

## Terms of Service

My Virtual Mission and The Conqueror is owned and operated by Actionary Ltd, a limited liability company registered in New Zealand with the NZBN 9429042333289 (**Actionary, we, us, or our**).

These Terms of Service (**Terms**) apply to your access and use of the My Virtual Mission and or Conqueror website (currently [www.myvirtualmission.com](http://www.myvirtualmission.com) and [www.theconqueror.events](http://www.theconqueror.events)) (the **Websites**), software, application, products and services (all together, the **Services**). The Services include the providing of fitness challenges.

Where you are using the services as part of an organisation or group (including if you are invited to join a mission by a mission admin):

- (a) section 19 specifies how these Terms apply to the organisation or group;
- (b) “you” refers to your organisation or group unless the context requires otherwise; and
- (c) all individuals in the organisation or group who access the Services must still comply with these Terms as users.

You must accept these Terms to register with us (including on the Website), to order any products or to receive any Services (including taking part in any of our fitness challenges).

These Terms are a legally binding contract between you and us.

### 1. Use of our Services

You must not use or access our Services if you are under the age of 18, or any higher minimum age in the jurisdiction where you reside, unless your parent, guardian or caregiver has consented in accordance with applicable law. Where these Terms prohibit you from doing something you must also not attempt to do it, or encourage or assist others in doing it while accessing or using the Services.

### 2. Creating an account

Use of our Services requires that you create an account by providing us with information such as your full name and a valid email address, as well as a strong password. You must keep your account credentials confidential (you must not share your login details). You are responsible for all activity that occurs in association with your account. Please contact [support@myvirtualmission.com](mailto:support@myvirtualmission.com) if you discover or suspect any security breach related to the Services or your account.

### 3. Privacy

For information about our data practices, please see our [Privacy Notice](#) which sets out the personal information that we collect and our use of the information and our [Data Processing Agreement](#) (where that applies).

### 4. Actionary Content and property

Any materials that we post, generate, provide, or otherwise make available through the Services, including any photos, images, maps, graphics, video, audio, data, text, sounds, software is **Actionary Content**.

We reserve all rights in the Actionary Content, the Services, and the underlying technology.

You agree not to remove, change or obscure any copyright, trademark, service mark, or other proprietary rights notices incorporated in or accompanying the Services.

Our logos and any trademarks on the Services, and the overall look and feel of the Services, including page headers, graphics, icons, and scripts, may not be copied, imitated or used, in whole or in part.

Third-party trademarks, product, and service names and company names or logos mentioned on the Services are the property of their respective owners and may not be copied, imitated or used, in whole or in part, without the permission of the applicable trademark holder.

No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Actionary or its licensors, except for the licenses and rights expressly granted in these Terms.

## **5. Your content**

We do not claim ownership in any of the information, data, text, sound, photographs, graphics, video, messages or other materials you load onto the Services or that you connect to the Services (**Your Content**). Your Content excludes Actionary Content. You are entirely responsible for Your Content.

You grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, publicly perform and display Your Content in all media formats for the purpose of providing the Services. This license ends when you delete Your Content or your account.

The Services may provide you with the ability to treat certain of Your Content that you submit as private, public, or available only to select users of the Services. Actionary will endeavour to maintain the privacy of such content in accordance with your elections. However, if you do not elect to mark Your Content as private or available for a limited group of users, or later change such designation to allow such Content to be made available to anyone, you are responsible for the public nature of the content. Your Content will not be subject to any obligation of confidence on the part of Actionary other than as set out in our Privacy Statement and Actionary will not be liable for any use or disclosure of Your Content you provide.

We may generate and use anonymous data for any business purpose during or after the term of the arrangement between us (including without limitation to develop and improve Actionary's products and services and to create and distribute reports and other materials).

For clarity, we will only disclose data externally in a de-identified (anonymous) form that does not identify any user or organisation.

## **6. No infringing content**

You represent and warrant that Your Content, the use and provision of Your Content on the Service, and your use of the Service will not (a) infringe, misappropriate, or violate a third party's patent, copyright, trademark, trade secret, moral rights, or other intellectual property rights; (b) violate, or encourage any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (c) be fraudulent, false, misleading, or deceptive; (d) be defamatory, obscene, pornographic, vulgar, or offensive; (e) promote discrimination, bigotry, racism, hatred, harassment, or harm against any individual or group; (f) be violent or threatening or promote violence or actions that are threatening to any person or entity; (g) promote illegal or harmful activities or substances. You must ensure that Your Content complies with applicable privacy laws including that you have all necessary authorisations and consents for any personal information you include in Your Content.

