

BLERTER TERMS OF USE

1 BLERTER SERVICE

- 1.1 The Blerter Services (“Blerter”) is a cloud service provided by CLOUD M LIMITED that supports organizations in the operation, management and delivery of their Events. Blerter connects users together in an event delivery focused network, enabling users of the network to share, track and direct event operational information. Blerter is a tool for the communication, recording and management of information.
- 1.2 **USING BLERTER IS NOT A GUARANTEE OF COMPLIANCE WITH ANY LEGAL OBLIGATIONS YOU MAY HAVE. YOU REMAIN RESPONSIBLE FOR MEETING ANY SUCH LEGAL OBLIGATIONS.**

2 APPLICATION OF TERMS

- 2.1 These Terms apply to your use of the Service (as that term is defined below). By setting up a User Account, Organization or accessing and using the Service:
 - a you agree to these Terms; and
 - b where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorized to, and do in fact, agree to these Terms on that person’s behalf and that, by agreeing to these Terms on that person’s behalf, that person is bound by these Terms.
- 2.2 If you do not agree to these Terms, you are not authorized to access and use the Service, and you must immediately stop doing so.

3 CHANGES

- 3.1 We may change these Terms at any time. We will notify you of the change by email and/or in-app message and, where practical, will provide you 15-day advance notice of the change. Unless stated otherwise, any change takes effect from the date set out in the notice. By continuing to access and use the Service from the date on which the Terms are changed, you agree to be bound by the changed Terms.
- 3.2 **These Terms were last updated on December 15th, 2019.**

4 INTERPRETATION

In these Terms:

Blerter Software means the software owned by us (and our licensors) that is used to provide the Service.

Confidential Information means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Service. Our Confidential Information includes Intellectual Property owned by us (or our licensors), including the Blerter Software. Your Confidential Information includes the Data.

Data means all data, content, and information (including personal information) owned, held, used or created by you or on your behalf that is stored using, or inputted into, the Service.

Event means an organized gathering of people for the purposes of business, sport, entertainment and/or community activities.

Fees means the applicable fees agreed between you and us, or otherwise as may be published and updated by us from time to time.

Force Majeure means an event that is beyond the reasonable control of a party, excluding:

- ▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
- ▲ a lack of funds for any reason.

including and similar words do not imply any limit.

Intellectual Property Rights includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Objectionable includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

a *party* includes that party's permitted assigns.

Permitted Users means your personnel who are authorized to access and use the Service on your behalf in accordance with clause 6.3.

a *person* includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

personal information means information about an identifiable, living person.

personnel includes officers, employees, contractors, volunteers, agents and any person you invite or allow to be connected with your use of the Service, but a reference to your personnel does not include us.

Plan means the functionality, capabilities, configuration and any limitations that you are subscribing to. A Plan may entitle you to use the System for one or more Events.

Service means the service having the core functionality described on the Website, as the Website is updated from time to time.

Start Date means the date that you first access or use the Service.

Terms means these terms titled Blerter Terms of Use.

Underlying Systems means the Blerter Software, IT solutions, systems and networks (including software and hardware) used to provide the Service, including any third-party solutions, systems and networks.

User Profile means the personal information loaded by individual users when they register on the system and as updated by them from time to time. This includes their name, photo, email address, phone number and any other information that they load into the profile section of the Service.

User Personal Communications means communications on the Service that are held outside of Event Data (for example, in Group Chats).

We, us or our means CLOUD M LIMITED (trading as Blerter), company number 3170790.

Website means the internet site at blerter.com, or such other site notified to you by us.

Year means a 12-month period starting on the Start Date or the anniversary of that date.

You or your means you or, if clause 2.1b applies, both you and the other person on whose behalf you are acting.

Words in the singular include the plural and vice versa.

A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

5 PROVISION OF THE SERVICE

5.1 We must use reasonable efforts to provide the Service:

- a in accordance with these Terms and New Zealand law;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

5.2 Our provision of the Service to you is non-exclusive. Nothing in these Terms prevents us from providing the Service to any other person.

5.3 Subject to clause 5.4, we must use reasonable efforts to ensure the Service is available on a 24/7 basis and to minimize downtime. However, it is possible that on occasion the Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. We must use reasonable efforts to publish on the Website, in-app and/or notify you by email in advance of any planned unavailability that may last 5 minutes or more.

