data to a third country under the Data Protection Laws), as set out in this Agreement or any other document agreed by the parties in writing.

The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:

- the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities, providing that such transfers must be protected by appropriate safeguards.
- the Provider may transfer the Customer Personal Data to its third-party processors in the jurisdictions and may permit its third party processors to make such transfers, providing that such transfers must be protected by any appropriate safeguards identified therein; and
- the Provider may transfer the Customer Personal Data to a country, a territory or sector to the extent that the competent data protection authorities have decided that the country, territory or sector ensures an adequate level of protection for Personal Data.

The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.

The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the



fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause.

The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 36 hours after the Provider becomes aware of the breach.

The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause, providing that no such charges shall be levied with respect to the completion by the Provider (at the reasonable request of the Customer, not more than once per calendar year).

The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Provider of this Agreement or any security breach affecting the systems of the Provider.

If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

### **13. Warranties**

The Provider warrants to the Customer that:

- the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement
- the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
- the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

The Provider warrants to the Customer that:

- the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification
- the Hosted Services will be free from Hosted Services Defects
- the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- the Platform will incorporate security features reflecting the requirements of good industry practice

The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under NSW law. Reworded Statement: Compliance with Laws The Provider warrants that the Hosted Services, when used by the Customer in accordance with this Agreement and for their intended purpose, will materially comply with all applicable laws, statutes, and regulations of New South Wales, Australia. However, the

Provider makes no warranty that the Hosted Services will comply with all laws, statutes, and regulations applicable to the Customer's specific use case or industry. The Customer is solely responsible for ensuring their use of the Hosted Services complies with all applicable laws and regulations relevant to their business operations.

The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

- modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- procure for the Customer the right to use the Hosted Services in accordance with this Agreement.

The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

#### **14.Acknowledgements and warranty limitations**

The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

## **15. Consumer Guarantees**

**Application of Consumer Guarantees:** If the Customer is a "consumer" as defined in the Australian Consumer Law, the statutory guarantees provided by the Australian Consumer Law (including, without limitation, the guarantees as to acceptable quality, fitness for purpose, and due care and skill in providing services) apply to the supply of the Hosted Services under this Agreement. Nothing in this Agreement is intended to exclude, restrict, or modify those guarantees in any way.

**Inconsistency with Consumer Guarantees:** To the extent that any provision of this Agreement is inconsistent with any applicable consumer guarantee, the consumer guarantee will prevail.

**Remedies under Consumer Guarantees:** If any of the consumer guarantees are not met, the Customer may have rights under the Australian Consumer Law against the Provider, including the right to a refund, repair, or replacement of the Hosted Services, or compensation for any reduction in the value of the Hosted Services. The specific remedies available will depend on the nature of the failure to comply with the consumer guarantee.

The Customer should contact the Provider in the first instance to discuss any potential issues related to the consumer guarantees.

## **16. Limitations and exclusions of liability**

Nothing in this Agreement excludes, restricts, or modifies any rights or remedies that the Customer may have under the Australian Consumer Law. To the extent that there is any inconsistency between this Agreement and the Australian Consumer Law, the Australian Consumer Law will prevail.

Subject to the preceding paragraph, the following limitations and exclusions apply:

**Exclusion of Certain Losses:** Subject to the non-excludable provisions of the Australian Consumer Law, in no event shall the Provider be liable for any indirect, incidental, special, consequential, or punitive damages, including without limitation any loss of profits, loss of revenue, loss of data, loss of anticipated savings, loss of goodwill, loss of business opportunity, or damages arising from business interruption, arising out of or in connection with this Agreement or the Hosted Services, regardless of the form of action, whether in contract, tort (including negligence), or otherwise, even if the Provider has been advised of the possibility of such damages.

**Cap on Liability:** Subject to the non-excludable provisions of the Australian Consumer Law, the Provider's total aggregate liability to the Customer for all claims arising out of or in connection with this Agreement or the Hosted Services, whether in contract, tort (including negligence), or otherwise, shall in no event exceed the total amount paid by the Customer to the Provider under this Agreement during the 12 months preceding the date on which the cause of action arose.

**Force Majeure:** The Provider shall not be liable for any failure or delay in performing its obligations under this Agreement to the extent such failure or delay is caused by a Force Majeure Event (as defined in this Agreement)

## **17. Force Majeure Event**

If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

- promptly notify the other; and
- inform the other of the period for which it is estimated that such failure or delay will continue.

