



WolMobile End User Agreement

Last updated on: 18 November 2019

This End User Agreement (“**End User Agreement**”) is between you and WhosOnLocation and the terms of use described here governs your access to and use of the WolMobile application provided by Us. If you have any questions about this End User Agreement, WolMobile, or your dealings with WhosOnLocation, you may contact us as set out below:

Attn: End User Agreement Issues
WhosOnLocation Customer Services
P.O. Box 27023
Marion Square
Wellington 6011
New Zealand

Email: support@whosonlocation.com

1. Who we are and what this agreement does

- 1.1. You are being granted access to WolMobile because the organisation you work for or contract to (“**Your Organisation**”) has:
 - 1.1.1. agreed to subscribe, under a master subscription agreement (“MSA”), for certain services provided by WhosOnLocation including WolMobile; and
 - 1.1.2. requested We provide you with access to WolMobile.
- 1.2. In accordance with the MSA, We have agreed to provide you with access to WolMobile subject to you agreeing to be bound by this End User Agreement. By clicking on the “I agree to the terms of use” button you agree to this End User Agreement in its entirety.
- 1.3. Please read this End User Agreement carefully. If you do not agree to these terms, you must not access WolMobile, or if you have, you must immediately cease any such access and use.
- 1.4. If you download WolMobile onto any mobile phone or other device (“**Device**”) not owned by you, you must have the owner’s permission to do so. You will be responsible for complying with these terms, whether or not you own the Device.

2. Definitions and Interpretation

- 2.1. Capitalised terms used but not otherwise defined in this End User Agreement have the meaning given to them in clause 1 of the MSA, provided in [this link](#)
- 2.2. Where any provision of the MSA is inconsistent with any provision of this End User Agreement then:
 - 2.2.1. it relates to your access to and use of WolMobile, the terms of this End User Agreement shall prevail (but only to the extent of the inconsistency); and
 - 2.2.2. as it relates to the access to and use of WolMobile by Your Organisation, the terms of the MSA shall prevail (but only to the extent of the inconsistency).
- 2.3. The ways in which you use WolMobile may also be controlled by [Google Play](#) and the [Apple App Store's](#) rules and policies, and those rules and policies will apply instead of the terms of this End User Agreement where there are inconsistencies between the two (but only to the extent of the inconsistency).

3. Your Privacy

- 3.1. Under privacy and data protection laws, We are required to provide you with certain information about who We are, how We process your personal information and for what purposes and your rights in relation to your personal information and how to exercise them.
- 3.2. This information is available [here](#) and it is important that you read that information.

4. Term

- 4.1. This End User Agreement shall commence on your acceptance of this End User Agreement and shall continue until the earlier of:
 - 4.1.1. expiry or termination of the MSA;
 - 4.1.2. Your Organisation requesting that you no longer have access to WolMobile (and WhosOnLocation processing that request); or
 - 4.1.3. WhosOnLocation terminating this End User Agreement (whether for convenience or your breach of this End User Agreement).

- 4.2. Upon termination of this End User Agreement for any reason you must cease using WolMobile and follow all reasonable instructions from Us in relation to cessation of such use.
- 4.3. Any termination of this End User Agreement shall not relieve either party of any obligation accrued prior to such termination, and shall be without prejudice to the rights and remedies with respect to default or breach of this End User Agreement prior to termination.

5. How you may use the app

- 5.1. In return for accepting and complying with the terms of this End User Agreement, We grant you a non-exclusive, non-transferable, non-sublicensable, and revocable right to access and use WolMobile within the limits specified in the MSA and this End User Agreement.
- 5.2. All rights not expressly granted under clause 5.1 are reserved by Us and any other applicable third party providers of WolMobile.

