

# Blink Mobile Technologies Pty Ltd

## End User Platform Agreement

### 1. Definitions

- 1.1 Terms used in this document have the following meanings:
- a. "Agreement" means this document.
  - b. "AWS" means Amazon web services.
  - c. "BlinkMobile" means Blink Mobile Technologies Pty Ltd ACN 114 830 723.
  - d. "BlinkMobile Personnel" means employees, agents, contractors or subcontractors of BlinkMobile but does not include the Service Provider.
  - e. "Components" means each of the various services selected by the Customer (which may include Multi-tenanted Enterprise Service, Envoy Option or Enterprise Private Service).
  - f. "Customer" means the user of the Platform. The definition of Customer applies to each independent operating division of the customer (either with or without a separate company number or other unique identifier).
  - g. "Enterprise Private Service" means a fully private, secure and unlimited right to use all of the Platform features including (BlinkMobile managed) Envoy, with a dedicated system administrator running in the Customer's choice of AWS region.
  - h. "Envoy Option" means a right to use BlinkMobile's workflow and API integration and orchestration layer running in a BlinkMobile managed environment.
  - i. "External User" means any person who is not the Customer (or the Customer's employee, contractor or agent).
  - j. "Multi-tenanted Enterprise Service" means an unlimited right to use all of the Platform features excluding Envoy, while running in a multi-tenanted (or shared) environment of BlinkMobile's choosing.
  - k. "Platform" means the Blink Mobility Platform offered by BlinkMobile from time to time, and includes each of the Components.
  - l. "Platform Service" means the service of BlinkMobile making the relevant Components selected by the Customer from time to time available to the Customer.
  - m. "Service Provider" means the reseller of the Platform Service to the Customer.
  - n. "SLA" means the BlinkMobile Service Level Agreement attached at schedule 1 to this Agreement.
  - o. "Term" means the term of the supply agreement between the Customer and the Service Provider.
  - p. "Third Party Services" means third party services supplied under separate terms and conditions.

### 2. Introduction & Acknowledgements

- 2.1 This Agreement is between the Customer and BlinkMobile and sets out the terms on which the Customer is entitled to use the Platform Services.
- 2.2 Customer acknowledges that the Service Provider, acting in its capacity as an agent for BlinkMobile, will invoice the Customer the Platform fees.
- 2.3 Customer appoints the Service Provider as its agent for ordering the Components and making payment of the Platform fees on Customer's behalf.

- 2.4 Customer is not authorised to, and will not resell or commercially distribute, the Platform Service.

### 3. Platform Service Summary

- 3.1 In consideration for payment of the Platform fees, BlinkMobile grants the Customer a right of access to and use of, the Components and the Platform during the Term for the Customer's business purposes.
- 3.2 BlinkMobile will record and securely retain activity logs relevant to Customer's unique instance, categories and interactions while this Agreement is in place with Customer. Customer access to activity log reports are subject to a separate charge.
- 3.3 BlinkMobile will provide third line email and telephone support to the Service Provider in relation to the Customer's use of the Platform Service.
- 3.4 BlinkMobile will provide the Platform Service in accordance with the SLA.

### 4. Platform Service Exclusions

- 4.1 Development, configuration and support services as listed below will be provided through the Service Provider and are not covered by this Agreement and are not subject to any warranties provided by BlinkMobile under this Agreement:
  - a. Solution development and implementation services;
  - b. Requirements for and development of custom APIs/web services;
  - c. Requirements for and delivery of allied technologies;
  - d. Any development undertaken outside of the Platform;
  - e. Training and system delivery/handover;
  - f. Email and telephone Customer support;
  - g. Ongoing management and refinement of the solution design or implementation;
  - h. Push notification charges as part of any mobile solution;
  - i. SMS charges as part of any mobile solution.

