

Last modified: 06 November 2015

Mall of America App

End User License Agreement

IMPORTANT – READ THIS END USER LICENSE AGREEMENT CAREFULLY BEFORE PURCHASING, INSTALLING OR DOWNLOADING THE MALL OF AMERICA APP.

1. Introduction

This End User License Agreement (the “**Agreement**”) is a legal agreement between MOAC Mall Holdings LLC, having an address of Management Office, 60 East Broadway, Bloomington, Minnesota, 55425 (“**MOA**”) and you (a person referred to herein as the “**End User**”) for an MOA-brand software product available either by purchase or for free from the Apple, Inc. (“**Apple**”) “**App Store**” (the “**Software**”), and any updates to the Software that may be made available by MOA (“**Updates**,” and, together with the Software, the “**App**”), pursuant to which the End User may obtain or request certain information in the App (the “**Services**”).

This Agreement is between MOA and the End User only. As between End User and MOA, MOA is solely responsible for the App and Services. Apple is not a party to this Agreement; however, Apple and its subsidiaries are third party beneficiaries of this Agreement. As such, once the End User accepts this Agreement, Apple shall have the right (and will be deemed to have accepted the right) to enforce this Agreement against the End User.

By making acceptance of this Agreement in the manner provided prior to or while purchasing, installing, or downloading the App, the End User agrees to be bound by the terms of this Agreement. If the End User does not agree to the terms of this Agreement, the End User shall not purchase, install, download, or use the App.

By accepting this Agreement, the End User agrees that the End User’s use of the App and Services are governed by and shall be subject to the MOA [Privacy Policy](#) as it may be updated from time to time.

2. Ownership

MOA (or its licensor) is and shall be the exclusive owner of all right, title, and interest in and to the App and the content in the Services, including, without limitation, any and all patents, copyrights, trademarks and service marks, trade secrets, and all other proprietary rights of any kind whatsoever related to or used in the App or such content. Use of the App does not in any respect whatsoever constitute a grant of any license or other right to use or exploit any of the proprietary rights related to the App or Services, except as expressly granted to the End User in this Agreement.

The End User shall not modify, remove, or obscure any proprietary notices contained in or on the App or any screen images related to the App.

The End User shall not distribute, reverse engineer, translate, decompile, or disassemble the App, and the End User shall not in any other manner attempt to access or learn the source code related to the App.

3. License

Subject to the provisions of this Agreement, MOA grants the End User a personal, limited, revocable, non-exclusive, non-sublicensable, and non-transferable license to: (i) install and use the App, in object code

format only, on an Apple-branded product that is operated through the use of an Apple iOS operating system (the “**iOS Product**”), provided, however, that such use may be made only on an iOS Product that the End User owns or controls, and only to the extent permitted by the “Usage Rules” set forth in the App Store “Terms of Service;” and (ii) to use the Services available through the App, for End User’s personal use only.

The End User shall not make any copies of the App. The End User shall comply with any applicable agreements or terms of service when using the App or Services.

The terms of this Agreement apply to all upgrades and updates to the App, unless such upgrade or update is accompanied by a separate license, in which case the terms of that license will govern. MOA reserves the right to add or remove features or functions of the App and/or the Services. End User’s use of the App is voluntary and End User may uninstall the App at any time. However, by uninstalling the App, the End User’s will be unable to access to the Services provided by the App.

The App and any underlying technology may not be exported by you outside the United States in a manner that is prohibited by applicable export laws and regulations. By installing or using the App, the End User assumes responsibility for compliance with the foregoing. The End User represents and warrants that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties.

4. Disclaimers

Assumption of Risk

YOU EXPRESSLY ASSUME ANY AND ALL RISKS RELATED TO YOUR USE OF THE APP AND THE SERVICES.

Warranty Disclaimer.

THE APP AND THE SERVICES ARE PROVIDED “AS IS, WITH ALL DEFECTS.” THE APP AND THE SERVICES ARE PROVIDED WITHOUT WARRANTY OF ANY KIND WHATSOEVER, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NON-INFRINGEMENT, AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MOA EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT (I) THE APP OR SERVICES WILL OPERATE IN AN ERROR-FREE OR UNINTERRUPTED MANNER; (II) THE APP OR SERVICES WILL BE FREE OF VIRUSES OR OTHER HARMFUL ELEMENTS; (III) THE APP OR SERVICES WILL SATISFY THE END USER’S REQUIREMENTS; (IV) THE APP IS COMPATIBLE WITH SYSTEMS, PRODUCTS, OR SERVICES PROVIDED BY THIRD PARTY PERSONS OR ORGANIZATIONS; (V) THE RESULTS OBTAINED FROM THE USE OF THE APP OR SERVICES WILL BE EFFECTIVE, ACCURATE, OR RELIABLE; (VI) THE APP OR SERVICES WILL PREVENT THE UNAUTHORIZED DISCLOSURE OF, UNAUTHORIZED USE OF, UNAUTHORIZED ACCESS TO, MISAPPROPRIATION OF, LOSS OF, OR ALTERATION OF ANY DATA OR INFORMATION; OR (VII) ANY ERRORS OR DEFECTS IN THE APP OR SERVICES WILL BE CORRECTED. MOA DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE USE OF THE APP OR SERVICES WILL SATISFY, OR ENABLE THE END USER TO SATISFY, THE REQUIREMENTS OF ANY GOVERNMENT AGENCY, ASSOCIATION, OR OTHER ORGANIZATION.

