

TRIAL AGREEMENT

PARTIES

- (1) **QUDINI LIMITED** (company number: 08121501) a company incorporated in England and Wales whose registered office is at 35 Kingsland Road, London, E2 8AA ("**we, us, our or Qudini**"); and
- (2) **Your Company Name of your address, both as indicated by you upon sign-up via our web-service ("you").**

AGREED TERMS

1. A summary of what you are agreeing to and a description of the Service

- 1.1 We license and operate some virtual queuing management software (the "**Software**"), which can be used by you in order to manage queues or lists of customers for your business, event or venue. We host the Software and provide you with a service via the internet by means of which you may access and use the Software (the "**Service**"). Any new features that add to or enhance the Software or the Service and which are added by us after you enter this Agreement (including the release of new tools or resources) shall also be subject to this Agreement.
- 1.2 We do not distribute to you, or license you to use, any copies of the Software. Your use of the Software is restricted to that obtainable by use of the Service and, as explained above, access to and use of the Software and the Service is provided under this Agreement.
- 1.3 If you breach any of the terms of this Agreement, we may suspend or terminate your account or your access to or use of the Service, as set out in more detail in this Agreement.
- 1.4 This Agreement uses some defined terms, which are explained in schedule 1.

2. License and scope of authorised use

- 2.1 Subject to payment of the applicable charges and to the restrictions set out in this Agreement, you are granted a non-exclusive, non-transferable licence for the term of this Agreement, to access and use the Software via the Service.
- 2.2 Only you are licensed to access and use the Software and the Service. Use by you includes use by:
 - (a) your employees;
 - (b) any contract staff who are working for you; and
 - (c) any other person working with or on your behalf;

provided that, in each of these cases, the person concerned is accessing and using the Software and the Service exclusively on your behalf and for your internal business purposes.

2.3 In order to use and access the Service you must register and sign up for an account with us (via our Website). Once you have registered with us, we will issue you with a set of log-on credentials in order to gain access to the Service. You are responsible for ensuring the security and confidentiality of all log-on credentials (including usernames and passwords), assigned to you or any authorised user(s) to access or use the Service. You will be solely responsible for all activity by you or any authorised user(s) which occurs under its log-on credentials and shall promptly notify Qudini on becoming aware of any unauthorised access to or use of the Service.

2.4 You must not:

- (a) permit any third party (except as expressly permitted under clause 2.2) to access or use the Software or Service;
- (b) use the Software or Service on behalf of any third party (which includes operating any form of facility on behalf of any third party);
- (c) copy, modify, adapt or create derivative works from the Software (save to the extent that this occurs automatically and in temporary form in the normal course of using our Software via the Service);
- (d) attempt to discover or gain access to the source code for the Software or reverse engineer, modify, decrypt, extract, disassemble or decompile the Software except to the extent that you are permitted to do so by law;
- (e) attempt to interfere with the proper working of the Software or Service or attempt to circumvent security, licence control or other protection mechanisms or tamper with, hack into or otherwise disrupt the Software or Service or any related website, computer system, server, router or any other internet-connected device; or
- (f) obscure, amend or remove any copyright notice, trade mark or other proprietary marking on, or visible during the operation or use of, the Software or the Service.

3. Fees, invoicing and payment

3.1 You shall pay an on-going monthly fee for the Service as notified in writing to you by us during the sign-up process. We shall invoice you for the monthly fee for the Service in advance, and include any additional charges (as per the rates set out in Schedule 2) which have been incurred from the previous month, starting from the Effective Date.

3.2 The monthly fee is subject to review and increase by us at any time upon sixty (60) calendar days prior notice to you. If you do not wish to accept the fee increase, you may terminate your use of the Service on notice to us (such notice to be given before the end of the sixty (60) days notice that you were given of the proposed fee increase, and to expire at the end of that sixty (60) days notice).