### 5. Warranties

- 5.1 BlinkMobile warrants and agrees as follows:
  - a. it and any BlinkMobile Personnel have the training, skills and experience to deliver the Platform Service.
  - b. it will perform the Platform Service to the best of its ability and will reasonably require any BlinkMobile Personnel to perform the Platform Service in a proper and professional manner;
  - c. it and any BlinkMobile Personnel have the licences, rights, permissions, consents and authorities required to carry out the Platform Service;
  - d. it is engaged as an independent contractor only and no employment relationship exists between the Customer and BlinkMobile or any of BlinkMobile Personnel;
  - e. it has and will maintain all insurances required by law;
  - f. it will comply with all relevant Commonwealth, State, Territory and local government laws and



regulations (or where applicable to the Platform Service, any equivalent laws in the Customer's agreed location);

- g. The Platform Service will not store or retain Customer data, unless expressly agreed in writing with the Service Provider as a customised solution.;
- h. it and any BlinkMobile Personnel will not use Customer data for any purpose other than providing the Platform Service;
- i. that it is the owner of all rights, titles and interest in all Intellectual Property in the Platform and all of its trademarks and logos;
- j. the security architecture of Platform is as set out in Schedule 2 to this Agreement; and
- k. that the Platform is physically located in Australia.

## 6. Intellectual Property

- 6.1 BlinkMobile is the owner of all rights, titles and interest in all Intellectual Property in the Platform and all of its trademarks and logos.
- 6.2 All rights, titles and interest in all Intellectual Property in Third Party Services or products are owned by the relevant manufacturer or developer.
- 6.3 The Customer retains all rights and ownership over any Customer data that passes through the Platform.
- 6.4 For the purpose of this clause, "Intellectual Property" includes any:
  - a. copyright;
  - b. designs (as embodied in but not limited to drawings, computer software, solid models and algorithms), patents, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
  - c. trade, business, company or domain name;
  - d. know-how, inventions, processes and Confidential Information (whether in writing or recorded in any form); and
  - e. any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields, whether registrable or not and that presently exists or may arise in the future anywhere in the world.

## 7. Confidentiality

- 7.1 BlinkMobile must not directly or indirectly make use of, copy or disclose to any third party any Confidential Information otherwise than in the performance of the Platform Services without the Customer's prior written consent or as required by law.
- 7.2 BlinkMobile must immediately notify the Customer if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information and provide such reasonable assistance as required by the Customer to deal with such an event, including such assistance as may reasonably be required by the Customer in relation to any proceedings the Customer may take against any person or entity for unauthorised use, copying or disclosure of Confidential Information.
- 7.3 BlinkMobile and its employees, agents, contractors and subcontractors must not disclose the terms of this Agreement or any other activity of the Customer to any third party without the Customer's prior written approval (except where necessary to obtain legal, financial or any other form of professional advice, or as required by law).

7.4 This clause continues to apply after this Agreement ceases for any reason.

7.5 For the purpose of this clause "Confidential Information" includes but is not limited to:

- a. information which is specifically designated as confidential by the person providing the information on behalf of the Customer;
- b. information which by its nature may be reasonably understood to be confidential;
- c. the Customer's trade secrets and Intellectual Property;
- d. information regarding the Customer's financial or business affairs;
- e. the Customer's marketing plans, and marketing and sales techniques;
- f. the Customer's employee and contractor information;
- g. the Customer's business systems, and operating procedures or manuals; and
- h. any note, calculation, conclusion, summary or other material incorporating or derived or produced partly or wholly from the information in (a) to (g) above,

excluding information which is in the public domain other than as a result of a breach of confidentiality by BlinkMobile or its employees, agents, contractors and subcontractors.

## 8. Password, Account Security and Hosting

- 8.1 The Customer must protect any password issued to it by BlinkMobile in accordance with this Agreement. The Customer must immediately notify BlinkMobile through Service Provider of any unauthorised use of its password or BlinkMobile account, or any breach of security that, in the reasonable belief of the Customer, will adversely impact BlinkMobile and the Platform Services.
- 8.2 The Customer at all times is responsible for maintaining the confidentiality of its BlinkMobile password and account. Neither BlinkMobile nor Service Provider is liable for any loss or damage where the Customer breaches or fails to comply with its password obligations as set out in this Agreement.

