



Terms of Use Agreement

NOTE: YOU ARE CONCLUDING A LEGALLY BINDING AGREEMENT.

Carefully read the following Terms of Use Agreement and the Privacy Policy in the 'menu' of this web site. By 'accepting' this Agreement You are consenting to be bound by and are becoming a party to this Terms of Use Agreement (Agreement).

Who Are We?

We are Locating Us Limited, a registered company incorporated in New Zealand with operations around the world. Our product is WhosOnLocation, our cloud (web-based) people presence application.

Purpose

The mission of Locating Us Limited is to enable organisations to easily manage all aspects of who is onsite which in turn helps them meet their health and safety and security compliance obligations in respect to people presence, and evacuation management. To achieve our Mission, we make services available through our WhosOnLocation application to help you, and your health and safety and security people, access real-time information about who is allowed onsite, who is coming onsite, who is onsite now, and who was onsite historically.

Scope and Intent

You agree that by registering on WhosOnLocation and using the tools available to you under your account (including any Add-ons), or other information provided as part of the WhosOnLocation services (collectively "WhosOnLocation" or the "Services"), you are entering into a legally binding agreement with Locating Us Limited ("we," "us," "our," and "WhosOnLocation") based on the terms of this Terms of Use Agreement and our Privacy Policy, which is hereby incorporated by reference (collectively referred to as the "Agreement") and become a WhosOnLocation user ("User").

If you are using WhosOnLocation on behalf of a company or other legal entity, you are nevertheless individually bound by this Agreement even if your company has a separate agreement with us. If you do not want to register an account and become a WhosOnLocation User, do not conclude the Agreement, do NOT setup a User account and do not access, view, download or otherwise use any WhosOnLocation application webpage, information or services. By using any part of the WhosOnLocation application you acknowledge that you have read and understood the terms of use of this Agreement and



that you agree to be bound by all of its provisions. Please note that the Terms of Use Agreement and Privacy Policy are also collectively referred to as our "Terms."

1. Parties to this Agreement

This Agreement is between You ("Licensee"), being the organization or person entered in the Customer Name field in the WhosOnLocation Application (the 'Application'), and Locating Us Limited, ("Licensor").

2. Trial Policy

When You first register (sign up) for access to the Application You can evaluate the Application for 30 Days, free, with no obligation to continue to use the Application. At the expiry of the Trial Period You will be contacted by our Support Centre (or Authorised Reseller) and asked to confirm if You wish to continue Your use of the Application. Your agreement to continue use of the Application means You become a 'Licensed User' and are bound by the terms of this Agreement.

You will be billed from the day Your trial started; this being the day you first sign up for access. If You choose not to continue using the Application, You or WhosOnLocation may terminate your access to the Application.

3. Termination

If for any reason we suspect You have no intention of becoming a Licensed User we reserve the right to terminate Your trial without prejudice immediately.

4. Term

There is a minimum Term of 12 months which commences from the day your trial started. We will give you 30 days notification of your License expiry. Terms beyond 12 months can be agreed to in writing between You and us or You and our Authorised Reseller.

5. Notice to Terminate Agreement

You can terminate this Agreement by giving 30 days' notice (in writing or via email). Your License will terminate and Your account will be deactivated 30 days after we receive Your Notice to Terminate. Should You terminate Your License there is no refund of License Fees paid in advance. You can download all information pertaining to Your account from the Application upon termination. We will confirm, in writing, that we have deleted all copies of Your account information from our systems except that information that we must retain for



our own company records that shows You were a Customer and we are obligated to retain by Law.

6. License Grant

The License is for the use of the web application ("Application") referred to as 'WhosOnLocation' and the related explanatory written materials ("Documentation") available through the web site application. The "Application" includes any upgrades, modified versions, updates to the Application developed by us, and the Helpdesk. "You" means the person or company who is being licensed to use the Application and is defined by the person or company named as the 'customer' in the online registration part of the Application. "We" and "us" means Locating Us Limited.

We hereby grant You a non-exclusive, non-transferable, limited license to use the Application from an unlimited number of computer or internet enabled devices, provided such use is limited to the licensee's internal business operations. The Application is "in use" and the license commences upon the completion of the sign up process.