3.3 All amounts referred to in this Agreement are exclusive of VAT or other applicable sales tax which, where chargeable by us, shall be payable by you at the rate and in the manner prescribed by law.

3.4 You must pay all invoices within fourteen (14) calendar days of receiving them and pay all invoices, in full, by the due date for payment without deduction, set off or withholding of any kind. In the event of any dispute as to the amount of an invoice, you shall pay the amount in full pending the resolution of any dispute and we shall pay any adjustment due immediately upon any resolution.

4. Support and maintenance

- 4.1 We will provide support and maintenance services in accordance with the description set out in Schedule 3.

5. Intellectual Property Rights

- 5.1 We shall remain the owner of all Intellectual Property Rights in our brands, trade marks and logos, the Software and the Service (save for any Customer Content). Except as expressly permitted by this Agreement, you may not use any of our Intellectual Property Rights without our prior written consent.

- 5.2 Subject to clauses 7.2 and 7.3, you shall remain the owner of all Intellectual Property Rights in the Customer Content and you grant us a perpetual, irrevocable, non-exclusive, worldwide, royalty-free licence, to use, reproduce, publish, display and communicate to the public the Customer 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 us to provide the Service and perform our obligations under this Agreement.

6. Warranties

- 6.1 We warrant that:

- (a) we shall provide the Service so as to comply with the Service Level; and
- (b) we have the right to provide the Service as contemplated under this Agreement and that in doing so in accordance with the provisions of this Agreement, the Software, the Service and their use by you in accordance with this Agreement shall not infringe the Intellectual Property Rights or other rights of any third party.

- 6.2 We do not give or enter into any condition, warranty or other terms to the effect that the Service and the Software will be free from all known computer viruses, but we warrant that we have checked the Software for the most commonly-known viruses.

- 6.3 Except as expressly set out in this Agreement and subject to clause 11.1, no conditions, warranties or other terms, including any implied terms relating to satisfactory quality or fitness for any purpose, will apply to the Software or the Service or to anything supplied or provided by us under this Agreement. In particular, we do not give or enter into any condition, warranty or other term to the effect that the operation of the Software or Service will be uninterrupted or error-free, or that they will meet your particular requirements.

7. Sites

- 7.1 During the Term of this Agreement, and subject to clause 8.2, the Service shall be limited to use by you at the following Sites:

Your 1 trial site

- 7.2 You may add Sites at which you wish to use the Service by notifying us in writing not less than thirty (30) days prior to the date at which you wish to start using the Service at each such extra Site (and provided that the notice must be given so as to expire on the last day of a month). You may then start to use the Service at each such extra Site

with effect from the first day of the next month following the month at the end of which the notice expired, and additional charges in relation to such Site shall apply from the first day of the that next month. Any Sites added in accordance with this clause will be treated as being added to the list referred in clause 8.1.

- 7.3 If you have added one or more Sites under clause 8.2, you shall not be permitted to terminate use of the Service at an individual Site under this Agreement.
- 7.4 We may agree with you from time to time that you may use the Service at a given Site for trial purposes (for example, to assess the likely extent of use of the Service at a new Site that has just opened). If so, then the start and end of use of the Service at each such Site will be subject to the terms for the trial agreed at the time (but will otherwise be governed by the terms of this Agreement).

8. Data

8.1 Subject to clauses 7.2 and 7.3:

- (a) Customer Data inputted and uploaded by you or your customers to our Service; and
- (b) the Intellectual Property Rights in any such Customer Data;

shall be owned by you. Subject to clauses 7.2 and 7.3, we shall only use any such Customer Data for the purposes of providing you with the Services you have requested.

8.2 We shall be allowed to:

- (a) analyse Customer Data inputted and uploaded to our Service; and
- (b) from that Customer Data, create other data derived from that Customer Data, provided that the derived data concerned is anonymised so that it cannot be used to identify any individual to whom the Customer Data from which it was derived related ("**Anonymised Data**").