A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **18. Termination**

Either party may terminate this Agreement by giving to the other party at least 30 days' written notice of termination when subscribed to a monthly Subscription and at least 90 days' written notice of termination when subscribed to an annual Subscription.

Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.

Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- the other party:
  - is dissolved;
  - ceases to conduct all (or substantially all) of its business;
  - is or becomes unable to pay its debts as they fall due;

- is or becomes insolvent or is declared insolvent; or
- convenes a meeting or makes or proposes to make any arrangement or composition with its creditors.
- an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
- if that other party is an individual:
  - that other party dies;
  - as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
  - that other party is the subject of a bankruptcy petition or order.

## **19. Effects of termination**

Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely):

Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.

Within 30 days following the termination of this Agreement for any reason:

- the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
- the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement, without prejudice to the parties' other legal rights.

## **20. Notices**

Any notice from The Customer to The Provider under this Agreement must be given by one of the following methods:

- Submitting a support request ticket via the Hosted Services help pages with the Category “Cancellation”, in which case the notice shall be deemed to be received from the point at which the ticket is successfully submitted.

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

Any notice from The Provider to The Customer under this Agreement must be given by one of the following methods:

- Submitting an email to The Customer’s email address used to initially register for using the Hosted Services.
- Submitting an email to the Customer user’s email address used to make the most recent Subscription purchase.

The contact method may be updated from time to time by The Provider by giving written notice of the update to the other party via The Customer’s email address as per the above notice clause.

## **21. Subcontracting**

Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.



The Provider shall remain responsible to the Customer for the performance of any subcontractor obligations.

Notwithstanding the provisions of this Clause but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third-party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

## **22. Dispute Resolution**

**Informal Resolution:** In the event of any dispute arising out of or in connection with this Agreement, the parties agree to first attempt to resolve the dispute informally through good-faith negotiations. The party initiating the dispute shall provide written notice to the other party outlining the nature of the dispute and proposed resolution. The parties shall then have 14 days to attempt to resolve the dispute through negotiation.

**Mediation:** If the dispute is not resolved within 14 days of the written notice, the parties agree to submit the dispute to mediation administered by the Australian Disputes Centre in accordance with its then-current rules. The costs of mediation shall be shared equally between the parties.

**Litigation:** If the dispute is not resolved through mediation within 30 days of the commencement of mediation, or if either party fails to participate in good faith in the mediation process, either party may commence legal proceedings in a court of competent jurisdiction.

## **23. General**

This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior discussions, negotiations, representations, warranties, understandings, and agreements, whether written or oral, between the parties. Each party acknowledges that it has not relied on any representation, warranty, or other statement made by the other party, or any other person on its behalf, that is not expressly set forth in this Agreement.

No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree to any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia, without regard to its conflict of laws principles. Any dispute arising out of or relating to this Agreement, including its interpretation, validity, performance, or breach, shall be subject to the exclusive jurisdiction of the courts of New South Wales, Australia, and the parties irrevocably submit to the personal jurisdiction of such courts.

## **24. Interpretation**

In this Agreement, a reference to a statute or statutory provision includes a reference to:

- that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- any subordinate legislation made under that statute or statutory provision.

The Clause headings do not affect the interpretation of this Agreement.

References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

# Hosted Services Specification Particulars

## 1. Overview of Hosted Services

The Hosted Services as specified here means the ding ding system used for order management and customer alerting, known here as The System.

The System comprises of the following:

- User Interface; this is the web hosted platform accessible at <https://www.ding-ding.com.au> which The Customer uses to raise and manage orders and access all functionality of ding ding from the perspective of a subscribing Customer.
- Customer Interface; this is the interface which is seen and used by the Customer's customers. Typically, these are the individuals whose orders with the Customer the Customer uses the ding ding User Interface to manage. The Customer Interface comprises of the Mobile App and the Mobile Web App. These are used by the Customer's customers for the purpose of tracking the progress of their orders with The Customer and receiving updates

The operation of the User Interface and Customer Interface are outlined and fully detailed under the help pages of ding ding, these are accessible by clicking on the help link in the top right hand corner of the menu bar at the top of each screen under Guided Tours, How to Videos and FAQ and Support.