7. The Application's Purpose

The primary purpose of the Application is to enable users to manage the presence of people in their organization and their rights to be onsite. The term 'people' includes, but is not limited to, visitors, contractors, and staff. All of the features available in the Application including Add-ons, and the use thereof are covered by this License Agreement. The Application does not require any software to be downloaded by You as the Application is web-based and is hosted in a secure facility.

8. Use of Application by You

Users of the Application can only use the Application and enter data for its intended purpose – that being as defined in clause 7, The Applications Purpose. Any misuse of the Application, by whatever means, is considered a breach of this agreement and You indemnify us against any claim which is a result of the misuse of the Application by Your registered users.

9. Archiving of Data in the Application

All data in the Application related to You and Your locations and users is available upon request at any time. You are able to access data through the online reports and data download tools available in the Application. Locating Us Limited adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime,

but does not make any guarantees that there will be no loss of Data. WhosOnLocation expressly excludes liability for any loss of Data no matter how caused.

10. Title

This license is not a sale. We remain the owner of all right, title and interest in the Application and Documentation. Title to, and all Intellectual Property Rights in the Application, the Website and any documentation relating to the Application remain the property of Locating Us Limited.

11. Title to Customer Data

You remain the owner of all right, title and interest of Your Account Data. Such Data consists of Visitor Records, Contractor Records, and Staff Records. However, Your access to the Data is contingent on full payment of the License Fee when due and Your account is Paid up to date. You grant us a licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Application and for any other purpose related to provision of the Application to You.

12. Privacy and Security

Locating Us' policy is to respect and protect the privacy of our users. This policy statement tells You how we collect information from You and how we use it. We follow five core principles of privacy protection in the operation of its Application:

1. Notice/Awareness of WhosOnLocation' information practices
2. Choice/Consent to provide information
3. Access/Participation to/in Your own data
4. Integrity/Security of the Data Collected
5. Enforcement/Redress through self-regulation.

Please refer to the Privacy Policy in the footer of the Application and/or our Web Site.

13. Application Availability

Whilst we intend that the Application should be available 24 hours a day, seven days a week, it is possible that on occasions the Application or Website may be unavailable to permit maintenance or other development activity to take place.

We have achieved 99.9% availability each year since the Application was first activated in 2007. For clarification 99.9% uptime equals 8 hours, 45 minutes, and 57 seconds of

downtime per year.

(This statistic was last updated on 1st October 2011)

If for any reason we have to interrupt the Application for longer periods than we would normally expect, we will use reasonable endeavours to publish in advance details of such activity on the Website.

14. Service Level Commitments

Communication: We will notify You with information on the following:

14.1 Unplanned Outages: We will advise You via email when they occur, the expected downtime, and keep you updated every 30 minutes until availability is restored.

14.2 New Feature Releases: We will advise You, via email, 30 Days in advance. We release new features during non-business hours and with as little disruption to users as possible.

14.3 Delays: We will advise you, via email, with revised delivery dates at least 5 days before the scheduled release.

Support: If you contact our System Helpdesk on support@whosonlocation.com , we will provide:

14.4 Acknowledgement within 1 hour of your customer support request

14.5 Resolution or update within 24 hours of your request

14.6 On-going updates as needed

15. Service Level Breach

Penalty: If WhosOnLocation fails in any of its Service Level Commitments, and it is not a Force Majeure event which is the cause, you may apply for a credit equal to one month's License Fee for the effected Location – no questions asked.

16. Force Majeure

We are not responsible for the Application being unavailable where the cause of the event is outside of our control. Such events include, but are not limited to, Acts of God, Terrorism, Earthquake, Flood, Internet Outage, Power Failure, or any other Force Majeure event.

17. System Helpdesk



WhosOnLocation operates an online helpdesk to administer user enquiries. You can access the Helpdesk via the Application

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting us. If You still need technical help email us at support@whosonlocation.com or call +64 4 460 5218 during normal business hours 9am to 5pm. There is no charge for this service.

18. Reseller Helpdesk

Resellers may operate a Helpdesk to administer user enquiries. Your Reseller will advise You of their number and hours of availability.

19. Payment for Use of Application

We, or our Authorised Reseller, will contact You at the conclusion of Your 30-Day Free Trial. If You choose to become a Licensed User You can nominate Your payment frequency (Monthly or Yearly). If You are a direct Customer of WhosOnLocation we will issue You an invoice via email and You must pay our invoice by the Due Date to retain Your active account status.