All Anonymised Data, and all Intellectual Property Rights in Anonymised Data, shall be owned by us, and we shall have the right to copy, adapt, use and exploit the Anonymised Data in any way we see fit, without any obligation or liability to you.

8.3 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 we have consent from the relevant individual to do so, a copy of any Customer Data which is inputted or uploaded by you and which relates to that individual may be aggregated by us to the profile that we hold on that individual ("**Profile Data**"). All Profile Data, and all Intellectual Property Rights in Profile Data, shall be owned by us and, subject to the rights of the individuals to whom the Profile Data relate, we shall have the right to copy, adapt, use and exploit the Profile Data in any way we see fit, without any obligation or liability to you.

9. Data loss and backups

9.1 We shall use our reasonable endeavours:

- (a) to make one daily backup copy of the aggregate Customer Data held by us at the point at which the backup is made; and

- (b) in the event of loss or damage to any Customer Data, to restore the Customer Data concerned from the last available backup.

9.2 Without prejudice to our obligations under clause 8.1, we shall not be liable for any loss of, or damage to, Customer Data, regardless of how that loss or damage occurs.

10. Data protection

10.1 As between us and you, you are responsible for all Customer Content. In relation to all "**personal data**" (as defined by the Data Protection Act 1998 (the "**Act**"), which also defines the terms "**data controller**", "**data subject**" and "**processing**") provided or disclosed to us by or on your behalf, whether as part of any Customer Content or otherwise:

- (a) subject to clause 9.2, you acknowledge and agree that you are the data controller of such data, and that we are only acting on your behalf; and

- (b) you warrant that:

- (i) such data shall have been obtained and supplied to us in compliance with the Act, including you having obtained, where required, all necessary consents and approvals from the data subjects that are necessary to permit us to provide the Service as contemplated by this Agreement; and

- (ii) all instructions from you to us to process such personal data shall comply with the Act.

- (c) To the extent that we are processing any personal data you have provided to us, we shall:

- (i) only process such personal data as is necessary to perform its obligations under this Agreement and ensure that such data shall be held and processed in accordance with the Act;

- (ii) process the personal data only for such purposes as are instructed by you and ensure that our processing of the personal data does not put you in breach of the Act;

- (iii) establish and maintain at all times appropriate technical and organisational measures to protect against unauthorised, accidental or unlawful processing of such data against accidental loss or destruction of, or damage to, such data (having regard to the state of technological development and the costs of implementing any such measures) as well as implementing reasonable security programmes and procedures for the purpose of ensuring that only authorised personnel have access to the equipment to be used to process the personal data and that any person whom we authorise to have access to the personal data shall respect and maintain all due confidentiality. You acknowledge and agree that you, not us, are responsible for the security of such data, and all other Customer Content whilst in transit over the internet;

- (iv) promptly provide to you all information in our possession concerning any unauthorised or accidental disclosure or access made by any of our personnel;

(v) not cause any personal data to be transferred outside the European Economic Area unless a data export contract is first entered into between us and the relevant data importer on terms substantially similar to these approved by the European Commission; and

(vi) procure that any permitted sub-contractor of ours shall comply with the obligations under this clause 10 to the extent that such sub-contractor will be processing personal data.

10.2 We shall be the data controller in relation to any Profile Data held by us.

11. Confidentiality

11.1 Each party agrees and undertakes that during the term of this Agreement and thereafter it will keep confidential, and will not use for its own purposes, any information of a confidential nature (including without limitation trade secrets and information of commercial value) which may become known to that party from the other party ("**Confidential Information**") nor, without the prior written consent of the other party, disclose to any third party any Confidential Information unless the Confidential Information:

(a) is in the public domain at the Effective Date;

(b) is already known to that party at the time of disclosure;

(c) becomes public knowledge other than by breach of this Agreement; or

(d) subsequently comes lawfully into the possession of that party from a third party who is under no obligation of confidentiality.

