
END USER LICENCE AGREEMENT

1. The terms of this end user licence agreement apply to all transactions between us. Other documents relating to our transactions will include any specific terms and conditions, and / or our privacy policy.
 2. We reserve the right to modify our terms and conditions from time to time, and if you do not agree with our amendments to our terms, you must immediately cease using our app. We will provide these notices when you launch the app and you will be required to accept them in proceeding to use the app, and such terms apply whether you choose to read them or not.
 3. We have developed **an automated food ordering method system which utilises the convenience of our “Who’s Hungry” app to order and keep track of your food and/or beverage order on your phone in advance from anywhere to an approved venue.** This end user licence agreement refers to the terms and conditions herein that you agree to in the use of this app.
 4. **Definitions**
 - (a) App – Means application.
 - (b) APP – Means “Australian Privacy Principal” entity as defined under the *Privacy Act 1988* (Cth).
 - (c) Beverages – Refers to beverages both alcoholic and non-alcoholic purchased from licenced **and/or approved** venues.
 - (d) Developer - Who’s **Hungry** Pty Ltd
 - (e) Force Majure – includes both natural and / or unavoidable acts that prevent us from delivering you services, such as an Act of God (floods, hurricanes, drought, lightning, fires, storms), terrorism, failure of infrastructure, closure of licenced venues or businesses, closure of borders, pandemic, war, civil unrest, Government policies, and or service restrictions.
 - (f) Food – Refers to any food that is available to order off the **approved** venue’s menu and is not a beverage
 - (g) Licence – Refers to the licence given to you by us to use this app, which can be withdrawn by us at any time without notice at our sole discretion, and as otherwise provided in this agreement.
 - (h) Price - means our fixed and published price, or the amount agreed between us or the amount established by a course of dealing between us. The price unless otherwise agreed does not include delivery costs.
 - (i) Services – We provide you a licence to use our order platform app, that primarily allows the ordering of Beverages and other items from time to time from **approved** venues in Australia as approved by us. **We always have the sole right to increase or limit the services we offer that can vary from time to time, and with no notice.**
 - (j) Us - Means the app developer.
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- (k) Venue or Licenced Venue – Has the same meaning and refers to an approved licenced establishment for the sale of food and/or alcoholic or non-alcoholic beverages in Australia.
 - (l) Wasted – Means wasted beverages that have been poured / opened / otherwise served, or food that has been prepared / served and is not fit for resale to another person due to being spoiled, change of mind, and not collected or able to be served due to the venue's policies on RSA or otherwise.
 - (m) We – Means the app developer.
 - (n) You – Means yourself, the end user of the app.

5. Licence: Right of Use

- (a) Your use of this app is by licence, and the app is not sold to you. This licence is subject to compliance with this end user licence agreement which may vary from time to time without notice and is non-transferable.
 - (b) It is a requirement of use of this app that you represent and warrant to us that all information and representations that you, or any person acting on your behalf has given in connection with our transactions are true and correct and that you have not failed to disclose to us anything relevant to our decision to have dealings with you.
 - (c) The right to use this app by you is at our sole discretion at all times, and there is no requirement for us to continue to provide a licence to you for any reason.
 - (d) This agreement commences upon you downloading our app, and our rights remain in force regardless if you have deleted the software or not.
 - (e) You shall not:
 - (i) allow or permit any third party to access the app; or
 - (ii) create derivative works based on the services; or
 - (iii) copy, frame or mirror any part or content of the services; or
 - (iv) reverse engineer the services; or
 - (v) access the services in order to:
 - (1) build a competitive product or services;
 - (2) copy any feature, functions or graphics.
 - (vi) Export or re-export the app except as authorised by this agreement in the jurisdiction it is authorised for use in.
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6. Termination

- (a) We have the sole right to suspend or terminate your licence and user agreement at any time, and without notice.