The Customer Interface should be quite self-evident in terms of functionality for the Customer's customers.

## 2. Specification of Hosted Services

The Hosted Services work by allowing The Customer to record an order they have taken at a subscribing venue and allowing the customer who placed that order to scan a QR code representing the order.

Once the customer who placed the order has done this they can then be notified when the order is ready for collection or if the order has been cancelled. The Customer does this inside the User Interface by marking the order as Ready For Collection or Cancelled. The Customer cannot use the Hosted Services as a general communications tool for sending general notifications to their customers beyond the scope of sending a pre-configured, customisable 'Order Ready' or 'Order Cancelled' message.

There are multiple options available to The Customer in regard to how they might wish to tailor the above process and their customer's experience and these are outlined in detail in the help sections mentioned in section 1) above. These include the facility to customise message text sent to their customers in relation to the order they have placed, tailoring the Customer Interface to use their own logo in place of the default ding ding logo, adjusting the scanning functionality to use a printed QR code or a dynamically generated digital QR code and (for Customer venues subscribed to the appropriate service) optionally including Customer generated advertising banners to appear on the User Interface.

The Customer must adhere to the Acceptable Use Policy when making any customisations to either the Customer Interface or the User Interface and acknowledges that the Provider as outlined in the Terms and Conditions has no responsibility whatsoever for any content the Customer includes in any customisations.

The Hosted Services allow The Customer to sign up and subscribe as many venues as they would like via a subscription specific to each venue. For example, a Customer whose organisation has a venue in the north and the south of a city might initially register to use the Hosted Services with their north venue. They receive a 14-day free trial subscription on sign up that is valid for the north venue. At some point before the trial expires, they might sign up to a full subscription. If they subsequently decide to also use the Hosted Services at their south venue they need to sign up to a full subscription for this venue as well. Subscriptions are covered in full below.

The Customer is free to add as many users (their staff) as they like to use the Hosted Services. Users from the Customer's organisation can be configured with various roles and be provided with access to all venues within the Customer's organisation or granularly added to each venue with a specific role. There is no limit on the number of users the Customer may add within reason, however each subscription does have a maximum

number of orders that can be processed per month. For details see the Subscriptions section below.

### **3. Subscriptions and Payments**

A Customer will have an organisation and will have one or more venues within the Hosted Services. Subscriptions within the Hosted Services are tied to venues not to the organisation.

When the Customer initially registers to use the Hosted Services they are provided with a 14 day free trial subscription to enable them to evaluate the Hosted Services. If the customer does not take out a full subscription to the Hosted Services within the period of the free trial, then will no longer be able to use the Hosted Services to create and manage orders beyond that point.

If the Customer decides to continue to use the Hosted Services after the free trial period has completed, they can elect to purchase a full subscription. Doing so will restore their access to create and manage orders including any existing orders created during the lapsed free trial period.

Should the Customer elect to purchase a full subscription within the period of the free trial subscription, they will be credited with any days remaining on the free trial subscription at the point of purchase and these days will be added to the period of the first subscription. For example, if a free trial subscription runs from 1 May to 14 May and the Customer takes out a full monthly subscription on 10 May, this monthly subscription will initially renew on June 14 rather than June 10.

There are two basic types of subscription, each of which can be purchased on a month to month basis or as an annual subscription providing a saving compared against twelve monthly subscriptions of the same type:

- Basic Subscription; this type of subscription allows the Customer to process up to 6,000 orders in a month and provides some basic analytics.

- Standard Subscription; this type of subscription allows the Customer to process up to 18,000 orders in a month, provides more advanced analytics and additionally allows the Customer to include their own customised advertising banners on the screen's seen by their own customers.

Full subscriptions are paid for by the Customer at the commencement of the subscription period and will automatically renew for the same term on the renewal date (shown as the "Next Payment Date" in the Customer's account) unless the Customer cancels the subscription. To cancel a subscription, the Customer must submit a support request ticket via the Hosted Services help pages with the Category "Cancellation" no later than one business day before the Next Payment Date. If the Customer cancels within the specified timeframe, no further charges will be applied. If the Customer fails to cancel within the specified timeframe, the subscription will automatically renew, and the Customer will be charged for the subsequent subscription period. For annual subscriptions cancelled mid-term, refunds will be provided in line with the Termination clause in the Terms and Conditions.