11.2 To the extent necessary to give effect to this Agreement, each party may disclose the Confidential Information to those employees and sub-contractors as may be reasonably necessary to perform its obligations under this Agreement, provided that before any such disclosure each party shall make those employees and sub-contractor aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those employees and sub-contractors with this clause 11.

12. Limitation of liability

12.1 Our liability:

(a) for death or personal injury caused by our negligence;

(b) for fraud or fraudulent misrepresentation or any other fraudulent act or omission; or

(c) for any other liability which may not lawfully be excluded or limited;

is not excluded or limited by this Agreement.

12.2 Subject to clause 11.1, we shall not be liable for any:

(a) loss of profits;

(b) loss of sales;

(c) loss of revenue;

- (d) loss of or damage to goodwill;
- (e) loss of, or loss of use of, software or data (including Customer Data); or
- (f) indirect, consequential or special loss or damage;

and whether such liability arises due to breach of contract, negligence or misrepresentation, under any indemnity or for any other reason.

- 12.3 Subject to clauses 11.1 and 11.2, our sole and exclusive liability, and your sole and exclusive remedy, for any Service Failure, shall be Service Credits as set out in schedule 3. This shall be without prejudice to any right of termination to which you may be entitled under clause 13.3.
- 12.4 Subject to clauses 11.1 and 11.2, our total aggregate liability arising out of or relating to the Software, the Service or their use by you or otherwise under or in relation to this Agreement or its subject matter and to anything which we have done or not done in connection with the same (whether the liability arises due to breach of contract, negligence or misrepresentation, under any indemnity or for any other reason) shall be limited as follows:
- (a) in relation to each claim, to an amount equal to the total amount paid and payable by you to us under this Agreement in the period of twelve (12) months immediately preceding the month in which the claim arose (provided that if more than one claim arises from the same event or series of connected events, then all such claims will be treated as one claim, which will be treated as having arisen on the date on which the first such claim arose); and
 - (b) in the aggregate, to a maximum amount of £50,000.

13. Free trial and Termination

- 13.1 If you sign-up for a free trial period to our Service via our Website or directly through us, we will make the Service available to you on such a basis (that is, non-paid for access) until the earlier of either:
- (a) the expiry of the free trial period for which you have subscribed; or
 - (b) the commencement date of any paid-for Service requested by you.
- 13.2 Your access to the Service will be suspended immediately on expiry of the free trial period for which you have subscribed. If you wish to continue using our Service, you must contact us prior to the expiry of the free trial period to guarantee uninterrupted and continuous access to, and use of, the Service. Your usage of the Service will continue for a monthly or annual fee that will be agreed with us to most reflect your businesses usage of the Service.
- 13.3 We may at our discretion decide to extend your trial should we deem is necessary to do so, there may be a nominal fee for this extended period as agreed by us.
- 13.4 Any Customer Data which has been inputted into the Service by you during the free trial period shall be archived after sixty (60) days of inactivity on your account. Archived data will be retained for a period of no more than twelve (12) months, after which it will be deleted.

14. General

- 14.1 Nothing in this Agreement is intended to confer on a person any right to enforce any term of this Agreement which that person would not have had but for the Contract (Rights of Third Parties) Act 1999.
- 14.2 You are not entitled to transfer or assign this Agreement without Qudini's prior written consent. Qudini may assign, sub-contract or sub-let this Agreement or any part thereof.
- 14.3 Any failure by us to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.
- 14.4 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 representative as follows:
- Qudini: Imogen Weathered – CEO (imogen@qudini.com)
 - You as the representative who signed up to our service online, or any other representative whose contact details you may supply:

The representatives shall meet and attempt to resolve the dispute within a period of thirty (30) working days from the date of referral of the dispute to them.

