

## TERMS OF USE

**Effective Date: February 14, 2019**

Welcome to Clutch, a unique service which allows you to plan social events, communicate with other users, and access educational content. The application, website and service described herein (collectively the "Service") are provided by Clutch Partners, LLC, an Indiana Limited Liability Company.

These Terms of Use are a legally binding agreement made between you ("you," "your," or "yourself") and Clutch Partners, LLC ("Provider", "we," "us" or "our"), and set forth the applicable terms and conditions governing the use of our Service, so please review them carefully. By creating a Service account with us, you also accept and agree to be subject to and abide by our Privacy Policy, which is incorporated herein by reference.

We may choose to update these Terms of Use at any time by posting an update to this site. We encourage you to review these Terms of Use periodically, as your continued use of the Service will mean you accept those changes, whether you have read them or not. In addition, we shall both be subject to any posted guidelines or rules applicable to the Service, which may be posted from time to time.

All contact with us should be made via email to [info@clutch-partners.com](mailto:info@clutch-partners.com) in reference to any questions or comments concerning these Terms of Use or Privacy Policy.

### **1. Description of Service**

Our Service provides you with tools for planning events, communicating with other users, and viewing content.

### **2. Registration**

As a condition to using the Service, you are required to create an account by registering with us directly. In that registration process, we require that you provide certain information, such as your full name and email address, date of birth, address, and that you create a unique password.

The registration information you provide must be accurate, complete, and current at all times. Failure to do so constitutes a breach of these Terms of Use, which may result in immediate termination of your account.

You may not use the name of another person or entity that is not lawfully available for use, a name or trademark that is subject to any rights of another person or entity without receiving appropriate authorization, or a name that is offensive, vulgar, or obscene.

### **3. Application License Terms**

Our application is designed for devices using the iOS and Android mobile operating platforms, and other web browsers. The iOS application may be downloaded from the App Store, which is operated and owned by Apple Inc.; the Android application may be downloaded from Google Play, which is owned and operated by Google Inc. Please note that it is your responsibility to ensure your mobile device meets all of the necessary technical specifications to enable you to access and use our application.

The application will be provided to you in machine-readable object code only. The application does not include the source code or any portions thereof. You shall have no rights with respect to the source code under these Terms of Use. Please note that these Terms of Use do not entitle you to any support or maintenance services, updates, upgrades, patches, enhancements, or fixes for the application.

We grant to you a limited, non-exclusive, non-transferable license to use the application solely for your own personal use and not for resale, further distribution, or to render any commercial services. You are not allowed to transfer, assign, sub-license, sell, lease, rent or otherwise distribute the application or any part of it. In no event shall your use include any attempts to copy, reproduce, change, reverse-engineer, de-compile, disassemble, translate, make derivative works, enhancements, extensions or add-ons, modify, adapt or otherwise alter any portion of the application. Any attempt to do so is a violation of the rights of Provider and its licensors. If you breach this restriction, you may be subject to prosecution and damages.

These terms will govern any upgrades provided by us that may replace and/or supplement the application, unless such upgrades are accompanied by a separate license in which case the terms of that license will govern.

Your license does not grant you any ownership interest in the Service or any exclusive rights to its use, and these Terms of Use do not grant you any claims to patents, trade secrets, trademarks or other rights pertaining to the Service. You agree and acknowledge that the Service represents the proprietary, confidential, and trade secrets of Provider and that you will undertake all necessary steps and efforts to prevent unlawful or illegal distribution of such proprietary, confidential and trade secret information.

Any third party software provided as part of the Service will be licensed to you on the terms of this Section unless a separate license agreement is provided to you in which event the separate license agreement will apply to your use of the specific third party component.

#### **4. Fees**

As an Authorized User, there is no charge or fee to use the Service. However new fees and charges arising from new features and enhancements may be added from time to time.

#### **5. Your Acknowledgements**

By using the Service, you acknowledge and agree to the statements in this Section 5. All material and information presented by us is intended to be used for personal, educational or informational purposes only; you may not sell or resell any products you purchase or otherwise receive from us. All Services should be used strictly in accordance with their instructions, precautions and guidelines.

We cannot guarantee the accuracy, completeness, or accuracy of our Service and do not accept responsibility for its use. You understand that our Service is not a guarantee of safety. You may suffer injury as a result of your participation in our Service and hereby release us from any and all liability now or in the future, including but not limited to medical expenses, lost wages, death, injury, pain and suffering, that may occur despite your use of the Service.

