



Endless Mobile Terms of Use

Thank you for your purchase of an Endless Mobile, Inc. (“**Endless Mobile**”, “**we**,” or “**us**”) product. These Terms of Use (the “**Terms**”) will govern your use of the Endless Mobile operating system and associated computing device (including all accessories and materials provided with the device) (the “**Device**”), the Endless Mobile operating system embedded on the Device (the “**OS**”), the Endless Mobile and third party executable programs pre-loaded and made available on Devices (the “**Apps**”), and other services provided by us and on which a link to these Terms of Use is displayed (collectively, together with the OS, the Device, and the Apps, the “**Service**”). These Terms of Use are a legally binding contract between you and Endless Mobile regarding your use of the Service.

Endless Mobile has created the Service to inspire and to empower. In all that we do, we try to stay true to those principles and always remember to appreciate and respect our users.

PLEASE READ THE FOLLOWING TERMS OF USE CAREFULLY. BY CLICKING “ACCEPT AND CONTINUE,” YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. If you are not eligible, a minor, or do not agree to these Terms, then please do not use the Service or the Device. If you acquired a Device and do not agree to these Terms, you may return the entire, unused Device within five business days to the authorized retailer where you purchased it for a refund of the purchase price.

THIS CONTRACT INCLUDES AN ARBITRATION AGREEMENT. These Terms of Use provide that BINDING ARBITRATION will resolve all disputes between you and Endless Mobile. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT A JUDGE and your claims cannot be brought as a class action. Please review Section 18 below for the details regarding your agreement to arbitrate any disputes with Endless Mobile.

1. Endless Mobile Service Overview.

- 1.1. **Embedded Software.** We provide the OS, Apps, firmware, documentation, interfaces, content, fonts, and data embedded in or distributed with each Device in connection with the Service (altogether “**Software**”). Apps are pre-installed on the Device and you may activate and access the Apps via the Endless App Store, available from the desktop of the OS. All Software is licensed and is not sold. Unless we or our third party licensors provide specific different terms with any particular Software, in which case such terms will govern your use of that Software, all Software that you are permitted to use is provided to you subject to a limited, individual, revocable, non-exclusive, non-transferrable, and non-assignable personal license to use the Software to access the Service in accordance with these Terms. If you do not use the Software in accordance with these Terms, you do not have a license to any Software, and any license that was previously granted to you is automatically revoked. The Software license is granted subject to your compliance with these Terms, including the prohibitions in Section 6.
- 1.2. **Updates.** If your Device is connected to the Internet, (i) we may update the Software automatically, and you agree that we may update the Software, (ii) the Software will periodically check Endless Mobile’s servers for updates to the Software, and (iii) if an update is available, the update may automatically download and install onto your Device without user confirmation.

These Terms will govern any updates provided by Endless Mobile unless accompanied by a separate license, in which case the terms of that license will govern.

- 1.3. **Fonts.** Subject to the terms and conditions of this License applicable to Software, you may use the fonts included with the Software to display and print content while running the OS; however, you may only embed fonts in content as permitted by the embedding restrictions accompanying the applicable font.
- 1.4. **Backup Copies.** You may copy the Software in machine-readable form for backup purposes only, provided that any backup copies are solely for personal use. Software is provided only for use on Endless Devices or those of our authorized partners and you may not copy, modify, or distribute any part of that Software.
2. **Eligibility.** By agreeing to these Terms, you represent and warrant to us: (a) that you are legally able to contract with us, and if you are under age, that a legal guardian, tutor or parent has agreed to the terms; (b) that you have not previously been suspended or removed from the Service; and (c) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are using the Service on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind that entity, organization, or company to these Terms and you agree to be bound by these Terms on behalf of that entity, organization, or company.
3. **Support.** If you are having problems with the Service, you may reach us our authorized support providers to request support by either: (a) for Tigo telecoms subscribers, calling 3243-9886; (b) for Claro telecoms subscribers, calling 4761-1055; (c) emailing us at support@endlessm.com; or (d) accessing the "feedback" page within the OS and following the instructions set forth on that page.
4. **Content Disclaimer.** You understand that when using the Service you may be exposed to content from a variety of sources, not necessarily our own, and acknowledge that content on the Service may be inaccurate, offensive, indecent or objectionable. You agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Endless Mobile with respect to such content and we expressly disclaim any and all liability in connection with such content.
5. **Device**
 - 5.1. **Device Usage.** You will ensure that: (a) each Device will only be used in a careful and proper manner and in accordance with the written instructions provided by us or our authorized resellers, as may be updated from time to time; (b) each Device will be used and held with due care and will not be defaced, modified, or used or operated in any illegal manner or for any illegal purpose in violation of any applicable international, federal, state, or local law or regulation; (c) any regulatory or certification markers affixed to a Device will not be removed, defaced, or otherwise obstructed; (d) no one will open the Device, tamper with the Device, or attempt to or obtain unauthorized access to the Service, or any Software or other technology contained within the Device; (e) no one will reverse engineer or otherwise attempt to discover the source code of any Software on the Device, except to the extent that we may not restrict this activity under applicable law or Third Party Terms (as defined below); and (f) each Device will only be repaired by Endless Mobile or its authorized service representatives or in accordance with Endless Mobile's or its authorized services representatives' instructions and requirements. The unauthorized use of a Device or the Service may result in criminal fines or imprisonment.
6. **Prohibited Conduct.** BY USING THE SERVICE YOU AGREE NOT TO:
 - 6.1. grant any third-party any right in or to the Software;