5. Limitations on Liability

MOA AND ITS SHAREHOLDERS, DIRECTORS, OFFICERS, PARENT COMPANIES, SUBSIDIARIES, AFFILIATES, AND AGENTS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR USE OF THE APP OR SERVICES, WHETHER BASED ON CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

THE END USER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH MOA RELATED TO THIS AGREEMENT, THE APP OR SERVICES SHALL BE UNINSTALLING THE APP AND CEASING USE OF THE APP AND SERVICES. IN THE EVENT A COURT AWARDS DIRECT DAMAGES DESPITE THE FOREGOING, SUCH DAMAGE SHALL NOT EXCEED THE AMOUNT PAID BY THE END USER FOR THE APP.

Certain state laws do not allow limitations on implied warranties or the exclusion or limitation of certain damages. If these laws apply to the End User, some or all of the disclaimers, exclusions, or limitations in this Agreement may not apply to the End User, and the End User may have additional rights.

6. Acknowledgments and Apple Disclaimers

MOA and the End User acknowledge that MOA, and not Apple, is responsible for addressing any claims, to the extent permitted under this Agreement, of the End User or any third party relating to the App or Services or the End User's possession and/or use of the App or Services, including without limitation (i) product liability claims; (ii) any claim that the App or Services fail to conform to any applicable legal or regulatory requirement, and (iii) any claims arising under consumer protection or similar legislation.

MOA and the End User acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App or Services.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, APPLE SHALL HAVE NO LIABILITY OF ANY KIND WHATSOEVER WITH RESPECT TO THE APP OR SERVICES.

7. Term and Termination

The term of this Agreement shall commence on the date the End User makes acceptance of this Agreement and, unless terminated as specified below, shall continue for so long as the End User uses the App or Services or maintains the App installed on a device, whichever occurs last.

The End User shall have the right to terminate this Agreement at any time by uninstalling the App.

MOA may, in its sole discretion, terminate this Agreement and/or the Services without cause at any time. In addition, the End User's license to the App may, at MOA's discretion, expire when new versions of the App are released.

End User's license to the App and MOA's obligations under this Agreement will automatically terminate if End User fails to comply with any term of this Agreement. No notice will be required from MOA to effectuate such termination. End User will receive no refunds upon termination.

Upon termination of this Agreement, all of the End User's rights to use the App and Services shall terminate immediately; the End User shall remove the App from his/her iOS Product, and the End User shall provide MOA with written certification that the aforementioned actions have been taken.

8. Indemnification

The End User and his/her heirs, representatives, successors and assigns shall indemnify, defend, and hold harmless MOA and its subsidiaries, parent companies and other affiliates, successors and assigns from and against in respect of any and all third party claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and reasonable attorneys' fees, that MOA incurs or suffers, which arise from, result from, or relate to End User's use of the App or Services or this Agreement.

9. Infringement Claims

MOA and the End User acknowledge that, in the event of any third party claim that the App or the End User's possession and use of the App infringes that third party's intellectual property rights, MOA, and not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

10. General

MOA shall not be in breach of this Agreement in the event it is unable to perform any of its obligations under this Agreement as a result of natural disaster, fire, weather, war, terrorism, emergency conditions, labor strife, the inoperability of the Internet, technical difficulties of MOA, Apple, or any third party, any updates or other changes to the iOS Product, the inability to obtain supplies, or other reasons or conditions beyond its reasonable control.

This Agreement has been prepared in English, and English is the controlling language with respect to all matters concerning this Agreement. Any and all notices or communications related to this Agreement must be in English.

Injunctive or other equitable relief shall be a remedy available to MOA in the event of a breach of any provision of this Agreement by the End User; but such remedy shall not be the exclusive remedy available to MOA.

Regardless of any statute or law to the contrary, any claim or cause of action End User may have that arises out of or is related to this Agreement must be filed within two (2) years after such claim or cause of action arose or be forever barred.

For any questions, complaints, or claims about the App, the End User should contact MOA as follows:

Mall of America
Attention: Communications Vice President
Management Office
60 East Broadway
Bloomington, MN 55425
Phone: (952) 883-8810
Email: privacy@mallofamerica.com

The provisions of this Agreement, which, by their terms, require performance after the termination of this Agreement, or have application to events that may occur after the termination of this Agreement, shall survive the termination of this Agreement.

The End User shall not, without the prior written consent of MOA, assign his/her rights or delegate his/her duties under this Agreement.

The waiver of any provision or the breach of any provision of this Agreement by MOA shall not be effective unless made in writing. Any waiver by MOA of any provision or the breach of any provision of this Agreement shall not operate as or be construed to be a continuing waiver of the provision or the breach of the provision.

This Agreement shall be governed by the laws of the State of Minnesota (without regard to its choice of law principles or rules) in the United States and the applicable laws of the United States. For the purpose of resolving conflicts related to or arising out of this Agreement, the parties expressly agree that venue shall be in the federal and state courts located in Hennepin County in the State of Minnesota in the United States, and, in addition, the parties hereby expressly consent to the exclusive jurisdiction of the federal and state courts in Hennepin County in the State of Minnesota in the United States. The parties specifically disclaim application of the United Nations Convention on the International Sale of Goods, 1980.

In the event any portion of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement, and the portion of this Agreement held to be invalid shall be construed and given lawful effect in a manner that will best achieve the intent and objective of such portion of this Agreement.

This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof, there being no terms, conditions, warranties, or representations other than those contained in this Agreement, and shall supersede any prior agreements between the parties with respect to the subject matter hereof. MOA may revise this Agreement at any time without notice, and any continued use of the App or Services following the date on which changes to this Agreement are published on Apple's "App Store" or within the App shall constitute the End User's acceptance of all such changes.