- 14.5 All notices in relation to this Agreement must be in English, in writing, addressed to the other party and sent to the address or e-mail address as notified to the other party in accordance with this clause. All notices shall be deemed to have been given on receipt as verified by written or automated receipt or electronic log (as applicable). All other notices must be in English, in writing, addressed to the other party's primary contact and sent to their then current portal address or email address.
- 14.6 Subject to clause 11.1, this Agreement forms the entire understanding of the parties and supersedes all previous agreements, understandings and representations relating to its subject matter. Each of the parties acknowledges that it has not relied on any representations of the other in entering into this Agreement except for such representations as are expressly set out in this Agreement. This clause shall not exclude the liability of a party for fraud or fraudulent misrepresentation.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of England and each party agrees to submit to the exclusive jurisdiction of the English Courts. Notwithstanding the foregoing nothing herein shall preclude either party from seeking injunctions from any court of competent jurisdiction in order to protect its Intellectual Property Rights or Confidential Information.

SIGNED on behalf of both parties on the date set out at the top of this agreement:

SIGNED for and on behalf of)
QUDINI LIMITED)
Name:) Imogen Wethered
Position:) CEO/Director

SIGNED for and on behalf of)
CUSTOMER)
Name:)
Position:)

Schedule 1

Defined terms

"Act"	defined in clause 9.1;
"Anonymised Data"	defined in clause 7.2;
"Available"	means, in relation to the Service, that it is operational on at least one of the server(s) on which it is installed and available to be used by you (subject to proper performance of the devices, software and networks used by you to access the Service and to general internet connectivity, all of which are outside our control), and the term "Availability" should be interpreted accordingly;
"Confidential Information"	defined in clause 11.1;
"Customer Content"	all data, information or material provided or made available by or on behalf of the customer through access to or use of the Software or Service;
"Customer Data"	all data, information or material inputted or uploaded by you through access to or use of the Software or Service;
"Effective Date"	the date on which you agree to this Agreement, or the date on which you first start to use the Software and the Service, whichever occurs first;
"Initial Period"	defined in clause 13.1;
"Insolvency Event"	means in relation to a corporate entity, any of the following events: <ul style="list-style-type: none">(a) a petition is presented applying for an administration order to be made in respect of the other party or a petition is presented or notice is given or an order is made or an effective resolution is passed for the liquidation or winding up (or any similar judicial process) of the other party;(b) the other party seeks or enters into any composition or arrangement for the benefit of its creditors or convenes a meeting for the purpose of making such arrangement or composition or suffers or permits any distraint or distress proceedings or an encumbrancer takes possession or an administrative receiver or a receiver or manager is appointed of all or any part of its assets or undertaking or if it takes or suffers any similar action in consequence of debt or a judgment is entered and is not paid out within seven days; or(c) the other party ceases or threatens to cease to

carry on its business or substantially the whole of its business or disposes of its undertaking or stops payment or threatens to stop payment of its debts as and when they fall due or is deemed to be unable to pay its debts as they fall due within the meaning of section 123 Insolvency Act 1986;

"Intellectual Property Rights"	means patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and rights to apply for or register the same (present, future and contingent), and including all renewals, extensions, revivals and all accrued rights of action);
"Profile Data"	defined in clause 7.3;
"Renewal Period"	defined in clause 13.1;
"Service"	defined in clause 1.1, and includes all services provided by us and made available by us to you online via our Website, a detailed description of which can be found on the Website; References to the Service in this Agreement should be treated as including reference to the Software to which you may obtain access via the Service;
"Service Failure"	defined in paragraph 3.2 of Schedule 3;
"Service Hours"	means between the hours of 6am-2am GMT (or 6am-2am in the time zone of any other applicable country in which you are using our Service)
"Service Level"	defined in paragraph 3.1 of Schedule 3;
"Software"	defined in clause 1.1 and includes all human readable, machine operable and all other forms of the proprietary software which comprise the Services and incorporating all forms of any modifications made to it by Qudini from time to time;
"user(s)"	means the individuals who are authorised by you to access and use the Service; and
"Website"	means app.qudini.com or such other website on which we may make the Service available.