5.4 Through the use of web services and APIs, the Service interoperates with a range of third-party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third-party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that

feature to you. To avoid doubt, if we exercise our right to cease the availability of a third-party feature, you are not entitled to any refund, discount or other compensation.

6 YOUR OBLIGATIONS

6.1 You and your personnel must:

- a use the Service in accordance with these Terms solely for:
 - i your own internal business purposes to organize and deliver Events.
 - ii lawful purposes (including complying with the Unsolicited Electronic Messages Act 2007; and
- b not resell or make available the Service to any third party, or otherwise commercially exploit the Service without first obtaining our express written agreement.

6.2 When accessing the Service, you and your personnel must:

- a abide by the Blerter Community Guidelines;
- b not impersonate another person or misrepresent authorization to act on behalf of others or us;
- c correctly identify the sender of all electronic transmissions;
- d not attempt to undermine the security or integrity of the Underlying Systems;
- e not use, or misuse, the Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Service;
- f not attempt to view, access or copy any material or data other than:
 - i that which you are authorized to access; and
 - ii to the extent necessary for you to use the Service in accordance with these Terms; and
- g neither use the Service in a manner, nor transmit, input or store any Data, that breaches any third-party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading.

6.3 Without limiting clause 6.2, no individual other than a Permitted User may access or use the Service. You may authorize any member of your personnel to be a Permitted User, in which case you must provide us with the Permitted User's name and other information that we reasonably require in relation to the Permitted User, or require them to create a user account on the Service where they provide this information themselves. You must procure each Permitted User's compliance with clauses 6.1 and 6.2 and any other reasonable condition notified by us to you.

6.4 A breach of any of these Terms by your personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of these Terms by you.

6.5 You are responsible for procuring all licenses, authorizations and consents required for you and your personnel to use the Service, including to use, store and input Data into, process and distribute Data through, the Service.

7 DATA

7.1 All User Profile and User Personal Communications are separate from Data related to an Event and are owned by the person who created them. Obtaining the right to use the User Profile of your personnel within the Event Data, to the extent that it is required to support the functionality of the System, is included in your obligations under clause 6.5.

7.2 We will not provide or sell Data or Personal Information to 3rd parties except as part of an integration to a 3rd party system or use of our API. You must authorize each integration by enabling this functionality within the System or asking us to do it on your behalf.

7.3 You acknowledge that:

- a we may require access to the Data to exercise our rights and perform our obligations under these Terms; and
- b to the extent that this is necessary but subject to clause 10, we may authorize a member or members of our personnel to access the Data for this purpose.

7.4 You must arrange all consents and approvals that are necessary for us to access the Data as described in clause 7.1.

7.5 You acknowledge and agree that:

- a we may:
 - i use Data and information about you and your end users' use of the Services to generate anonymized and aggregated statistical and analytical data (**Analytical Data**); and
 - ii use Analytical Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
 - iii provide these trends and insights to the Events industry for the purposes of helping further develop the understanding and maturity of the Events industry.
- b our rights under clause 7.5a above will survive termination of expiry of the Agreement; and
- c title to, and all Intellectual Property Rights in, Analytical Data is and remains our property.

7.6 You acknowledge and agree that to the extent Data contains personal information, in collecting, holding and processing that information through the Service, we are acting as your agent for the purposes of the Privacy Act 1993 and any other applicable privacy law. You must obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process that information in accordance with these Terms.

- 7.7 Further to clause 7.6, you acknowledge that personal information includes:
- a information the Service collects about the location of Permitted Users when they interact with the Service as well as information they manually upload to the Service.
 - b information about your personnel, your event attendees and members of the public including photos, location, names, email address, phone numbers and medical information; and
 - c personal information that may be uploaded by Permitted Users or third-party systems you have authorized to integrate with your Event Data.
- 7.8 While we will take standard industry measures to back up all Data stored using the Service, you agree to keep a separate back-up copy of all Data uploaded by you onto the Service.
- 7.9 You agree that we may store Data (including any personal information) in secure servers in New Zealand, the United States and/or Europe and may access that Data (including any personal information) in the United States, Europe and New Zealand from time to time.
- 7.10 You may request removal of your personally identifiable Data (including User Profile and information that identifies your organization). Requests for Data removal can be initiated by email to notices@blerter.com and upon removal will result in the termination of your access to the System.
- 7.11 You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