6. WolMobile Features

- 6.1. A description of the features and functions of WolMobile is available [here](#) ("**Features**"), which may include the ability:
 - 6.1.1. for Your Organisation to create a virtual perimeter around a real-world geographic point (**Geo-fenced Location**);
 - 6.1.2. to tag yourself in and out of a Geo-fenced Location, whether manually or automatically (by enabling Locating Services and Push Notifications for WolMobile); or
 - 6.1.3. to send and receive notifications and acknowledgements from and to Your Organisation when you are entering, exiting or are within a Geo-fenced Location.
- 6.2. Some Features are dependent on:
 - 6.2.1. the capabilities of your Device, and you are solely responsible for the installation and configuration of WolMobile on your Device;
 - 6.2.2. Your Organisation enabling your access to that Feature, and Your Organisation is solely responsible for determining which Features you will have access to;
 - 6.2.3. Your Organisation activating certain Features, for example Your Organisation is solely responsible for creating Geo-fenced Locations;

- 6.2.4. you enabling that Feature for WolMobile on your Device, for example you have the ability to turn on or off Location Services and Push Notifications for WolMobile on your Device;
- 6.2.5. your and Your Organisation's connection to the internet;
- 6.2.6. certain third party providers and the availability of their products and services, for example Location Services uses a combination of cellular, Wi-Fi, and GPS to determine your location, all of which may be subject to:
 - 6.2.6.1. your location when you use WolMobile, for example if you're not within a clear line of sight of GPS satellites, or your Device cannot determine your location using crowd-sourced Wi-Fi and cell towers then your location may not be identified; and
 - 6.2.6.2. changes by those third parties, accordingly, such Features may be modified or limited.
- 6.3. We do not safeguard an interruption-free and latency-free end-to-end connection between you and Your Organisation, or take any responsibility for accurately determining your location.
- 6.4. This End User Agreement does not grant to you any rights to use any other products and/or services of WhosOnLocation, and you must not attempt to do so or assert otherwise.

7. Help Desk

- 7.1. WhosOnLocation operates an online helpdesk to administer user enquiries. You can access the Helpdesk via Our website.
- 7.2. In the case of technical problems, in the first instance you should work with Your Organisation to investigate and diagnose problems before contacting WhosOnLocation. If you still need technical help, please contact us:**Online helpdesk:** <https://support.whosonlocation.com/> (available 24 x 7 x 365)
Email: support@whosonlocation.com **Worldwide:** +64 4 891 0886
Australia: 1300 106 541 **United States / Canada:** 1 800 501 1761 **United Kingdom / EU:** 0808 189 1412

8. Conditions of Use

8.1. You agree that you will:

- 8.1.1. use WolMobile only in accordance with the provisions of this End User Agreement and in accordance with applicable laws and regulations;
- 8.1.2. follow any directions We give you from time to time in relation to use of WolMobile;
- 8.1.3. not sell, transfer, sub-license, publish, disclose, or otherwise make available WolMobile or any other part or copies of WolMobile, to any third party without Our prior written consent (which may be withheld in Our sole discretion);
- 8.1.4. exercise at all times all reasonable care and diligence and must not pass any virus, worm, bug or other computer infection to Us, or any third party providers; and
- 8.1.5. comply with all applicable technology control or export laws and regulations that apply to WolMobile.

9. Prohibited Uses

9.1. You must not, at any time, make any attempt to:

- 9.1.1. de-compile, reverse-engineer, disassemble, or create derivative works from WolMobile or otherwise attempt to discover any part of any source code, algorithms, processes, methods or processes used in WolMobile;
- 9.1.2. defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms in WolMobile including, any such mechanisms used to restrict or control the functionality of WolMobile;
- 9.1.3. modify, alter, adapt or incorporate any part of WolMobile into any other material, product, service or database or create any derivative works based upon WolMobile;
- 9.1.4. otherwise infringe Our intellectual property rights or those of any third party in relation to your use of WolMobile;
- 9.1.5. transmit any material that is defamatory, offensive or otherwise objectionable through WolMobile;

- 9.1.6. use WolMobile in a way that could damage, disable, overburden, impair or compromise Our systems or security or interfere with other users; or
- 9.1.7. collect or harvest any information or data from WolMobile or our systems or attempt to decipher any transmissions to or from the servers running WolMobile.

10. Intellectual Property Rights

- 10.1. All intellectual property rights in WolMobile throughout the world belong to Us (or Our licensors).
- 10.2. You have no intellectual property rights in, or to, WolMobile other than the right to use them in accordance with the terms of this End User Agreement.