- 6.2. use the Service for any illegal purpose, or in violation of any local, state, national, or international law;
 - 6.3. violate the rights of third parties, including by infringing or misappropriating third party intellectual property rights;
 - 6.4. interfere with security-related features of the Service, including without limitation by: (a) disabling or circumventing features that prevent or limit use or copying of any content, (b) monitoring, recording, or analyzing any network communications in connection with the Service including any communications to or from a Device, or (c) reverse engineering or otherwise attempting to discover the source code of the Service or any part thereof except to the extent that such activity cannot be restricted under applicable law or Third Party Terms (as defined below);
 - 6.5. perform any fraudulent activity including impersonating any person or entity, claiming false affiliations, accessing the Service on behalf of others without permission, or falsifying your age or date of birth;
 - 6.6. sell or otherwise transfer the access granted herein or any Materials (as defined in Section 10 below) or any right or ability to view, access, or use any Materials; or
 - 6.7. attempt to do any of the foregoing in this Section 6, or assist or permit any persons in engaging or attempting to engage in any of the activities described in this Section 6.
- 7. Termination of Use; Discontinuation and Modification of the Service.** If you violate any provision of these Terms, your permission to use the Service will terminate automatically. Additionally, Endless Mobile, in its sole discretion may suspend or terminate your access to the Service at any time, with or without notice. We also reserve the right to modify or discontinue the Service at any time (including, without limitation, by limiting or discontinuing certain features of the Service) without notice to you. We will have no liability whatsoever on account of any change to the Service or any suspension or termination of your access to or use of the Service. You may terminate these Terms at any time by contacting customer service at support@endlessm.com. If you terminate these Terms, you will remain obligated to pay all outstanding fees, if any, relating to your use of the Service incurred prior to termination. Upon termination of these Terms, you will cease all use of the Device.
- 8. Additional Terms.** Your use of the Service is subject to any and all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may provide with Apps or other Software or parts of the Service in the future (the "**Additional Terms**"), such as end-user license agreements for any Apps that we may offer, or rules applicable to particular features or content on the Service, subject to Section 11 below. The Additional Terms may require you to agree to them from time to time in order to continue the Service. All such Additional Terms are hereby incorporated by reference into, and made a part of, these Terms.
- 9. Languages and Localization.** Any translation of these Terms is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version will govern, to the extent not prohibited by applicable law. The Service, including Third Party Software, may not be available in all languages or in all countries, and Endless Mobile makes no representation that the Service is appropriate or available for use in any particular location. To the extent you choose to use or access the Service, including Third Party Software, you do so at your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws and privacy and data collection laws.
- 10. Ownership; Proprietary Rights.** The Service is owned and operated by Endless Mobile and our third party licensors. The Software, Device hardware, firmware and other software embedded in or distributed with each Device, visual interfaces, graphics, design, compilation, information, data,

computer code (including source code or object code), products, software, services, and all other elements of the Service (the “**Materials**”) provided by Endless Mobile and our third party licensors are protected by all relevant intellectual property and proprietary rights and applicable laws. Except for any purchased Device hardware, all Materials are the property of Endless Mobile or our third-party licensors. Except as expressly authorized by Endless Mobile or our applicable third party licensor or as required by applicable law, you may not make use of the Materials. Endless Mobile reserves all rights to the Materials not granted expressly in these Terms.