Advice, graphics, images, videos, and information contained on our Service is presented for general educational and information purposes only. It is not intended to be legal, security, or other expert advice and should not be used in place of consultation with appropriate professionals. The information contained in this site is to be used at your own risk based on your own judgement. You assume full responsibility and liability for your own actions. Provider has not independently verified the accuracy of the Content contained on the Service. Failure to follow safe practices could result in severe personal injury (including death) to the user or bystanders. Technical data and information contained herein do not detail the comprehensive training, procedures, techniques and safety precautions that are necessary to ensure safe activities.

#### **6. Content**

We allow you to upload certain content on the Service, including photos, videos, designs, graphics, comments, messages, suggestions and feedback ("Content"). Please read this section carefully before posting, uploading, or otherwise making available any Content on the Service.

You may be able to share your Content with other users via the Service. It must be emphasized that we cannot prevent other users from taking screen shots or captures or from downloading your Content and subsequently making your Content publicly available. We and other users may retain and continue to use, host, display, store, cache, reproduce, publish, transmit, modify, re-format, re-arrange, distribute, and create derivative works of any of your Content that you have posted to the Service. If the potential for public dissemination of your Content concerns you, please do not share that Content.

#### **7. Responsibility for Content**

You, and not Provider, are entirely responsible for all Content that you upload, post, transmit or otherwise make available via the Service. Under no circumstances will we be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, Intellectual Property Rights infringement

claims regarding such Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, transmitted or otherwise made available via the Service.

We have the right, but no obligation to review any of your Content for any purpose, including but not limited to, for accuracy, legality or non-infringement. You warrant and represent to us that you have the right to enable the Service to use your Content without violating any rights you might have in such Content or any third party rights in such Content. You may remove your Content from the Service at any time; however you acknowledge that we may retain archived copies of your Content.

Users of the Service may post copyrighted information which has copyright protection whether or not it is identified as copyrighted. We reserve the right, but have no obligation, to monitor such Content, and, as such, we do not control or guarantee the accuracy, integrity or quality of user Content. You acknowledge that by using the Service, you may be exposed to user Content that is offensive, indecent or objectionable.

By making your Content available to our Service, you are granting us a non-exclusive, royalty-free, worldwide license to use, host, display, store, cache, transmit, modify, re-format, re-arrange, and adapt (including, without limitation, in order to conform it to the requirements of any networks, devices, services, or media through which the Service is available), and create derivative works of your Content. The rights you grant to us are for the limited purpose of operating and providing the Service, improving the Service, and allowing us to develop new services. The reference in this license to "derivative works" is not intended to give us a right to make substantive changes or derivations to your Content.

Opinions, advice, statements, offers, or other information or content made available through the Service, but not directly by us, are those of their respective authors, and should not necessarily be relied upon. Such authors are solely responsible for such content. We do not guarantee the accuracy, completeness, or usefulness of any information on the Service. We also do not adopt or endorse, nor are we responsible for the accuracy or reliability of any opinion, advice, or statement made by parties other than us. Under no circumstances will we be responsible for any loss or damage resulting from anyone's reliance on information or other Content posted on the Service, or transmitted to users.

## **8. Confidentiality**

You agree not to use any technical, financial, strategic and other proprietary and confidential information relating to our business, operations and properties ("Confidential Information") disclosed to you for your own use or for any purpose other than as contemplated herein. You shall not disclose or permit disclosure of any Confidential Information to third parties. You agree to take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of our company in order to prevent it from falling into the public domain. Notwithstanding the above, you shall not have liability to us with regard to any disclosure of Confidential Information which you can prove: (a) was in the public domain at the time it was disclosed by us or has entered the public domain through no fault of yours; (b) was known to you, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (c) is disclosed with our prior written approval; (d) becomes known to you, without restriction, from a source other than us without breach of these Terms of Use by you and otherwise not in violation of our rights; or (e) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that you shall provide prompt notice of such court order or requirement to us to enable us to seek a protective order or otherwise prevent or restrict such disclosure.