## **7. Permitted use**

Actionary grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to (a) access and use the Service, (b) access and view the Actionary Content, and (c) access and use the software and, where you download an application, the application, provided by Actionary in relation to the Service, subject to these Terms.

## **8. Prohibited actions**

Disruptive use: You will not: (a) upload any content that contains software viruses or is designed to interrupt, destroy, or limit the functionality of any equipment or services, or that contains other harmful, disruptive, or destructive files or content; (b) use or attempt to use another user's account without authorization, or impersonate any person or entity; (c) harvest, solicit, or collect information of other users for any reason whatsoever, including, without limitation, for sending unsolicited communications; or (d) use the Service in any manner that, in our sole discretion, is objectionable or restricts or inhibits any other person from using or enjoying the Service, or which may expose us or our users to any harm or liability of any type.

No commercial use: You will not: (a) use, sublicense, copy, adapt, modify, translate, disclose, prepare derivative works based upon, distribute, license, sell, rent, lease, assign, transfer, transmit, broadcast, or otherwise exploit the Actionary Content, Services or any portion of the same (including any third-party software); or (b) post, advertise, or promote products or services commercially, or upload any content that is advertising, promotional material, junk mail, spam, or a contest or sweepstake.

Use and technical: You will not (a) use, display, mirror, or frame the Service or any individual element within the Service, including the layout and design of any page; (b) use Actionary's name, any Actionary trademark or logo, or any Actionary proprietary information; (c) access or tamper with non-public areas of the Service, Actionary's computer systems, or the technical delivery systems of Actionary's providers; (d) test the vulnerability of any Actionary system or breach any security or authentication measures; (e) circumvent any

technological measure implemented by Actionary or any of Actionary's providers or any other third party (including another user) to protect the Service; (f) access the Service or Actionary Content through the use of any mechanism other than through the website or application; or (g) modify, decompile, disassemble, reverse engineer, tamper with, or otherwise attempt to derive the source code of any software that Actionary provides to you or any other part of the Service.

#### **9. Our enforcement rights**

Actionary may, in its sole discretion, alter, remove, or refuse to display any of Your Content, remove or disable access to any Actionary Content, suspend or terminate your access to the Services and/or your account, or take any action we may deem appropriate, at any time and without notice, if we determine that the relevant content or your use of the Service is objectionable or in violation of these Terms.

#### **10. Use at your own risk**

If you rely on any Actionary Content or the Services you do so solely at your own risk.

You should consult with your health care professional in relation to any fitness challenge or your health.

We are not responsible for any health problems, issues with training or fitness or any damage (including damage to property) that may result from activity undertaken in relation to the Services. Information provided in relation to the Services is not medical, health, training or fitness advice.

We are not responsible for the content or information you receive through the Services. We make no endorsement, representation, or warranty of any kind about any content or information on the Services including that we do not promise the accuracy, reliability, availability, integrity or quality of such content. Under no circumstances will Actionary be liable in any way for any content, including, but not limited to, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of any content made available on the Services. You agree to bear all risks associated with the use of any content available in connection with the Services, including any reliance on the accuracy, completeness, or usefulness of such content. You acknowledge that Actionary does not moderate or monitor the content posted to the Services.

#### **11. Changes to content and Services**

Actionary Content may change from time to time or vary by geographic location. Maps, directions, and other GPS or navigation data, including data relating to your current location, may be unavailable, inaccurate, or incomplete.

Actionary and its third party service providers may make improvements and/or changes in the Services, products, services, applications, features, programs, and prices at any time and for any reason in its sole discretion. The application may download and install upgrades, updates and additional features in order to improve, enhance, and further develop the Services. Actionary reserves the right at any time to modify or discontinue, temporarily or permanently, the Services or any portion of the Services with or without notice. You agree

that Actionary shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Services.

## **12. Third-party services**

The Service may display or permit linking or other access to or use of third-party content, promotions, websites, apps, services and resources (**Third-Party Services**) that are not under Actionary's control. This may include the opportunity for you to link your Actionary account, data, or the Services with Third-Party Services. We provide these links only as a convenience and are not responsible for the products, services, or other content that are available from Third-Party Services. You acknowledge that any Third-Party Services that you use in connection with the Services are not part of the Services and are not controlled by Actionary, and you take sole responsibility and assume all risk arising from your interaction with or use of any Third-Party Services. You also acknowledge that these Terms and the Privacy Statement do not apply to any Third-Party Services. You are responsible for reading and understanding the terms and conditions and privacy policy or statement that applies to your use of any Third-Party Services.