All WhosOnLocation invoices will be sent to the Billing Contact whose details are provided by You and recorded under the 'Manage' / 'Billing Details' section of the Administration Dashboard. You must pay or arrange payment of all amounts specified in any invoice by the due date for payment and are payable within 10 days of the invoice date. You are responsible for payment of all taxes and duties in addition to the License Fees.

If You are a Licensed User through one of our Authorised Resellers they retain the right to invoice on a different cycle agreed by You and them.

20. License Fee Reviews

Any adjustment to your License Fees must be issued in writing to You at least 30 days prior to the commencement of that fee adjustment. Any new License Fee will not apply until the next License renewal.

21. Add-ons and Service Fees

In the event we introduce new Add-ons (Features) that we feel require the introduction of a new fee for that respective new feature's use; we will advise You, as per our Service Level Commitment 14.2, 30 days prior to the new feature being released in the Application. You



are not obligated to accept or activate any new feature or service that requires the introduction of a new fee.

22. Governing law and jurisdiction:

22.1 Law and Forum for Legal Disputes

This Agreement or any claim, cause of action or dispute (“claim”) arising out of or related to this Agreement shall be governed by the laws of New Zealand regardless of your country of origin or where you access WhosOnLocation and notwithstanding of any conflicts of law principles and the United Nations Convention for the International Sale of Goods. You and Locating Us agree that all claims arising out of or related to this Agreement must be resolved exclusively by a court located in New Zealand, except as otherwise agreed by the parties or as described in the Arbitration Option paragraph below. You and Locating Us agree to submit to the personal jurisdiction of the courts located within New Zealand for the purpose of litigating all such claims. Notwithstanding the above, you agree that Locating Us shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

22.2 Arbitration Option.

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. 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.

23. Warranties and Acknowledgements

You warrant that You have the authority to agree to these Terms on behalf of the organization or person entered as the Licensee and agree that by registering to use the Application You bind the organization or person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

23.1 Acknowledgement:

You acknowledge that:

You are authorised to use the Application and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person you have authorised to use the Application. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the Applications (whether that information and Data is Your own or that of anyone else).

We have no responsibility to any organization other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Application or access the Website on behalf of or for the benefit of anyone other than yourself (whether a body corporate or otherwise) you agree that:

- You are responsible for ensuring that You have the right to do so;
- You are responsible for authorising any person who is given access to information or Data, and you agree that we have no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and

You will indemnify us against any claims or loss relating to:

- Our refusal to provide any person access to Your information or Data in accordance with these Terms,
- Our making available information or Data to any person with Your authorisation.

The provision of, access to, and use of, the Application is on an "as is" basis and at Your own risk.

We do not warrant that the use of the Application will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Application, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Application. We are not in any way responsible for any such interference or prevention of Your access or use of the Application.

23.2 No warranties:

We give no warranty about the Application. Without limiting the foregoing, we do not warrant that the Application will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

23.3 Consumer guarantees:

You warrant and represent that You are acquiring the right to access and use the Application for the purposes of a business and that, to the maximum extent permitted by law, any



statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Application, the Website or these Terms.

24. Limitation of Liability

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 loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Application or Website.

If You suffer loss or damage as a result of our negligence or failure to comply with these Terms, 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 License Fees paid by You in the previous 12 months.

If You are not satisfied with the Application, Your sole and exclusive remedy is to terminate these Terms in accordance with Clause 5.

25. Severability

If any part or provision of these Terms 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 Agreement will be binding on the parties.

26. User Training

User Training Documentation is available via the 'Help' link at the footer of the application dashboards. On-site user training is provided by request and negotiation.

27. Your Acceptance of These Terms

By using this Application, You signify Your assent to these Terms for accessing the Application.

If You do not agree to our terms and conditions of use, then please do not use our Application. Your continued use of the Application (accessed via secure logon at <https://vm.Locatingus.com>) following the posting of changes to our Terms of Use will mean You accept those changes.

If you have any questions about the Terms of Use, the practices of this Web site application, or your dealings with us, you may contact us by sending an email to:

- email at support@whosonlocation.com or by writing to:



Attn: Terms of Use Issues
WhosOnLocation Customer Services
Locating Us Ltd
P.O. Box 15 145
Wellington, New Zealand 6243

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