Schedule 3

Service level description

1. Overview

- 1.1 This schedule sets out the service level agreement between us and you for the provision of the Service.

2. Support requests

- 2.1 We will provide you with support in respect of the Service during 8am and 10.30pm. Phone support will be provided to you as standard and on-site support may be provided as agreed with us at our daily rate of £600 (plus reasonable travel costs) per person-day.
- 2.2 If a problem occurs with your use of our Service, you should consult the troubleshooting page on our Website and our instruction manuals in the first instance.
- 2.3 In the event of a problem arising requiring access to our support services, you should report your problem either by telephone or email (as set out below) or via our form on the Website. We will respond to all support requests as soon as possible, and within Four (4) business hours (9am-6pm) to work with you to resolve your problem:

Qudini support helpdesk telephone number: 0203 322 1016

Qudini support helpdesk email address: support@qudini.com

3. Service Guarantee and service credits

- 3.1 We shall use our best endeavours to provide the Service so that in each month it has an average Availability during Service Hours of 99.5%, measuring the relevant time periods in minutes (the "**Service Level**"). Outside Service Hours we shall use our reasonable endeavours to provide the Service but we do not guarantee that the Service will be Available during that time for any particular period or without interruption.
- 3.2 Subject to clause 6 of this schedule 3, if in any complete month during which you are a subscriber of our Service, the Service Availability falls below the Service Level (a "**Service Failure**"), we will after the end of the relevant month give you a service credit equal to a percentage of your monthly fee, the relevant percentage being the same as the amount by which the percentage of actual Availability in the month concerned (measuring the relevant time periods in minutes) is less than the Service Level of 99.9% (so, for example, if the average Availability in Service Hours in a given month is 98.9%, you will be given a service credit of 1% of your monthly fee), provided that the maximum service credit that we will give in relation to any given month will not exceed 50% of the monthly fee.
- 3.3 Service credits shall be provided as a reduction in the amount due from you to us in the next invoice then due to be issued under this Agreement. We shall not be obliged in any circumstances to pay any money or make any refund to you. Any unused service credit allowance will be lost on termination or expiry of this Agreement.
- 3.4 The provision to you of a service credit shall not entitle you to any right of set-off.

3.5 The parties agree that each service credit is a genuine pre-estimate of the loss likely to be suffered by you and is not a penalty.

3.6 The provision of service credits shall be your sole and exclusive remedy for Service Failures.

4. Maintenance windows

4.1 We reserve the right to take the Service offline in order to carry out emergency maintenance, but will endeavour to provide you with as much notice as reasonably possible. Routine maintenance, which may also require the Service to be taken offline, will as far as reasonably possible be carried out outside Service Hours.

5. Service updates and testing

5.1 All upgrades and testing of the Service will be performed at our discretion, and we will inform you of all planned upgrades to the Service. As far as reasonably possible, all Service upgrades and testing will be performed outside Service Hours.

5.2 On rare occasions, it may be necessary to perform Service upgrades and testing during Service Hours. Where this occurs we will in accordance with clause 3 of this schedule 3, provide you with a service credit to compensate you for any disruption caused whilst our Service was unavailable due to this reason.

6. Service level exclusions

6.1 The parties agree that any failure of or interruption to the Service that occurs other than as a result of any act or omission of Qudini shall not be regarded as a Service Failure for the purposes of this agreement. This includes failures or interruptions occurring as a result of:

- (a) failure of the Internet or an occurrence of another major circumstance or event which is outside Qudini's control;
- (b) any problem with any software or device used by you to access the Service (unless that software or device was supplied by us);
- (c) any problem with the internet, or your internet connection (including your WiFi connection, if you are using one);
- (d) any problem with your browser settings; or
- (e) the inability of any of your customers to receive SMS messages due, for example, to a problem with the customer's phone or the customer being located in an area of poor mobile phone network coverage.