Actionary is not responsible for late data, errors in data, lack of or loss of data from Third-Party Services. You acknowledge that such problems with Third-Party Service data are common.

## **13. Changes**

Actionary may change or discontinue, temporarily or permanently, any feature, component, or content of the Services at any time without notice. Actionary is not liable to you or to any third party for any modification, suspension, or discontinuance of any feature, component, or content of the Services. We reserve the right to determine the timing and content of software updates, which may be automatically downloaded and installed by Actionary products without prior notice to you.

## **14. Price and payment**

Unless otherwise agreed, pricing is listed on the Website. Pricing is per person not per account. Accounts and/or login details must not be shared for the purpose of avoiding paying fees. Fees paid are non-refundable. Fees are stated exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (**Taxes**). You will be responsible for paying all Taxes associated with your purchases, except for those taxes based on our net income. We may change our pricing at any time but any such change will only apply to a new subscription.

## **15. Termination**

You may close your account at any time by using the function on the website. Upon any suspension, termination, or discontinuation of the Services or your account, the following provisions of these Terms will survive: Sections 1, 3, 4, 6, 7, 8, 10, 16, 17, 18, 19, 20 and 23.

## **16. Disclaimers**

THE INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND CONTENT AVAILABLE THROUGH THE SERVICES ARE PROVIDED TO YOU "AS IS" AND WITHOUT WARRANTY. ACTIONARY AND

ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS HEREBY DISCLAIM ALL WARRANTIES WITH REGARD TO SUCH INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND CONTENT, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. ACTIONARY AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT: (a) THE SERVICE WILL MEET YOUR REQUIREMENTS; (b) YOUR CONTENT WILL BE AVAILABLE OR THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS; AND (e) ANY ERRORS IN THE SERVICES WILL BE CORRECTED.

YOU EXPRESSLY AGREE THAT ACTIONARY IS NOT PROVIDING MEDICAL ADVICE VIA THE SERVICES. THE CONTENT PROVIDED THROUGH THE SERVICES, INCLUDING ALL TEXT, PHOTOGRAPHS, IMAGES, ILLUSTRATIONS, GRAPHICS, AUDIO, VIDEO AND AUDIO-VIDEO CLIPS, AND OTHER MATERIALS, WHETHER PROVIDED BY US OR BY OTHER ACCOUNT HOLDERS OR THIRD PARTIES IS NOT INTENDED TO BE AND SHOULD NOT BE USED IN PLACE OF MEDICAL OR HEALTH ADVICE. YOU SHOULD NEVER DISREGARD MEDICAL ADVICE OR DELAY IN SEEKING MEDICAL ADVICE BECAUSE OF ANY CONTENT PRESENTED ON THE SERVICES, AND YOU SHOULD NOT USE THE SERVICES OR ANY CONTENT ON THE SERVICES FOR DIAGNOSING OR TREATING A HEALTH PROBLEM.

YOU EXPRESSLY AGREE THAT YOUR ATHLETIC ACTIVITIES CARRY CERTAIN INHERENT AND SIGNIFICANT RISKS OF PROPERTY DAMAGE, BODILY INJURY OR DEATH AND THAT YOU VOLUNTARILY ASSUME ALL KNOWN AND UNKNOWN RISKS ASSOCIATED WITH THESE ACTIVITIES EVEN IF CAUSED IN WHOLE OR PART BY THE ACTION, INACTION OR NEGLIGENCE OF ACTIONARY OR BY THE ACTION, INACTION OR NEGLIGENCE OF OTHERS.

ACTIONARY'S MAXIMUM AGGREGATE LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES SHALL NOT EXCEED THE GREATER OF THE AMOUNT YOU HAVE PAID TO ACTIONARY FOR USE OF THE SERVICES IN THE 12-MONTHS PRIOR TO DATE THE CLAIM OR ONE HUNDRED US DOLLARS (USD\$100).

ACTIONARY IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE SERVICES OR ANY COSTS OF DELAY, LOSS OR INACCURACY OF DATA OR INFORMATION OR LOSS OF PROFITS, EVEN IF IT KNOWS OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET OUT ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN US.

IF THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS EXCLUDED BY LAW, ACTIONARY'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES WILL BE THE AMOUNTS YOU HAVE PAID TO ACTIONARY FOR USE OF THE SERVICE.