## 9. Content Disclaimer and exclusion of certain liability

- 9.1 BlinkMobile is not responsible in any way for the content connected with any keyword, category or interaction. Such content is the sole responsibility of the Customer. Further, BlinkMobile is not liable for the accuracy, integrity, completeness, delivery, performance or quality of such content.
- 9.2 The Customer relies on its own skill and judgment and acknowledges that it has received no promise, guarantee, representation, warranty or undertaking regarding profitability or any consequence or benefit to be obtained from the Platform Services.
- 9.3 BlinkMobile acknowledges that the *Competition and Consumer Act 2010* (Cth) and other legislation (including where applicable equivalent legislation that applies to the supply of the Platform Service in the Customer's agreed location) implies certain statutory guarantees, conditions and warranties into contracts for the supply of goods or services to consumers in relation to the provision of the Platform Service that cannot be excluded, restricted or modified (**Non-Excludable Terms**). Nothing in this



- Agreement is intended to exclude or restrict the application of the Non-Excludable Terms.
- 9.4 To the full extent permitted by law, BlinkMobile excludes all other representations, warranties, guarantees, conditions or other terms and liability (by whatever legal theory, whether contract, tort or otherwise) both express and implied (including warranties implied by statute or otherwise) including as to the description, quality, performance or fitness for its purpose of the Blink Mobility Platform.
- 9.5 In no event will BlinkMobile or any of its directors, officers, employees or related bodies corporate be liable for any claim for damage or any special incidental, indirect or consequential loss, (including damages for loss of profits, business interruption, or loss of reputation, data or computer programs whether foreseeable or unforeseeable, whether based on contract, tort or any other legal theory).
- 10. Source content changes**
- 10.1 It is the responsibility of the Customer and Service Provider to monitor and maintain synchronisation with the Components and changes to source content, including website changes, APIs/webservices and any other system changes that may break the linkages between the Components and the underlying data sources in the Customer's solution.
- 11. Indemnity**
- 11.1 BlinkMobile agrees to indemnify and keep indemnified the Service Provider and the Customer, their related bodies corporate, officers, employees and agents, against all damage, liability and/or costs (including but not limited to GST and reasonable legal fees and costs of defence) in respect of any third party claim against the Customer or Service Provider resulting from BlinkMobile failing to have all right, title and interest in all Intellectual Property in the Platform (**Infringement Claim**), provided that the Customer or Service Provider notifies BlinkMobile promptly in writing of any such Infringement Claim, grants BlinkMobile sole control over the defence and settlement of the Infringement Claim, and reasonably cooperates with BlinkMobile in response to a request for assistance. BlinkMobile will have the exclusive right of defending and settling any Infringement Claim at its own discretion, and Customer or Service Provider must not settle or compromise any Infringement Claim without the prior written approval of BlinkMobile.
- 12. Privacy**
- 12.1 BlinkMobile its affiliates and subsidiaries respect and are committed to protecting the privacy of the Customer.
- 12.2 BlinkMobile may collect personal information from the Customer in the course of carrying out the Platform Service, including but not limited to names, telephone and mobile phone numbers, and email contact details. If such information is collected, the purpose of the collection is solely for the operation of the Platform Service.
- 12.3 In relation to any personal information or sensitive information (as overseen by the Office of the Australian Information Commissioner and *Privacy Act 1988* (Cth) (or any equivalent governmental body and legislation that applies to BlinkMobile's supply of the Platform Service in the Customer's agreed location) (**Privacy Act**)) which BlinkMobile and/or its employees, agents, contractors and subcontractors receive, collect or are exposed to during the term of this Agreement, BlinkMobile agrees and will ensure that its employees, agents, contractors and subcontractors agree to comply with all obligations regarding the collection, use and disclosure of such information imposed on BlinkMobile by privacy and health laws including but not limited to the Privacy Act.
- 12.4 BlinkMobile will not collect sensitive information, as defined by the Privacy Act unless it has the prior written approval of the Customer.
- 12.5 BlinkMobile will use its reasonable endeavours to prevent unauthorised persons gaining access to personal information which comes into its possession by implementing appropriate security measures and BlinkMobile will not release any personal information to any organisation or individual other than the Customer (except if compelled by law).
- 12.6 BlinkMobile will not disclose Customer information to associated companies, affiliates, and contractors without the prior written consent of Customer (except if compelled by law).
- 12.7 BlinkMobile is bound by the Australian Privacy Principles and Information Privacy Principles set out in the Privacy Act and overseen by the Office of the Australian Information Commissioner.
- 13. Termination**
- 13.1 If the Customer is in breach of this Agreement, BlinkMobile may terminate this Agreement if, 30 days after it has notified the breach through Service Provider to the Customer in writing, the breach has not been rectified.
- 13.2 If BlinkMobile is in breach of this Agreement, the Customer may terminate this Agreement if, 30 days after it has notified the breach to BlinkMobile in writing, the breach has not been rectified.
- 13.3 BlinkMobile is under no obligation to provide or maintain activity logs, information or other material on termination or expiration of the Term.
- 13.4 If, having terminated this Agreement in accordance with this clause, the Customer continues to use the Platform by accessing, using or uploading material to the Components, the terms of this Agreement will continue to apply for so long as the Customer continues to use the Platform Service and such continuation may be terminated at any time.
- 13.5 In the event of termination of the Platform Service for any reason, the Customer may request that any data belonging to the Customer is delivered to the Customer prior to its removal or deletion. Any charges to access, search or report based on the archived data and Customer's criteria will be subject to quotation and acceptance.
- 13.6 BlinkMobile may withdraw any of the broad Platform features or the Components if BlinkMobile can no longer supply or support the relevant Platform or Component by BlinkMobile giving 120 days written notice to the Customer of the withdrawal of such Platform, or Component. In such case, the written notice will operate to amend that feature or function, but not this Agreement as a whole. BlinkMobile may offer replacement features and functionality to replace the Platform or Component that is being withdrawn.



