

Terms of Service

Terms of Service are effective from 10th October 2023.

The Conqueror and My Virtual Mission are owned and operated by Actionary Ltd, a limited liability company registered in New Zealand with the NZBN 9429042333289 and parent company of the Actionary group of companies including Conqueror Challenges UK Limited, Company Number 13775359 (referred to collectively as 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 and www.theconqueror.events), as applicable (the **Website**), software, application, products and services (all together, the **Services**). The Services include the provision of fitness challenges.

1. Use of the Services

You must accept these Terms in order to receive any Services (including taking part in any of our fitness challenges). These Terms are a legally binding contract between you and us. 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. an authorized representative of the organization must agree to these Terms;
- b. all individuals in the organisation or group who access the Services must comply with these Terms and the organisation is responsible for ensuring this; and
- c. the organisation is responsible for all content posted to the Services by its users and must monitor and moderate such content.

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. Accounts

An account must use a valid name and email address and account information must be kept up-to-date at all times. You must keep your login details confidential and secure (including not sharing your login details with any other person). You are responsible for all activity that occurs in association with your account. Please contact privacy@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. 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.

4. Use of Services by children

Children below the age of 16 may only use the Services with the consent of a guardian.

On registration, children are required to confirm that they have the consent of a parent or guardian to use our Services and to our Privacy Notice. Actionary applies certain restrictions on the accounts of those under the age of 16.

5. Intellectual Property

You acknowledge that any materials that we post, generate, provide, or otherwise make available through the Services, the Websites or apps, including any photos, images, maps, graphics, video, audio, data, text and sounds (**Actionary Content**), the "look and feel" and arrangement of such Actionary Content, all My Virtual Mission and Conqueror trademarks and the underlying technology used to provide the Services is owned, controlled or licensed by or to Actionary. We reserve all rights in such intellectual property.

We grant you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to (a) access and use the Services, (b) access and view the Actionary Content, and (c) access and use the software and, where you download an application, the application, subject to these Terms.

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.

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.

6. Your Content

We do not claim ownership in any of the information, data, text, sound, photographs, graphics, video, messages or other materials that you post 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 Notice and Actionary will not be liable for any use or disclosure of Your Content you provide.

We may generate and use anonymised data from which data subjects can no longer be identified for any business purpose during or after the term including without limitation to develop and improve Actionary's products and services and to create and distribute reports and other materials.

7. 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 Services will not:

- a. infringe, misappropriate, or violate a third party's intellectual property rights;
- b. violate, or encourage any conduct that would violate, any applicable law or regulation or would give rise to 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; or
- 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.

8. Communities and Teams

Administrators must ensure that communities containing members who are children are password protected. Participants below the age of 16 must have the permission of their guardians to join a Community or Team. Participants may withdraw from a Community or Team and may delete any content they have posted, at any time.

Content posted in a Community or Team must not be reproduced in any form outside of the Community or Team without the express permission of the original poster. Information about Community or Team members may not be disclosed or sold in any form.

Community and Team creators are responsible for all content posted to the Community or Team and must actively monitor such content to ensure compliance. Infringing content must be flagged for removal at the earliest possible opportunity. This can be done within the app, or by contacting privacy@theconqueror.com.

Users of any social media Community must abide with the applicable group rules.

9. Prohibited Actions

9.1 Disruptive Use

You must not:

- a. use the Services in any manner that damages, disables, overburdens or impairs any Website or interferes with any other party's use of the Services
- b. 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;
- c. access the Services using another user's login credentials, including reusing or sharing login credentials among multiple users;
- d. harvest, solicit, or collect information of other users for any reason whatsoever, including, without limitation, for sending unsolicited communications; or

- e. 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.

9.2 No Commercial Use

You must not:

- a. sell, rent, lease, sublicense or otherwise exploit any Actionary Content Services, or products supplied by Actionary
- b. copy or create derivative works based on the Actionary Content or Services;
- c. use any name, trademark, logo, or proprietary information of Actionary or of any third-party displayed on the Services or Websites; or
- d. upload or post any content that is advertising, promotional material, junk mail, spam, or a contest or sweepstake.