## **17. Indemnity**

You will indemnify and hold Actionary or its officers, directors, employees, affiliates, agents, licensors, and contractors harmless from and against any claims, suits, actions, demands, disputes, allegations, or investigations brought by any third party, governmental authority, or industry body, and all liabilities, damages, losses, costs, and expenses, including without limitation reasonable attorneys' fees, arising out of or in any way connected with (a) your access to or use of the Services, (b) Your Content, (c) your violation of these Terms, or (d) your violation of any law or the rights of a third-party. We reserve the right to assume control of the defence of any third-party claim that is subject to indemnification by you, in which event you will cooperate with us in asserting any available defences.

## **18. Dispute resolution**

You agree that any action at law or in equity arising out of or relating to these Terms or your access to or use of the Services will be filed only in New Zealand courts and you irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts over any suit, action or proceeding. These Terms and the resolution of any disputes shall be governed by and construed in accordance with the laws of New Zealand without regard to its conflict of laws principles.

The parties shall use their best efforts to settle any dispute, claim, question, or disagreement directly through good-faith negotiations, as a precondition to either party initiating arbitration. Any claim arising out of or relating to this Agreement and your use of the Services shall be finally settled by binding arbitration administered by JAMS in accordance with its provisions and procedures for consumer-related disputes, excluding any rules or procedures governing or permitting class actions. The arbitrator, and not any court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to this Agreement. The arbitrator shall be empowered to grant whatever relief would be available in a court, provided, however, that the arbitrator will not have authority to award damages, remedies, or awards that conflict with this Agreement. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. Both of us expressly waive trial by jury.

You may only resolve disputes with Actionary on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to these Terms.

Subject to applicable laws, you agree that any claim you may have arising out of or related to your relationship with Actionary and these Terms must be filed within one year after such claim arose, otherwise, your claim is permanently barred.

## **19. Use by organisation**

Where an organisation including a club, school, business or non-profit, uses the Services: (a) an authorized representative of that organization must agree to these terms; (b) the organisation must ensure that it's users comply with these Terms and Actionary's

reasonable directions in relation to the Services; (c) the organisation is responsible for all content posted to the Services by its users and must monitor and moderate such content; (d) the organisation agrees to indemnify and hold Actionary harmless from any and all claims arising out of use of the Services by the organisation, including but not limited to claims of infringing content; and (e) the organisation must notify Actionary if it may have more than 1000 users. For clarity, the liability provisions in section 18 (Disclaimers) apply to the organisation in relation to the use of the Services.

## **20. Data Processing Agreement**

The Actionary [Data Processing Agreement](#) applies to the extent that Actionary is processing personal data in the course of performing the Services and applicable law requires there to be a data processing agreement in place or we otherwise agree it will apply.

## **21. Additional terms**

Our Terms of [Sale](#) apply to purchases of any physical goods that we may offer. Additional Actionary terms may apply to certain products or services including surveys, contests, giveaways, and other promotions (we will notify you where such additional terms apply). If you access our application through either the App Store or Google Play, additional terms may be notified (and if so, will apply) to your access to the Services. Where they apply, such Actionary additional terms including the Terms of Sale are incorporated into and made part of these Terms.

No terms or conditions proposed by a customer or a user will be incorporated into these Terms or will apply to the supply of the Services, even if at some later date Actionary signs or otherwise purports to accept them. Where a mission admin or an organisation or group specifies or requires its users of the Services to agree to different terms to these Terms, including terms specific to a particular mission, such terms do not apply to Actionary or our supply of the Services and are not part of the contract between us and you.

## **22. Feedback**

If you submit comments, ideas, or feedback to us, you agree that we can use, disclose, reproduce, distribute, and exploit them without any restriction or compensation to you. We do not waive any rights to use similar or related ideas or feedback previously known to us, developed by Actionary, or obtained from sources other than you.

## **23. General terms**

Except as otherwise stated, these Terms constitute the entire and exclusive understanding and agreement between Actionary and you regarding the Services, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Actionary and you regarding the Services.

We may modify these Terms at any time and such modification will be effective when the new Terms are loaded onto the website.

If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.



You may not assign, delegate, or transfer these Terms, by operation of law or otherwise, without Actionary's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Actionary may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors, and permitted assigns.

Any notices or other communications provided by Actionary under these Terms, including those regarding modifications to these Terms, will be given: (i) via email or (ii) by posting to the Services. For notices made by e-mail, the date of receipt on the message will be deemed the date on which such notice is transmitted.

The words "includes" and "including" in these Terms are deemed to mean "including without limitation".

Nothing expressed or implied in these Terms will be deemed to constitute either party as the partner, agent, or joint venturer of the other party.

Actionary's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Actionary. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.