



## Endless Terms of Use

Thank you for your selection of an Endless Mobile, Inc. ("**Endless**", "**we**," or "**us**") product. Endless was created to inspire and to empower, and so we strive to appreciate and respect our users.

These Terms of Use (the "**Terms**") are a legally binding contract between you and Endless regarding your use of the Service. The Terms will govern your use of the Endless operating system (the "**OS**"), the Endless and third-party programs included with or made available for the OS (the "**Apps**"), and other services provided by us (collectively, together with the OS and the Apps, the "**Service**").

Please read these Terms carefully. By clicking "accept" you acknowledge that you have read, understood, and agreed to be bound by the Terms.

If you do not agree to these Terms, then please do not use the Service. If you acquired a device with the Service pre-loaded and do not agree to these Terms, you should return the device (including all accessories and materials provided with it) to the retailer where you purchased it and request a refund of the purchase price.

These Terms include an arbitration agreement, by which you agree that binding arbitration will resolve all disputes between you and Endless. Your rights will be determined by a neutral arbitrator, not a judge; and your claims cannot be brought as a class action. Please review Section 15 below for further details.

### 1. License to Endless Software and Updates.

**1.1. Software.** Unless specifically noted otherwise in writing, the OS, Apps, Updates (as defined below), and other materials distributed in connection with the Service (together, the "**Software**") are licensed and are not sold. All Software is provided to you subject to a limited, individual, revocable, non-exclusive, non-transferrable, and non-assignable personal license to use the Software, subject to your compliance with these Terms. Endless reserves all rights to the Software not granted expressly in these Terms.

**1.2. Updates.** From time to time, Endless may, at its own discretion, create updates, upgrades, enhancements or bug fixes (collectively "**Updates**") to the Software, and make such Updates available to you. The Service may automatically download and install Updates without user confirmation.

**1.3. Copying and Distribution.** You may copy and distribute the OS as described in the Endless OS Redistribution Policy (<https://endlessos.com/redistribution-policy/>).

**2. Eligibility.** You represent and warrant to us that you are legally able to contract with us, or that if you are under age, a legal guardian, tutor or parent has agreed to the terms. 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. Content Disclaimer.** When using the Service you may be exposed to content from a variety of third party sources, including the internet. You acknowledge that such content may be inaccurate,

offensive, indecent or objectionable, and you waive any legal or equitable rights or remedies you may have against Endless with respect to such content.

**4. Data Collection.**

**4.1. Default.** Certain information is reported to Endless periodically by the Service. This information includes the version of the OS which was installed and is currently being used, the device that is being used to run the OS and its approximate location, how the OS was installed, and how long the OS has been installed on that device.

**4.2. Optional.** Additional information may be reported to Endless periodically by the Service's user metrics system. To enable and disable this system, use the "Privacy" settings in the OS control center.

**4.3. Data Usage.** Endless may process and use the data it collects about your usage (collectively, the Usage Information), and may share the Usage Information in an anonymous and aggregate form with third parties including, but not limited to, current and potential content providers, app developers, hardware manufacturers who ship the OS, investors. In addition, when legally required, Usage Information may be shared with government agencies.

**5. Prohibited Conduct.** You will not:

**5.1.** use the Service for any fraudulent or illegal purpose, or in violation of any local, state, national, or international law;

**5.2.** violate the rights of third parties, including by infringing or misappropriating third-party intellectual property rights;

**5.3.** attempt to do any of the foregoing in this Section 5, or assist or permit any persons in engaging or attempting to engage in any of the activities described in this Section 5.

**6. 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, 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. You may terminate these Terms at any time by contacting customer service at [support@endlessm.com](mailto: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 Service.

**7. 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 9 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.

**8. Languages and Localization.** In the event of a dispute between the English version of these terms and any translated 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 makes no representation that the Service is appropriate or available for use in any particular location.