7. Dispute Resolution

- (a) If you have a dispute regarding a payment, you agree to abide by our refunds policy.
- (b) You agree that any other dispute outside of our refunds policy will be dealt with in accordance with our dispute resolution process disclosed herein.
- (c) Any complaint must first be made by written notice to the **relevant approved** venue, specifying the nature of the dispute, the outcome required, and the action believed necessary under the circumstances that will assist in settling the dispute.
- (d) You will then negotiate with the **relevant approved** venue in good faith to attempt to resolve the dispute before any legal action or remedy is sought in any way.
- (e) If the licenced venue has not resolved the dispute within 90 days, you may request for the dispute to be reviewed by us, in which case we will provide a final determination within 45 days upon receipt of all relevant information.
- (f) Notices must be in writing and be given personally by Express or Registered Post with delivery confirmation or by facsimile transmission or email with receipt confirmation.

8. Fees for Using the App

- (a) As we are providing you with a portal via our app for the payment and ordering your drink and / or food not too dissimilar to an EFTPOS transaction, we are entitled to charge you commercial fees for the use of the merchant facility together with a reasonable fee for the use of our service.
 - (b) We reserve the right to change our fees from time to time, and such notification will be provided to you on the app or in our updated terms and conditions.
 - (c) There are no sign up, or subscription fees, or purchase fees to download the app at present, only a transaction fee per order. We reserve the right to change these fees in the future, and will advise you in advance if such fees become payable.
 - (d) At present we charge a fee of 5% per transaction. This fee incorporates a merchant charge of 3% and a margin of 2% for our fees. A \$6.00
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beverage and / or food order will attract a 30 cent fee incorporated into the purchase price. We will charge you the total amount so there is no additional amount to be paid at the bar or food collection point. We reserve the right to change these fees or percentages in the future and will advise you in advance of any such changes.

9. Refunds Policy

- (a) Any refund of uncollected beverages requires the approval of the licenced venue acknowledging that the ordered beverages and / or food was not provided. The venue will be responsible for all refunds, including any transaction fees.
- (b) If you order a beverage and / or food in breach of our terms and conditions, or the beverage and / or food is wasted due to non-collection for any reason, you will not be entitled to any refund.

10. Force Majeure and / or Non-Provision of Services

- (a) You acknowledge in using our app that there may be circumstances beyond our control that may impact upon the ability of the app that could affect its performance or result in a total loss of service.
- (b) Such circumstances could include, but are not limited to failure of the internet, telecommunications, app updates that are not compatible, and Force Majeure events.
- (c) We are not liable to you for any loss of service under this clause, or otherwise in this agreement.

11. Limitation of Liability and Warranty

- (a) We do not accept any responsibility for the accuracy of the pricing of the licenced venues as the licenced venues set such prices. Any complaints regarding errors of the pricing should be taken up with the licenced venues directly who will liaise with us.
 - (b) Our app is for the specific use of providing a payment portal and drink and / or food tracking program, we do not purport to be in the business of providing any advice as to recommending the consumption of **any food or either alcoholic or non-alcoholic beverages**.
 - (c) We are not in the business of selling alcohol or food preparation, this is an activity undertaken by the supplier, the **approved and/or** licenced venue. We merely provide a payment platform for the purchase to be facilitated and as such the contractual relationship for the supply of goods exists between you and the **approved** licenced venue.
 - (d) We do not accept any liability if your beverage/s and / or food is spoiled, out of date, contaminated, causes illness or otherwise. We are not the manufacturer or supplier of such goods and any liability for such rests with the manufacturer and or licenced venue.
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- (e) In using this app you limit our liability to the maximum extent permitted by law, or consequences that may flow from the potential abuse of this app.
 - (f) We will use our best endeavours to ensure that our app is free of any defects or malware.
 - (g) You expressly acknowledge that you use this app at your own sole risk. To the maximum extent not prohibited by law, in no event shall we be responsible for personal injury or any accident, indirect or consequential damages whatsoever, including but not limited to damages for loss of earnings, loss of data, business interruption, or injury to a third party or property due to any reliance upon the app in calculation of alcohol consumption or otherwise, or any other commercial damages or losses arising out of your use or inability to use the app, regardless if the claim is in tort, contract or otherwise, and the normal theory of such liability. Certain jurisdictions and legislation including the Australian Competition and Consumer Act 2010 (Cth), may limit the ability to exclude liability, and in these instances: any services supplied shall be resupplied at our expenses, or the payment for having the services supplied again if applicable; in the case of beverages / goods supplied by the licenced venue, the replacement of such beverages / goods by the licenced venue or replacement cost of the beverages.