**14. Insurance**

14.1 BlinkMobile must effect and maintain on and from the date it commences providing the Platform Service, product indemnity insurance, workers compensation insurance and public liability insurance (in each case for a level of coverage considered prudent by BlinkMobile).

**15. Liability**

15.1 Where permissible by law, and with the exception of the indemnity given in clause 13, BlinkMobile's liability to the Customer for any loss arising from the delivery or non-delivery of the Platform Service is limited to the cost of supplying the Platform Service again, or if any goods are supplied, repairing, replacing or paying the cost of repairing or replacing goods (as the case may be).

15.2 To the extent permitted by law and with the exception of the indemnity given in clause 13 each party excludes all other liability for consequential loss.

15.3 Each party's liability will be reduced to the extent any loss or damage is caused by the other party or its employees or agents.

**16. Miscellaneous**

16.1 A failure or delay by a party to enforce a provision of this Agreement will not be construed as a waiver of the party's rights under this Agreement.

**17. Dispute Resolution**

- a. A party may not commence any court or arbitration proceedings relating to a dispute that has arisen under or in relation to this Agreement unless it complies with this clause, except where the party seeks urgent interlocutory relief.
- b. A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the dispute.

c. On receipt of the notice by the other party, the parties must endeavour in good faith to resolve the dispute expeditiously by discussion between BlinkMobile's Directors and the Chief Executive Officer of the Customer (or any other suitably senior representative of the Customer with authority to resolve the dispute nominated by the Customer).

d. If the dispute has not been resolved by the parties in 30 days, either party may take whatever steps are available to them.

**18. General**

18.1 (Entire agreement) This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, proposals, offers, representations, arrangements, understandings, covenants, terms, conditions, warranties or provisions of all types relating to this Agreement's subject matter, whether express or implied and whether written or oral. This Agreement or any part may be varied, modified, amended or added to only in writing executed by the parties.

18.2 (Governing Law and Jurisdiction) This Agreement must be interpreted and governed by the law of the state of New South Wales and the Commonwealth of Australia as applicable. If a dispute arises in relation to this Agreement it must be subject to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia. In the event that any provision of the Agreement is held to be invalid, unenforceable or illegal, that provision must be ignored to the extent of its invalidity, unenforceability or illegality, and all other provisions of this Agreement will remain in full force and effect.

18.3 (Notice) The Customer authorises Service Provider to give any notice under this Agreement to BlinkMobile.

18.4 (Variation) This Agreement may only be amended by written agreement between the Parties.