## **9. Links to Other Sites**

Links to third party websites are not endorsements or referrals of any products, services or information contained in such websites. Information provided and opinions expressed by others do not necessarily represent our opinions. We expressly disclaim any and all liability resulting from reliance on such information or opinions. Some products, manufacturers and service providers may be mentioned in or on the Service. Mention of these products, manufacturers or service providers does not constitute an endorsement by us. We shall have the right, at our sole discretion, to remove links and images attached to such links, if such links are flagged by users as offensive.

## **10. Use Restrictions**

You represent and warrant that you will not use the Service to:

- Upload, post, email, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable.
- Express or imply that any statements you make are endorsed by us, without our specific prior written consent.
- Use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the presentation of the Service.
- Interfere with or disrupt the Service, or the servers or networks connected to the Service.
- Forge headers or otherwise manipulate identifiers to disguise the origin of any Content or order transmitted through the Service, or attempt to impersonate another user, person or entity.
- Download lists of other users of the Service and use their information for your own business reasons.
- "Frame" or "mirror" any part of the Service, or use meta tags or code or other devices containing any reference to us or the Service in order to direct any person to any other websites for any purpose.
- Modify, adapt, sublicense, translate, sell, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Service, or cause others to do so.
- Upload, post, email, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements).
- Provide false, inaccurate or misleading information on the Service (directly or by omission or failure to update information).
- Post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, account, or private information from any user.
- Create or send unsolicited messages or other electronic communications.
- Upload, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party.
- Upload, post, email, transmit or otherwise make available any material that contains software viruses Trojan horses, worms, time bombs, cancelbots, easter eggs or any other computer code, files or programs designed to interrupt, destroy detrimentally interfere with or limit the functionality of any computer software or hardware or telecommunications equipment or intercept or expropriate any system, data or personal information.
- Submit stories or comments linking to affiliate programs, multi-level marketing schemes, or websites/blogs repurposing existing stories (source hops).
- Advertise to, or solicit, any user to buy or sell any products or services, or use any information obtained from the Service to contact, advertise to, solicit, or sell to any user without the user's prior explicit consent.
- Intentionally or unintentionally violate any applicable local, state, national or international law.

We reserve the right, but are not obligated to, investigate and terminate your participation in the Service if you have misused the Service, or violated any of the restrictions above.

## **11. No Warranties**

WE PROVIDE THE SERVICE AND RELATED INFORMATION AND MATERIALS ON AN "AS IS" BASIS AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. WE DO NOT GUARANTEE AND DO NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE SERVICE. WE, OUR SUBSIDIARIES, MEMBERS, DIRECTORS, EMPLOYEES AND SUPPLIERS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SOME STATES DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

We do not warrant that your use of the Service will be accurate, complete, reliable, current, secure, uninterrupted, always available, or error-free, or will meet your requirements, that any defects in the Service will be corrected, or that the Service is free of viruses or other harmful components.

We do not accept responsibility or liability for any Content, communication or other use or access of the Service by anyone in violation of these Terms of Use. We are not responsible or liable in any manner for any Content posted on the Service, or for any of the equipment or programming associated with or utilized in the Service. Although we provide rules for user conduct and postings, we do not control and are not responsible for what users post, transmit or share on the Service and are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable Content you may encounter while using the Service. It also is possible for others to obtain personal information about you due to your use of the Service, and that the recipient may use such information to harass or injure you. We are not responsible for the use of any personal information that you disclose on the Service.

The Service may be temporarily unavailable from time to time for maintenance or other reasons. We are not responsible for any technical malfunction or other problems of any telephone network or service, computer systems, servers or providers, computer or mobile phone equipment, software, failure of text messaging on account of technical problems or traffic congestion on the Internet, on the Service, on any website or any combination thereof, including injury or damage to your mobile device or other hardware or software, related to or resulting from using or downloading materials in connection with the Service.

No oral or written information or advice provided by us, our resellers, agents or employees shall create a warranty or in any way.

We reserve the right to modify, suspend or stop providing access to the Service at any time without notice and without obligation or liability to you. Reference to any products, services, processes or other information by trade name, trademark, manufacturer, supplier, vendor or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof, or any affiliation therewith, by us. Some jurisdictions do not allow the disclaimer of implied terms in contracts with consumers, so some or all of the disclaimers in this section may not apply to you.

No oral information or advice provided by us, our resellers, agents or employees shall create a warranty or in any way.