It is possible for the Customer to have multiple venues with different types of subscriptions renewing on different dates.

Full subscriptions will have a valid from and a valid to date. These appear inside the Hosted Services under the Venues and Subscriptions screen as last payment date and next payment date respectively. The next payment date is the renewal date of the subscription. On the renewal date ding ding will attempt to take a payment for the subscription amount. Payment records can be found under the Payments screen inside the Hosted Services where a receipt can be downloaded for any successful payment.

Where the renewal payment was successful the last and next payment dates will be updated accordingly. If the renewal payment fails for any reason this will be visible to the Customer at various points within the Hosted Services, including the main Orders screen and the Venues and Subscriptions screen. The customer can manually make a payment to renew the subscription from the latter. If the Customer does not do so within 24 hours, then the subscription lapses and the Customer will no longer be able to use the Hosted Services to manage and create orders.

Customers whose organisations contain large numbers of venues should contact ding ding for specialised service and subscription pricing. See our website for details.

#### **4. Advertising banners**

Customers subscribed to either a monthly or annual Standard Subscription can use the Hosted Services to create banner advertisements which will appear on their customers screens after their customers scan a QR code for their order or receive notifications on the progress of their order.

Only advertising banners created within the Hosted Services can appear on the screens of customers (of The Customer) and only via the Mobile App or the Mobile Web App.

The Customer must adhere to the Acceptable Use Policy when crafting any advertising banners and acknowledges that the Provider as outlined in the Terms and Conditions has no responsibility whatsoever for any content the Customer includes in any advertising banner made visible to the Customer's customers.



# Acceptable Use Policy

## 1. Introduction

This acceptable use policy (the "Policy") sets out the rules governing:

- the use of <https://www.ding-ding.com.au>, any successor website, and the services available on that website or any successor website (the "Services"); and
- the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("Content").

References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to ding ding (and "we" and "our" should be construed accordingly).

By using the Services, you agree to the rules set out in this Policy.

We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.

## 2. General usage rules

You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.

You must not use the Services:

- in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
- in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.

You must ensure that all Content complies with the provisions of this Policy.

### 3. Unlawful Content

Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:

- be libellous or maliciously false
- be obscene or indecent
- infringe any copyright, moral right, database right, trademark right, design right, right in passing off, or other intellectual property right
- infringe any right of confidence, right of privacy or right under protection legislation
- constitute negligent advice or contain any negligent statement
- constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity
- be in contempt of any court, or in breach of any court order
- constitute a breach of racial or religious hatred or discrimination legislation
- constitute a breach of official secrets legislation; or
- constitute a breach of any contractual obligation owed to any person

You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaints.

### 4. Graphic material

- Content must be appropriate for all persons who have access to or are likely to access the Content in question, and, in particular, for children.
- Content must not depict violence in an explicit, graphic or gratuitous manner.
- Content must not be pornographic or sexually explicit.

## **5. Factual accuracy**

- Content must not be untrue, false, inaccurate or misleading.
- Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

## **6. Negligent advice**

Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional advisory services.

Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

## **7. Etiquette**

- Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.
- Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.
- Content must not be liable to cause annoyance, inconvenience or needless anxiety.
- You must not use the Services to send any hostile communication, or any communication intended to insult, including such communications directed at a particular person or group of people.
- You must not use the Services for the purpose of deliberately upsetting or offending others.

- You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- You must ensure that Content does not duplicate other content available through the Services.
- You must ensure that Content is appropriately categorised.
- You should use appropriate and informative titles for all Content.
- You must at all times be courteous and polite to other users of the Services.

## **8. Marketing and spam**

You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering. The only exception to this is the creation of advertising banners from within the Hosted Services and made available to customers of the Customer where the Customer has this facility enabled via the Subscription they are subscribed to.

Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.

You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.

You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.

You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.

## **9. Regulated businesses**

- You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.
- You must not use the Services for any purpose relating to the offering for sale, sale or distribution of drugs or pharmaceuticals.
- You must not use the Services for any purpose relating to the offering for sale, sale or distribution of knives, guns or other weapons.

## **10. Monitoring**

You acknowledge that we may actively monitor the Content and the use of the Services.

## **11. Data mining**

You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

## **12. Hyperlinks**

You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

## **13. Harmful software**

The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.