11. Third Party Software and Open Source.

11.1. **Third Party Terms.** The Materials may contain or be accompanied by materials, including software code, provided by third parties (“**Third Party Software**”) subject to separate license terms (the “**Third Party Terms**”), not any license contained in the Terms. Endless Mobile will not provide updates, maintenance, warranty, technical or other support or services for Third Party Software. We have no obligation to provide any technical or other support for Third Party Software or third party services. Your use of the Third Party Software in conjunction with the Service in a manner consistent with the Terms is permitted, however, you may have broader rights under the applicable Third Party Terms and nothing in the Terms is intended to impose further restrictions on your use of the Third Party Software. In addition to Sections 11.3 and 11.4 below, you can find certain required notices and other information regarding Third Party Software, including open source software, [here](#). In addition, Endless Mobile displays some of the open source components included in the Third Party Software on our public GitHub account, located at <https://github.com/endlessm>. Endless Mobile does not represent or warrant that the licensing information provided therein or herein is correct or error-free and you should investigate the Software you intend to use to confirm the accuracy of the license terms for that Software. You are also encouraged to notify us of any inaccurate information or errors found in these notices by contacting us via the methods provided in Section 12 below.

11.2. **Open Source Modification.** You may modify Third Party Software offered under an open source license as long as (i) the resultant modified software is used in place of the unmodified Third Party Software on Devices that you own or control, and as long as each Device has a properly licensed copy of the OS on it; and (ii) you otherwise comply with these Terms and the applicable Third Party Terms. Periodic OS updates may overwrite user modifications.

11.3. **Google.** Use of Google Inc.’s software and services in the Device is subject to the Google terms of service (http://www.google.com/terms_of_service.html) and to Google's privacy policy (<http://www.google.com/privacypolicy.html>).

11.4. **GNU.** Certain Third Party Software included in the Service are licensed under the terms of the GNU General Public License (GPL) or the GNU Library/Lesser General Public License (LGPL). Please see the GNU General Public License for more information around GNU Licensing: <http://www.gnu.org/copyleft/gpl.html>. The GPL/LGPL software is distributed in the hope that it will be useful, but WITHOUT ANY WARRANTY, without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. A copy of the GPL and LGPL is included with the Software. If you would like a copy of the GPL source code used in the Software, please contact Endless Mobile as provided in Section 12 below.

11.5. **Source Code Requests.** Certain Third Party Terms, such as the GNU General Public License, GNU Lesser (or Library) General Public License, and Mozilla Public License, require Endless Mobile to make available the source code corresponding to free and open source binaries distributed under those Third Party Terms. You may obtain a complete machine-readable copy of the source code for such free software under the terms of the GPL or LGPL, without charge except for the costs of media, shipping and handling. If you would like to receive a copy of such source code, submit a request to Endless Mobile:

By post:

Endless Mobile
Attn: FOSS Requests
512 2nd Street, Floor 3
San Francisco, CA 94105

Or by email:

legal@endlessm.com

Please include the following in your requests:

- the Software packages for which you are requesting source code;
- the Device and version number with which the requested Software was distributed;
- an email address and/or phone number at which we may contact you regarding the request (if available); and
- the postal address for delivery of the requested source code.

We will make commercially reasonable efforts to honor your valid requests in a timely manner.

12. Indemnity. You agree that you will be solely responsible for your use of the Service, and you agree to defend, indemnify, and hold harmless Endless Mobile and its officers, directors, employees, consultants, affiliates, subsidiaries, retailers and agents (collectively, the "**Endless Mobile Entities**") from and against any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with: (a) your access to, use of, or alleged use of the Service; (b) your violation of (i) these Terms or any representation, warranty, or agreements referenced in the Terms, (ii) Third Party Terms, or (iii) any applicable law or regulation; (c) your modifications to open source Third Party Software (d) your violation of any third-party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; or (e) any disputes or issues between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (and without limiting your indemnification obligations with respect to such matter), and in such case, you agree to cooperate with our defense of such claim.