## **12. Indemnity**

You agree to fully exonerate, indemnify, defend and save harmless Provider, its directors, officers, employees or agents, from and against any and all suits, actions, claims, demands, liens, losses, damages, fines, judgments or decrees, and any expenses in connection with such, including, without limitation, reasonable attorneys' fees, based upon or arising out of loss, damage or injury (including death) arising from: (a) the violation of any statute, ordinance or regulation by you; and (b) the violation of any of your obligations under these Terms of Use, including but not limited to the failure to procure necessary licensing rights and/or pay applicable royalties for such rights, (ci) any personal data you provide, including processing of such data by or on behalf of Provider; (d) your negligence or more culpable act or omission (including recklessness or willful misconduct) in connection with this Agreement; and (e) your use of the Services in any way.

You will be solely responsible for any damage that results from your use of the Services. We will have no responsibility or liability to you for third party products made available through our Service and any claims or disputes by you regarding these products must be brought directly to and shall be the responsibility of, that third party vendor.

## **13. Limitation of Liability**

IN NO EVENT SHALL WE BE LIABLE TO YOU, OR ANY THIRD PARTY, FOR ANY DAMAGES ARISING FROM YOUR USE OF, OR ANY THIRD PARTY'S USE OF, OR INABILITY TO USE, THE SERVICE, SITE, APPLICATION OR ANY PRODUCTS RELATED THERETO (WHETHER SUCH DAMAGES ARE DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, AND ARISING FROM ANY CAUSE WHATSOEVER, WHETHER IN CONTRACT OR TORT, INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUE, OR DATA) EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL WE BE LIABLE FOR LOSS OF YOUR

DATA, INFORMATION, CONTENT OR OTHER INFORMATION IN CONNECTION WITH THE USE OF SERVICE.

Some jurisdictions do not allow the exclusion of certain warranties or conditions or the limitation or exclusion of liability for loss or damage caused by negligence, breach of contract or breach of implied terms, or incidental or consequential damages. Accordingly, only the limitations which are lawful in your jurisdiction will apply to you and our liability will be limited to the maximum extent permitted by law.

#### **14. Term and Termination**

These Terms of Use are effective until terminated. We may terminate your account immediately for convenience, or if you breach any provision of these Terms of Use.

#### **15. Audit Rights**

You agree that we may audit your use of the Service for compliance with these Terms of Use at any time. In the event that such audit reveals any use of the Service by you other than in full compliance with these Terms of Use, we shall have the right to immediately cancel your account, and you shall reimburse us for all reasonable expenses related to such audit in addition to any other liabilities to which you may be subject as a result of such non-compliance. You acknowledge that we shall have the right to enforce the provisions of these Terms of Use directly against you and our remedies for any breaches may include, without limitation, damages or injunctive or other equitable remedies.

#### **16. Intellectual Property Rights**

All Intellectual Property Rights in and to the Service shall be owned by us absolutely and in their entirety. These rights include, but are not limited to, database rights, copyright, design rights (whether registered or unregistered), trademarks (whether registered or unregistered) and other similar rights wherever existing in the world together with the right to apply for protection of the same. All other trademarks, logos, service marks, company or product names set forth in the Service are the property of their respective owners. You may not remove or alter any trademark, trade names, service mark, product names, logo, copyright or other proprietary notices, legends, symbols or labels featured on the Service. You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Service ("Submissions"), provided by you to us are non-confidential and shall become the sole property of us. We shall own exclusive rights, including all Intellectual Property Rights, in these Submissions, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

Unless otherwise noted, all materials, including images, illustrations, designs, icons, photographs and written and other materials that appear on our Site are copyrights, trademarks, trade dress and/or other intellectual properties owned, controlled or licensed by Provider.

#### **17. Communications**

E-mail and text communications sent from us to you are designed to make your experience more efficient and enjoyable. You specifically agree to accept and consent to receiving e-mail and text communications initiated from us, which include, without limitation: e-mails and texts informing you of new and existing features we provide. Standard text messaging charges applied by your mobile device carrier will apply to text messages we send. If you change your mobile phone service provider, the notification service may be deactivated for your phone number and you may need to re-enroll in the notification service.