8 SUBSCRIPTIONS & FEES

- 8.1 A Plan will determine the Fees, functionality, number of Events and number of Permitted Users that can be run in the System under that Plan.
- 8.2 You may subscribe to one or multiple Plans. Each time you subscribe to a new Plan that is a new Subscription (“Subscription”).
- 8.3 Subscriptions will automatically renew each year on the anniversary of the date upon which you subscribed to the Plan, or in the case of a multi-year subscription, on the last day of that subscription period for a further term of one year (“Renewal”).
- 8.4 If you do not wish to renew your subscription you must notify us at least 10 days prior to the Renewal. If you do not Renew a Subscription you will no longer have access to the Data related to the Events contained within that Subscription after the end of the subscription (“Expired Subscription”). If you wish to retain access on the System to Data related to an Expired Subscription you may subscribe to a new Data retention Plan related to that original Subscription.
- 8.5 Unless we agree otherwise in writing, the Fee for Renewal will be at our then current list price for the Plan, or, should that specific Plan no longer be available, at the nearest equivalent Plan that we provide.

8.6 We will provide you with an invoice for each subscription at the time that you initially subscribe and at each Renewal. This invoice will include the Fees plus any applicable taxes such as GST, VAT or Sales Taxes that we are required to collect by local or national authorities (“Subscription Invoice”).

8.7 You must pay the Subscription Invoice:

- a By credit card or, where we have given you prior agreement, by electronic payment to our bank account or other electronic payment method we may provide you; and
- b By the Due Date stipulated on the Subscription Invoice; and
- c All payments must be in full and without any set off or deduction.

8.8 We may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at 18% per annum.

9 INTELLECTUAL PROPERTY

9.1 Subject to clause 9.2, title to, and all Intellectual Property Rights in, the Service, the Website, and all Underlying Systems is and remains our property (and our licensors’ property). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

9.2 Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable license to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with these Terms.

9.3 To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual license to use for our own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by us in the provision of the Services.

9.4 If you provide us with ideas, comments or suggestions relating to the Service or Underlying Systems (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
- b we may use or disclose the feedback for any purpose.

9.5 We grant you the right to use the Blerter name, website address and approved logo, subject to the Blerter Brand Guidelines, to inform your personnel about the use of and operations of the Service and for communicating the presence of the Service with your sponsors, government agencies and other stakeholders in your Events.

9.6 You grant us the right to identify publicly that you are a user of the Service and to use your organization’s name, website address and logo, subject to any brand guidelines you advise us of, for our marketing of the Service.

9.7 You acknowledge that the Service may link to third party websites or feeds that are connected or relevant to the Service. Any link from the Service does not imply that we endorse, approve or recommend, or have responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.

10 CONFIDENTIALITY

10.1 Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorized access or use; and
- c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 10.1a and 10.1b.

10.2 The obligation of confidentiality in clause 10.1 does not apply to any disclosure or use of Confidential Information:

- a for the purpose of performing a party's obligations, or exercising a party's rights, under these Terms;
- b required by law (including under the rules of any stock exchange);
- c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- d which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
- e by us if required as part of a *bona fide* sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 10.

11 WARRANTIES

11.1 Each party warrants that it has full power and authority to enter into, and perform its obligations under, these Terms.

11.2 To the maximum extent permitted by law:

- a our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to NZD1,000; and

- b we make no representation concerning the quality of the Service and do not promise that the Service will:
 - i meet your requirements or be suitable for a particular purpose, including that the use of the Service will fulfil or meet any statutory role or responsibility you may have; or
 - ii be secure, free of viruses or other harmful code, uninterrupted or error free.

11.3 You agree and represent that you are acquiring the Service, and accepting these Terms, for the purpose of trade. The parties agree that:

- a to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Service or these Terms; and
- b it is fair and reasonable that the parties are bound by this clause 11.3.

11.4 Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to:

- a supplying the Service again; and/or
- b paying the costs of having the Service supplied again.

12 LIABILITY

12.1 Our maximum aggregate liability under or in connection with these Terms or relating to the Service, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed an amount equal to the Fees paid by you relating to the Service in the previous Year (which in the first Year is deemed to be the total Fees paid by you from the Start Date to the date of the first event giving rise to liability). The cap in this clause 12.1 includes the cap set out in clause 11.2a.