13. Disclaimers; No Warranties

EXCEPT AS PROVIDED IN SECTION 6.3, THE SERVICE, INCLUDING THE SOFTWARE AND ANY DEVICE HARDWARE, AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY. THE ENDLESS MOBILE ENTITIES SPECIFICALLY (BUT WITHOUT LIMITATION) DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, SATISFACTORY QUALITY, ACCURACY, PERFORMANCE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. THE ENDLESS MOBILE ENTITIES DO NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE OR SERVICE, THAT THE FUNCTIONS CONTAINED IN OR SERVICES PERFORMED OR PROVIDED BY ENDLESS MOBILE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, THAT ANY SERVICES WILL CONTINUE TO BE MADE AVAILABLE, THAT THE SOFTWARE OR SERVICE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE, APPLICATIONS, OR THIRD PARTY SERVICES, THAT THE SERVICE OR ANY PART THEREOF WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, DEFECTS, VIRUSES, OR OTHER HARMFUL COMPONENTS, OR THAT ANY OF THE FOREGOING WILL BE

CORRECTED. INSTALLATION OR USE OF THE SOFTWARE MAY AFFECT THE USABILITY OF THIRD PARTY SOFTWARE, APPLICATIONS, OR THIRD PARTY SERVICES.

YOU ASSUME ALL RISK FOR ALL DAMAGES THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE, YOUR DEALINGS WITH OTHER SERVICE USERS, AND ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE AND USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM USED IN CONNECTION WITH THE SERVICE) OR LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF SUCH MATERIALS OR CONTENT.

YOU ACKNOWLEDGE THAT THE SOFTWARE AND SERVICE ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA, OR INFORMATION PROVIDED BY THE SOFTWARE OR SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, FIRE OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATIONS THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MOTOR VEHICLES, LIFE SUPPORT, OR WEAPONS SYSTEMS. THE DEVICE IS NOT INTENDED OR SUITABLE FOR USE IN PLACES WHERE IT IS LEGALLY PROHIBITED TO USE DEVICES WITH MOBILE TECHNOLOGY.

NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY ENDLESS MOBILE OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE ANY WARRANTIES NOT EXPRESSLY SET FORTH IN THESE TERMS. EXCEPT AS PROVIDED IN SECTION 6.3, IF THE SOFTWARE OR SERVICE PROVE DEFECTIVE AND THEREBY INCUR ANY DAMAGE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.

SOME JURISDICTIONS MAY PROHIBIT SOME DISCLAIMERS OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. TO FIND ABOUT MORE ABOUT YOUR RIGHTS, YOU SHOULD CONTACT A LOCAL CONSUMER ADVICE ORGANIZATION, CONSUMER PROTECTION AUTHORITY OR ATTORNEY.

14. Limitation of Liability

IN NO EVENT WILL THE ENDLESS MOBILE ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, MORAL DAMAGES, LOSS OF PROFITS, GOODWILL, USE, DATA, INCLUDING CORRUPTION OF DATA OR FAILURE TO TRANSMIT OR RECEIVE ANY DATA OR INFORMATION, OR OTHER INTANGIBLE LOSSES) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE ENDLESS MOBILE ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE.

YOU AGREE THAT THE AGGREGATE LIABILITY OF THE ENDLESS MOBILE ENTITIES TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE THE SERVICE (INCLUDING ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE,

TEMPORARILY OR PERMANENTLY) OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO \$50 UNITED STATES DOLLARS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, IF THAT IS THE CASE, AND ONLY TO THAT EXTENT, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS AGREED TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 14 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

15. Governing Law. These Terms shall be governed by the laws of the State of California without regard to conflict of law principles. To the extent that any lawsuit or court proceeding is permitted hereunder and not legally subject to arbitration under the applicable laws, then in that case you and Endless Mobile agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within San Francisco County, California for the purpose of litigating all such disputes.