12. Intellectual Property

- (a) We reserve all rights, title, and interest in and to the services, including all related intellectual property rights. In using our licence no rights are granted to you other than as expressly set forth herein.
- (b) You agree that the services, including but not limited to content, graphics, user interface, audio clips, video clips, editorial content, and the scripts and software used to implement the services, contain proprietary intellectual property and other laws, including but not limited to copyright. You agree you will not use such proprietary information or materials in any way whatsoever other than for use of our app for personal and non-commercial uses in compliance with this agreement.

13. Third Party Provisions

- (a) We are reliant upon the use of third-party providers for the provision of our services.
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- (b) At present we use Stripe for the processing of our payments, for access to their current terms and conditions please refer to the following link:
- (i) <https://stripe.com/au/ssa>
- (c) We currently use Amazon Web Services (AWS) for the hosting and storage of data, however this may change without notice. Wherever possible we will elect for these servers to be located within Australia although this may change without notice. You agree to abide by the terms and conditions of AWS as they vary from time to time, for access to their current terms and conditions please refer to the following link:
- (i) <https://aws.amazon.com/legal/>
- (d) You agree to the terms of use of Apple / Google in the utilisation of the app on the respective platform, that may change from time to time, these terms and conditions are available to view on the relevant app platform:
- (i) The Australian terms and conditions for the Apple iTunes Store can be presently found here:
- (1) <https://www.apple.com/au/legal/internet-services/itunes/au/terms.html>
- (ii) The Australian terms and conditions for the Google Play can be presently found here:
- (1) https://play.google.com/intl/en_au/about/play-terms/index.html
- (e) This agreement is between you and us, and we are responsible for the maintenance of the app and the content of the app, not Apple, Google, or any other third party.
- (f) If you access our app using a third party, such as Facebook or Instagram, you agree to their terms of use that may change from time to time.
- (i) Facebook's terms and conditions are available to view on the relevant app platform or current as below:
- (1) <https://www.facebook.com/legal/terms/update>
- (2) <https://www.facebook.com/about/privacy/update>
- (ii) Instagram's terms and conditions are available to view on the relevant app platform or current as below:
- (1) <https://help.instagram.com/581066165581870>
- (2) <https://help.instagram.com/519522125107875>
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- (g) In using our app, you agree to the relevant policies and terms and conditions of the third-party providers, and we do not have any liability or responsibility for their policies and terms of use.
 - (h) Any claims, issues or support regarding the performance or functionality of the app should be address to us. Please refer to our current contact details on our website:
 - (i) <https://www.whoshungry.com.au/contact-us/>
 - (i) You agree and acknowledge except for rights or guarantees we cannot exclude by law, we make no warranties or representations about third-party providers or their accuracy, reliability, completeness, or ability to achieve any purpose, including representations of continuous access and or availability.
 - (j) You agree to indemnify us and our officers, directors, shareholders, predecessors, successors in interest, employees, agents, subsidiaries and affiliates, harmless from any demand, loss, liability, claims or expenses (including legal fees), made against us by any third party due to or arising out of or in connection with your use of our app.
 - (k) We shall not be responsible for any data or phone use charges on your device that are incurred due to the use of our app.
 - (l) We reserve the right to change our providers at our sole discretion, and the relevant provider's terms and conditions will be applicable. We shall endeavour to notify you of any such changes where such changes may significantly affect you, or the service we provide, however no liability exists from us to you to use any specific third party provider.