#### **18. Surveys and Feedback**

We may periodically present you with surveys or solicit your opinion about the Service. You acknowledge that your participation in these types of programs is completely voluntary. By submitting opinions, suggestions, feedback, images, documents, and/or proposals to us through these surveys, any suggestion or feedback webpages, or through any other communication with you, you acknowledge and agree that: (a) the suggestions or feedback you provide will not contain confidential or proprietary information; (b) we are not under any obligation of confidentiality, express or implied, with respect to the suggestions and feedback you provide; (c) we shall be entitled to use or disclose (or choose not to use or disclose) the suggestions and feedback you provide for any purpose, in any way, in any media worldwide (without

disclosing your identity); (d) we may have similar ideas to the suggestions and feedback you provide already under consideration or in development; (e) the suggestions and feedback you provide will automatically become our property without any obligation to you; and (f) you are not entitled to any compensation or reimbursement of any kind from us under any circumstances.

## **19. DMCA, Copyright and Other Complaints**

We promote respect for the Intellectual Property Rights of others in all of our business endeavors and strictly prohibit users from uploading infringing Content to the Service. We may, in our sole discretion, refuse or remove Content that appears to infringe on the Intellectual Property Rights of others. It is our policy to respond to and investigate claims of copyright and other Intellectual Property Rights infringement. We have a policy of terminating the access of users who are repeat infringers in appropriate circumstances.

You may notify us of alleged copyright infringement in accordance with the Digital Millennium Copyright Act (the "DMCA"). We will respond expeditiously to notices of alleged infringement sent pursuant to the DMCA.

In order to notify us of a copyright infringement claim pursuant to the DMCA, you must include:

- a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works on the Service are covered by a single notification, a representative list of such works;
- a description of the material that is claimed to be infringing or to be the subject of infringing activity, and information reasonably sufficient to permit us to locate the material, including a URL address;
- Your full name, address, telephone number, and, email address;
- a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- a statement made under penalty of perjury by you that the information in the notification is accurate, and that you are authorized to act on behalf of the owner of the copyright involved.

The notice described above should be sent to us via email using the address at [info@clutch-partners.com](mailto:info@clutch-partners.com).

Please note that in order to facilitate resolution of the dispute, we may provide your contact information to the user or entity that posted the Content that you are reporting; or in the event that you are the alleged infringer and provide a counter-notice, to the user or entity that filed the original claim. Please also note that you may be liable for damages (including costs and attorneys' fees) if you knowingly and materially misrepresent that material or an activity is infringing your copyright.

## **20. Other Complaints**

If you reasonably believe that Content made available through the Service infringes your rights, please email us at [info@clutch-partners.com](mailto:info@clutch-partners.com).

## **21. Independent Contractors**

No agency, partnership, joint venture, or employment relationship is created between us as a result of these Terms of Use and you do not have any authority of any kind to bind us in any respect whatsoever.

## **22. Non-Waiver**

The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

## **23. Force Majeure**

We shall not be liable for any failure to perform our obligations hereunder where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including "line-noise" interference).

**24. Severability**

If any provision of these Terms of Use is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms of Use shall otherwise remain in full force and effect and enforceable.

**25. Assignment**

These Terms of Use are not assignable, transferable or sub-licensable by you except with our prior written consent. We may transfer, assign or delegate these Terms of Use and their rights and obligations without consent.

**26. Compliance with Law**

By using our Services, you are representing and warranting to us that you are compliant with all applicable laws and regulations. You agree to indemnify and hold harmless Provider for any fines, costs, liability, or expenses (including attorney's fees) arising out of your breach of the foregoing obligations.

**27. Governing Law**

By using the Service, you agree that these Terms of Use shall be governed by and construed in accordance with the laws of the State of Indiana, United States of America, without regards to its conflict of law rules, and all applicable federal laws and regulations. Each of the parties irrevocably submits to the exclusive jurisdiction of the state and federal courts located in Indiana for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Each of the parties waives all defenses of lack of personal jurisdiction and *forum non conveniens*. In any action or suit to enforce any right or remedy under this Agreement, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees. You further agree that you may only bring claims in your individual capacity and not as a plaintiff or class member in any purported class or representative proceeding.

**28. Entire Agreement.**

These Terms of Use supersede all prior and contemporaneous agreements, representations and warranties and understandings, whether oral or written, with respect to the Service, and any Content. We reserve the right, at our sole discretion, to modify or replace these Terms of Use at any time. Using the Service following a change to these Terms of Use shall constitute your acceptance of the Terms of Use as modified.