16. Export. Endless Mobile's Service, Software, and Device hardware may be subject to domestic and foreign export and reexport control laws and regulations. You agree to comply with all applicable export and reexport control laws and regulations, including both domestic and foreign controls. Specifically, you warrant that you are: (a) not located in Cuba, Iran, North Korea, Sudan, or Syria; and (b) not a denied party as specified in domestic or foreign regulations. You also covenant that you will not, directly or indirectly, sell, export, reexport, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Endless Mobile to any destination, entity, or person prohibited by applicable laws or regulations, including those of any other country from which the product has been exported, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

17. General. These Terms, together with any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Endless Mobile regarding your use of and access to the Service, and except as expressly permitted above may be amended only by a written agreement signed by authorized representatives of all parties to these Terms. You may not assign or transfer these Terms or your rights hereunder, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice. The failure to require performance of any provision will not affect our right to require performance at any time thereafter, nor shall a waiver of any breach or default of these Terms or any provision of these Terms constitute a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and shall not have any impact on the interpretation of particular provisions. If any part of these Terms is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. Upon termination of these Terms, any provision that by its nature or express terms should survive will survive such termination or expiration, including, but not limited to, Sections 2, 3, and 6 through 20.

18. Dispute Resolution and Arbitration

18.1. Generally. THIS CONTRACT CONTAINS AN ARBITRATION AGREEMENT. In the interest of resolving disputes between you and Endless Mobile in the most expedient and cost effective manner, you and Endless Mobile agree that any and all disputes arising in connection

with these Terms shall be resolved by binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Our agreement to arbitrate disputes includes, but is not limited to all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether the claims arise during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND ENDLESS MOBILE ARE EACH WAIVING THE RIGHT TO A TRIAL OR TO PARTICIPATE IN A CLASS ACTION.

- 18.2. **Exceptions.** Notwithstanding subsection 18.1, we both agree that nothing herein will be deemed to waive, preclude, or otherwise limit either of our right to: (a) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available; and (b) seek injunctive relief, to the extent permitted by law or in connection with the arbitration, in a court of law.
- 18.3. **Arbitrator.** Any arbitration between you and Endless Mobile will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "**AAA Rules**") of the American Arbitration Association ("**AAA**"), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting Endless Mobile.
- 18.4. **Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required), or if we do not have a physical address on file for you, by electronic mail ("**Notice**"). Endless Mobile's address for Notice is: Endless Mobile, Inc. 512 2nd Street, Third Floor, San Francisco, CA 94107. The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("**Demand**"). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 calendar days after the Notice is received, you or Endless Mobile may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Endless Mobile shall not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If our dispute is finally resolved through arbitration in your favor, Endless Mobile shall pay you (I) the amount awarded by the arbitrator, if any, (II) the last written settlement amount offered by Endless Mobile in settlement of the dispute prior to the arbitrator's award; or (III) \$50.00, whichever is greater.
- 18.5. **No Class Actions.** YOU AND ENDLESS MOBILE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Endless Mobile agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.
- 18.6. **Modifications.** We may revise these Terms at any time without notice. By continuing to use this Service after you have been notified of a modification, you are agreeing to be bound by the then current version of these Terms.
- 18.7. **Enforceability.** If Subsection 18.5 is found to be unenforceable or if the entirety of this Section 18 is found to be unenforceable, then the entirety of this Section 18 shall be null and void and, in such case, the parties agree that the exclusive jurisdiction and venue described in Section 15 shall govern any action arising out of or related to these Terms.

- 19. Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.
- 20. Notices.** Except for the notices set forth in Sections 11 and 18, all notices to Endless Mobile must be sent to Endless Mobile, Inc., 512 2nd Street, Third Floor, San Francisco, CA 94107 by certified mail, and will be deemed given upon receipt by Endless Mobile. All notices by Endless Mobile to you will be sent to the email address you have made available to Endless Mobile, and will be deemed given on the day sent.
- 21. Contact Information.** The services hereunder are offered by Endless Mobile, Inc., located at 512 2nd Street, Third Floor, San Francisco, CA 94107. You may contact us by sending correspondence to the foregoing address or by emailing us at support@endlessm.com. If you are a California resident, you may have these Terms mailed to you electronically by sending a letter to the foregoing address with your electronic mail address and a request for these Terms.