14. Advertising

- (a) We may display advertisements for third parties in our app.
- (b) We accept no liability or responsibility for the accuracy, content, compliance with legislative provisions, safety or appropriateness of these ads. Nor are we affiliated or deemed to recommend any such products merely due to the ad being displayed in our ap.
- (c) You must use your own discretion in viewing such content that is beyond our control to regulate.
- (d) If you notice an ad that you deem inappropriate or potentially breaching the AANA Code of Ethics in any way, please contact Ad Standards on (02) 6173 1500 or PO Box 5110 Braddon ACT 2612 (or its successor organisation) on lodge a complaint online at:
 - (i) <https://adstandards.com.au/lodge-complaint>

15. Data Retention and Privacy Policy

- (a) We collect and use your personal information in order to provide our services, ensure compliance where possible with legislation and laws of the relevant jurisdictions, and to maintain electronic or other records
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for each account. These details will include your name, gender, email address, phone number, date of birth and contact details, and may include other information from time to time that we deem necessary to operate our services. We may exchange your details with third parties such as Stripe or AWS in the ordinary course of our business.

- (b) You consent to the use of your personal information provided under this agreement, for the purposes in this agreement, and you acknowledge it is your responsibility to advise us of any changes to your personal details (such as contact details).
- (c) You agree that we may also use or disclose personal information collected from you for any other purpose we may reasonably require, including changes to the conditions of use and changes to or discontinuance of our services, and for direct marketing and related marketing research by us or third parties approved by us.
- (d) Sensitive personal financial payment information will be processed by Stripe and will not be retained, shared, or utilised for any other purpose other than the processing of payments for our services.
- (e) We do not accept any responsibility for any marketing contact to you by third parties, you will need to unsubscribe from the third party directly if you wish to no longer receive contact from that third party.
- (f) By using our services, you consent to the collection, use and disclosure of the personal information you provide to us.
- (g) We shall take reasonable steps to protect your personal information from misuse, interference and loss, unauthorised access, modification or disclosure other than as agreed, however we do not accept any responsibility for such.
- (h) You also agree that we have the right, without liability to you, to disclose data and / or information to law enforcement authorities, government officials, and / or a third party, as we believe is reasonably necessary or appropriate to enforce and / or verify compliance with this agreement (including our legal requirement to cooperate with any legal process).
- (i) We are not an Australian Privacy Principal (APP) entity subject to compliance with the *Privacy Act 1988* (Cth), as defined by same Act.
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16. General

- (a) The governing law of these terms and conditions will be the substantive law of New South Wales.
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- (b) You may not assign your rights or obligations under this agreement, without our prior written consent. We may assign our rights at any time and in our sole discretion.
 - (c) If any provision of these terms and conditions is deemed to be illegal, invalid, unenforceable or void, it shall be read down and remains valid to the fullest extent of that the purpose possible, and the offending words removed and substituted where possible to give effect to the same or similar meaning where permitted, and at all times the remainder of the terms and conditions shall remain valid and enforceable to the greatest extent permitted by the relevant laws.
 - (d) This agreement constitutes the entire agreement between you and us for the use of our app. You will also be subject to additional terms and conditions that apply in using our third-party providers as disclosed under our third-party providers terms in this agreement, and externally in those agreements of the third party providers.
 - (e) If we choose not to enforce or insist upon the strict performance of any of the terms, or take action against you for any breach, this shall not be construed as a waiver, and we retain all rights and remedies available.
 - (f) Any claims, issues or support regarding the performance or functionality of the app should be addressed to us. Any other claims should be referred to the licenced venue. Please refer to our current contact details on our website.
 - (i) <https://www.whoshungry.com.au/contact-us/>
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