12.2 Neither party is liable to the other under or in connection with these Terms or the Service for any:

- a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

12.3 Clauses 12.1 and 12.2 do not apply to limit our liability under or in connection with these Terms for:

- a personal injury or death;
- b fraud or willful misconduct; or
- c a breach of clause 10.

12.4 Clause 12.2 does not apply to limit your liability:

- a to pay the Fees;

- b under the indemnity in clause 7.10; or
- c for those matters stated in clause 12.3a to 12.3c.

12.5 Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.

12.6 Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms or the Service.

13 TERM, TERMINATION AND SUSPENSION

13.1 Unless terminated under this clause 13, these Terms and your right to access and use the Service:

- a start on the Start Date; and
- b continue while you have at least one active Subscription.

13.2 Either party may, by notice to the other party, immediately terminate these Terms and your right to access and use the Service if the other party:

- a breaches any material provision of these Terms, and the breach is not:
 - i remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - ii capable of being remedied; or
- b becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

13.3 You may terminate these Terms and your right to access and use the Service by not renewing your Subscriptions.

13.4 Termination of these Terms does not affect either party's rights and/or obligations that accrued before that termination.

13.5 On termination of these Terms, you must pay all Fees for the provision of the Service prior to that termination.

13.6 No compensation is payable by us to you as a result of termination of these Terms for whatever reason, and you will not be entitled to a refund of any Fees that you have already paid.

13.7 Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of these Terms but subject to clause 13.8, a party must promptly return

to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.

13.8 At any time prior to one month after the date of termination, you may request:

- a a copy of any Data stored using the Service, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we must provide a copy of the Data in a common electronic form. We do not warrant that the format of the Data will be compatible with any software; and/or
- b removal of the Data stored using the Service as outlined in clause 7.10, in which case we must use reasonable efforts to promptly remove that Data.

To avoid doubt, we are not required to comply with clause 13.8a to the extent that you have previously requested removal of the Data.

13.9 Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the Service and/or delete, edit or remove the relevant Data if we consider that you or any of your personnel have:

- a undermined, or attempted to undermine, the security or integrity of the Service or any Underlying Systems;
- b used, or attempted to use, the Service:
 - i for improper purposes; or
 - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Service;
- c transmitted, inputted or stored any Data that breaches or may breach these Terms or any third-party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
- d otherwise materially breached these Terms.

14 GENERAL

14.1 Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure.

14.2 No person other than you and us has any right to a benefit under, or to enforce, these Terms.

14.3 For us to waive a right under these Terms, that waiver must be in writing and signed by us.

14.4 Subject to clause 7.6, we are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.

- 14.5 If we need to contact you, we may do so by email, in-app message or by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications. You may give notice to us under or in connection with these Terms by emailing notices@blerter.com.
- 14.6 These Terms, and any dispute relating to these Terms or the Service, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Service.
- 14.7 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 7.10, 9, 10, 12, 13.4 to 13.8 and 14.6, continue in force.
- 14.8 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.
- 14.9 Subject to clauses 3.1 any variation to these Terms must be in writing and signed by both parties.
- 14.10 These Terms set out everything agreed by the parties relating to the Service, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the Service that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 14.10.
- 14.11 You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer.

15 TERMS FOR APPLE APP STORE DOWNLOADS

- 15.1 If you have downloaded a Blerter App from the Apple App Store the following additional terms and conditions apply:
- a These Terms are solely between you and us and not with Apple. We (and not Apple) are solely responsible for the App and its content (subject to these Terms);
 - b You acknowledge that Apple has no obligation to furnish any maintenance or support services to you in connection with the App;
 - c In the event of any failure of the App to conform to any warranty that might be contained or implied into these Terms, you may notify Apple, and Apple will refund the purchase price (if any) for the App. Except for the foregoing, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App;
 - d Any claim in connection with the App related to product liability, a failure to conform to applicable legal or regulatory requirements, claims under consumer protection or similar

legislation or intellectual property infringement are governed by these Terms, and Apple is not responsible for such claims;

- e You will comply with the App Store Terms of Service including the Usage Rules;
- f You represent and warrant that you are not located in any U.S. embargoed countries or on any U.S. Government list of prohibited or restricted parties;
- g Apple and its subsidiaries are third party beneficiaries to these Terms and, upon your acceptance of them, Apple will have the right to enforce these Terms against you;
- h All other terms and conditions of these Terms apply to your use of the App.

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