## 9. Third Party Software and Open Source.

- 9.1. Third Party Terms.** The Service contains materials, including software code, provided by third parties (“**Third Party Software**”) subject to separate license terms (the “**Third Party Terms**”). Endless has no obligation to provide updates, maintenance, warranty, technical or other support or services 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. 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 9.3 and 9.4 below, you can find certain required notices and other information regarding Third Party Software, including open source software, [here](#).
- 9.2. Open Source Modification.** Endless makes available some of the open source components included in the Third Party Software on our public GitHub account, located at <https://github.com/endlessm>. Endless does not represent or warrant that the licensing information provided is correct or error-free, and we encourage you to notify us of any inaccurate information. If you make modifications to any open source software contained in the Service, Endless updates may overwrite such modifications without warning.
- 9.3. Google.** Use of Google Inc.’s software and services in the Service is subject to the Google terms of service ([http://www.google.com/terms\\_of\\_service.html](http://www.google.com/terms_of_service.html)) and to Google’s privacy policy (<http://www.google.com/privacypolicy.html>).
- 9.4. GNU.** Certain Third Party Software included in the Service is licensed under the terms of the GNU General Public License (GPL) or the GNU Library/Lesser General Public License (LGPL). 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 as provided in Section 9.5 below.
- 9.5. 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 to make available the source code corresponding to free and open source binaries distributed under those Third Party Terms 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:

**By postal mail:**

Endless Mobile, Inc.  
Attn: FOSS Requests  
575 Market Street, Suite 825  
San Francisco, CA 94105

**By email:**

[legal@endlessm.com](mailto:legal@endlessm.com)

Please include the following in your requests:

- the Software packages for which you are requesting source code;
- the OS 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.

**10. 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 and its officers, directors, employees, consultants, affiliates, subsidiaries, retailers and agents (collectively, the "**Endless 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.

#### **11. Disclaimers; No Warranties**

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 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 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 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. Endless does not warrant or represent that the Software will be compatible with any operating systems, applications, or hardware provided by third parties. 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.

No oral or written information or advice provided by Endless or its authorized representatives will create any warranties not expressly set forth in these terms. 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 out more about your rights, you should contact a local consumer organization, consumer protection authority, or attorney.

## **12. Limitation of Liability**

In no event will the Endless 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, your inability to access or use, or changes to, 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 Entities have been informed of the possibility of such damage.

You agree that the aggregate liability of the Endless 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 or the amount you paid for the Service, whichever is smaller.

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 12 will apply even if any limited remedy fails of its essential purpose.

**13. Export.** Endless's Service and Software may be subject to domestic and foreign export and reexport control laws and regulations. You will 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 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 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.

- 14. 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 regarding your use of and access to the Service. 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 Sections 2-3 and 5-17 will survive.

## **15. Dispute Resolution and Arbitration**

**15.1. Generally.** This contract contains an arbitration agreement. In the interest of resolving disputes between you and Endless in the most expedient and cost effective manner, you and Endless 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 are each waiving the right to a trial or to participate in a class action.

**15.2. Exceptions.** Notwithstanding subsection 15.1, 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.

**15.3. Arbitrator.** Any arbitration between you and Endless 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](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Endless.

**15.4. 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's address for Notice is: Endless Mobile, Inc. 575 Market Street, Suite 825, San Francisco, CA 94105. 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 may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Endless 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 shall pay you (I) the amount awarded by the arbitrator, if any, or (II) the last written settlement amount offered by Endless in settlement of the dispute prior to the arbitrator's award, whichever is greater.

**15.5. No Class Actions.** You and Endless 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 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.

**15.6. 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 modified version of these Terms.

**15.7. Enforceability.** If Subsection 15.5 is found to be unenforceable or if the entirety of this Section 15 is found to be unenforceable, then the entirety of this Section 15 shall be null and void and, in such case, the parties agree that the exclusive jurisdiction and venue described in Section 18 shall govern any action arising out of or related to these Terms.

**16. 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 any requirements that such communications be in writing.

**17. Notices and Contact.** Except as set forth in Sections 9 and 15, all notices to Endless must be sent to Endless Mobile, Inc., **575 Market Street, Suite 825, San Francisco, CA 94105** by certified mail, and will be deemed given upon receipt by Endless. All notices by Endless to you will be sent to the email address you have made available to Endless, and will be deemed given on the day sent. 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.

**18. 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 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.