9.3 Security

You must not:

- a. access or attempt to gain access to the technical systems used to provide the Services;
- b. circumvent any technological security measure in place regarding the Websites or Services;
- c. access the Services or Actionary Content through the use of any mechanism other than through the Websites; or
- d. modify, decompile, disassemble, reverse engineer, tamper with, or otherwise attempt to derive the source code of any software that is part of the Services.

10. 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.

11. Use at Your Own Risk

If you rely on any Actionary Content or the Services you do so solely at your own risk. Under no circumstances will we be liability in any way for any Actionary Content including, but not limited to, any errors or omissions in any Actionary Content, or any loss or damage of any kind incurred as a result of the use of any content. You acknowledge that Actionary does not moderate or monitor the content posted to the Services. We make no endorsement, representation, or warranty of any kind about Actionary Content including that we do not promise the accuracy, reliability, availability, integrity or quality of such content.

You should consult with your healthcare 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.

12. Changes

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.

13. 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. Actionary is not responsible for late data, errors in data, lack of or loss of data from Third-Party Services. You also acknowledge that these Terms and the Privacy Notice do not apply to any Third-Party Services. You are responsible for reading and understanding the terms and conditions and privacy notice or statement that applies to your use of any Third-Party Services.

14. Price and Payment

Prices and the currency for payment are specified at the time of purchase. Additional charges such as shipping, handling and sales taxes may apply. You agree to pay the specified price and any such additional charges. You are responsible for paying all external fees and taxes associated with your purchases, except in relation to pricing that is specified as being inclusive of sales tax and taxes based on our net income. We may change our pricing at any time but any such change will only apply to a new order. Accounts and/or login details must not be shared for the purpose of avoiding paying fees.

15. Orders

Supply of all Services is subject to availability and we reserve the right to impose quantity limits on any order, reject all or any part of an order and to discontinue Services. We may refuse or cancel any order or limit any order quantity in our sole discretion, even after receiving your order. We may also require additional qualifying information prior to accepting or processing your order.

16. Refunds and Returns

Our [Refunds and Returns Policy](#) applies to your purchases in relation to The Conqueror. Except for any refunds or returns specified in that policy, all sales are final and the company does not provide returns except for goods that are damaged or defective on receipt (subject to any applicable consumer law). Actionary is not responsible for customers' failure to redeem a code or complete a challenge before any expiration date.

17. Termination

You may request to delete your account at any time by using the function within the apps, via the website or by contacting privacy@myvirtualmission.com. Upon any deletion, suspension, termination, or discontinuation of the Services of your account, the following provisions of these Terms will survive: Sections 1, 2, 3, 5, 6, 7, 9, 10, 11, 13, 14, 16, 18, 19, 20, 21 and 22.

18. 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 (**Related entities**) disclaim all warranties with regard to the same, including, without limitation, all implied warranties and conditions of merchantability, fitness for a particular purpose, title and non-infringement. Actionary and Related Entities make no warranty that: (a) the Services will meet your requirements; (b) your content will be available or the Services will be uninterrupted, timely, secure or error-free; (c) the results that may be obtained from the use of the Services 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.

If you rely on any Actionary Content or the Services you do so solely at your own risk. Under no circumstances will we be liability in any way for any Actionary Content including, but not limited to, any errors or omissions in any Actionary Content, or any loss or damage of any kind incurred as a result of the use of any content. You

acknowledge that Actionary does not moderate or monitor the content posted to the Services. We make no endorsement, representation, or warranty of any kind about Actionary Content including that we do not promise the accuracy, reliability, availability, integrity or quality of such content.

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.

You should consult with your healthcare 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.

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 the date of 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, these Terms 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 Services.

19. Indemnity

You will indemnify and hold Actionary or Related Entities 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.

20. 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.

21. Additional Terms

Additional terms may apply to certain products or services including surveys, contests, giveaways, and other promotions (we will notify you where this is the case) and to our application accessed through the App Store or Google Play. Where they apply, such additional terms 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. General Terms

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

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

If 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, 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.

You are not permitted to purchase products or services from Actionary if you are a person or entity who is subject to any sanctions or a person to whom we are legally prohibited from providing our Services including under any export restrictions.

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. The date of receipt on the message is the date on which such notice is transmitted or posted.

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.