11. Changes To This Agreement

- 11.1. We may need to change this End User Agreement to reflect changes in law or best practice, based on user feedback or to deal with additional Features which We introduce.
- 11.2. We reserve the right to change this End User Agreement at any time, effective upon the communicate of these changes to you via:
 - 11.2.1. a notification sent to the email address which you provided when setting up your access to WolMobile; or
 - 11.2.2. an in-application notification.
- 11.3. It is your obligation to ensure that you have read, understood and agree to the most recent terms available. If you do not accept the notified changes you will not be permitted to continue to use WolMobile.

12. Updates to WolMobile

- 12.1. From time to time We may update WolMobile in accordance with the MSA to improve performance, enhance functionality, introduce new Features or address security issues.
- 12.2. Except for new Features (where clause 6.2.2 applies), if you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using WolMobile.

13. Limitation of Liability

13.1. WhosOnLocation will not be liable for any delay, defect, deficiency and/or loss of service in connection with WolMobile or any loss caused by or on account of any of the following:

13.1.1. Devices, data or services supplied by you, Your Organisation or any third party; or

13.1.2. any telecommunications organisation equipment or services (including any speeds or capabilities of such equipment or services), any requirements of the telecommunications authority, or any internet outages.

13.2. To the maximum extent permitted by law, we exclude all liability and responsibility to you (or any other person) in contract, tort (including negligence), or otherwise, for any consequential loss or damage (including loss of profits and savings) resulting, directly or indirectly, from any use of, or reliance on, WolMobile.

13.3. Subject to clause 13.4 below, if you suffer loss or damage as a result of our negligence or failure to comply with this End User Agreement, any claim by you against Us arising from Our negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Subscription Fees paid by Your Organisation in the previous 12 months.

13.4. This clause does not apply to limit our liability for personal injury, death, fraud or wilful misconduct.

14. General

- 14.1. This End User Agreement, together with Our Privacy Policy and the terms of any other notices or instructions given to you under this End User Agreement, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between the parties relating to WolMobile.
- 14.2. If either party waives any breach of a term of this End User Agreement, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.
- 14.3. You cannot not assign this End User Agreement without Our prior written consent.
- 14.4. You agree that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this End User Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If you learn of any violation of the above restriction, you will use reasonable efforts to promptly notify Our Legal Department at trust@whosonlocation.com.
- 14.5. If any part or provision of this End User Agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this End User Agreement will be binding on the parties.
- 14.6. A person who is not a party to this End User Agreement has no right to benefit under or to enforce any term of this End User Agreement.

15. Governing law and jurisdiction

- 15.1. If you are a person who is a tax resident in New Zealand at the time that you accept this End User Agreement then New Zealand law governs this End User Agreement and you submit to the exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with this End User Agreement.
- 15.2. If you are a person who is a tax resident in Australia at the time that you accept this End User Agreement then Australian law governs this End User Agreement and you submit to the exclusive jurisdiction of the courts of Australia for all disputes arising out of or in connection with this End User Agreement.
- 15.3. If you are a person who is a tax resident in the United States of America at the time that you accept this End User Agreement then the State of California law govern this End User Agreement and you submit to the exclusive jurisdiction of the state courts of San Francisco County, California or federal court for the Northern District of California for all disputes arising out of or in connection with this End User Agreement.
- 15.4. In all other situations this End User Agreement is governed by the laws of New Zealand and you hereby submit to the exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with this End User Agreement.
- 15.5. Notwithstanding any other clause of this End User Agreement, you agree that WhosOnLocation shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

16. Arbitration Option

- 16.1. For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, they shall initiate such arbitration through an established alternative dispute resolution (“**ADR**”) provider mutually agreed upon by the parties.
- 16.2. The ADR provider and the parties must comply with the following rules: (a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually

agreed by the parties; and (c) any judgment on the award rendered by the arbitrator shall be final and may be entered in any court of competent jurisdiction.

17. Federal Government End Use Provisions

17.1. If you are contracting on behalf of a U.S. federal government department or agency, WolMobile is a “Commercial Item” as that term is defined at 48 C.F.R. 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as those terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, WolMobile is licensed to you with only those rights as provided under the terms and conditions of this End User Agreement.