

# Terms of Use

## 1. Purpose

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Zinger.me (**website**) is owned and operated by Affinity.me Pty Ltd ACN 614 913 370 (**we** or **us**).

We are a social network that uses psychology and science to connect like-minded people.

## 2. Acceptance of terms

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### 2.1 Agreement

You agree that by clicking "I agree", "Join", "Sign up" "Register or "Accept", and registering to use or accessing our Services, you will be bound by the following agreement (**terms of use**) between you and us. These terms of use govern your access to and use of our Services.

### 2.2 Changes to terms of use

- (a) You agree that we may update these terms of use at any time, by giving you notice in any of the ways mentioned in clause 14.5(b).
- (b) After we give you such a notice your continued use of any of the Services will signify your agreement to and acceptance of the terms of use as amended, with effective from that date.
- (c) If you do not agree to the changes, you can terminate this agreement by:
  - (1) ceasing to use all of our Services; and
  - (2) giving us written notice in accordance with clause 14.5(a).

For termination to be effective, you must do both of the things in paragraphs (a) and (b).

## 3. Term and termination

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This agreement starts on the first date that you install the Zinger.me mobile app or use the website to access our Services, and continues until terminated in accordance with this agreement (**Term**).

## 4. Licence

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### 4.1 Grant of licence

In return for you installing the Zinger.me mobile app or accessing the website, and the grant of your licence to us under clause 4.4, we give you a revocable, non-exclusive, non-transferable licence for the Term, to:

- (a) access and use the Services; and
- (b) use the Materials provided by us under this agreement,

for your personal use only, and in accordance with these terms of use.

### 4.2 Authorised Use

You must:

- (a) ensure that your access and use of the Services is strictly in accordance with these terms of use;
- (b) keep your username and password to access the Services secure and confidential;
- (c) promptly tell us of any unauthorised use of your password, so that we can reset your password. You must also take all other action that we reasonably deem necessary to maintain or enhance the security of the Services.

### 4.3 Limited Licence

You acknowledge and agree that the rights granted to you under the Licence are expressly limited to the rights stated in clause 4.1. To the fullest extent permitted by law, all implied rights in relation to the Licence are excluded.

### 4.4 Content and information you share

- (a) When you publish a post in the Members Area, you are allowing other users to view, access and use that information, and to associate it with you (that is, to your name and profile).
- (b) By using the Services, you warrant that any content that you post or transmit via the Services, or otherwise transmit to any other member of the website by any other means, will not infringe the Intellectual Property Rights of any third party.
- (c) You grant to Zinger.me a perpetual, worldwide, royalty-free, transferable, sub-licensable right to use, copy, modify, distribute, publish, and process information and content that you post to or transmit through our Services.
- (d) You give us your complete and genuine consent to our use of all or any portion of your post or transmission for the purpose of providing the Services to you (including for ancillary purposes), even if such use would otherwise be an infringement of your moral rights (having the meaning given to that term in the *Copyright Act 1968* (Cth)).
- (e) We are not required to publish any information or your content via the Services, and can remove it in our sole discretion, with or without notice.

## 5. Availability and security

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### 5.1 Security

You are solely responsible for your use of the Services, and protection of your password.

## 5.2 Suspension

We may temporarily suspend (in part or in whole), and without prior notice to you, your access to the Services if:

- (a) there is a malfunction, fault or breakdown of any of our (or our contractors) equipment or if we (or our contractor) needs to do any repairs, maintenance or service on any part of the Services;
- (b) we are required by law to do so;
- (c) an event of Exceptional Circumstance occurs, which affects or may affect our ability to provide the Services;
- (d) we suspend your access under clause 6.3 for your non-payment;
- (e) if someone claims the Services infringes the Intellectual Property Rights of any person;
- (f) if someone brings a Claim that exposes us to liability or prosecution for an offence or liability to a statutory prosecution; or
- (g) if we determine you are in breach of the Agreement, including where we determine you have failed to meet your obligations under clause 6.5.

A suspension any of these reasons will not affect any right which accrue prior to, or after, suspension of our obligations under these terms of use.

## 5.3 Downtime and Limitations

You acknowledge and agree that:

- (a) access to the Members Area may occasionally be limited due to scheduled maintenance; and
- (b) access to the Members Area is reliant upon various factors outside our control, including, without limitation, events of Exceptional Circumstance, your internet service provider, telecommunications provider or equipment used to access the Members Area. While we will use reasonable endeavours to ensure you have continuous access to the Members Area, we will not be liable to you or any other person for any Claim or to any other extent for Loss or damage caused by such factors.

## 5.4 Loss of Access

You will have no Claim against us in respect of loss of access or functionality to the Services referred to in this clause.

## 6. Payment

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### 6.1 Application

We offer our Services on a "freemium" model, meaning that some components of our Services are available free of charge, while payment of a recurring Fee (usually monthly or annually) is required to access our premium Services (**Subscription Fee**). This clause 6 applies if you

subscribe to access one or more of our premium Services.

### 6.2 Payment of Fees

You acknowledge and agree that for each premium Service to which you subscribe, we will debit the associated Subscription Fee attributable to your nominated subscription level and subscription period, to your nominated Apple App Store or Google Play account (**Payment Account**) on:

- (a) the later of the first date you subscribed to the applicable paid service or such other date as we notify to you from time to time (**First Payment Date**); and
- (b) unless and until you terminate your subscription—each anniversary (whether daily, monthly, weekly or annual, as applicable) of your First Payment Date, as payment in advance for the next subscription period,

and you must immediately pay the Subscription Fee as debited to your Payment Account. You agree to keep your Payment Account up-to-date at all times.

### 6.3 Late or non-payment of Subscription Fees

If you do not pay the Subscription Fee in clause 6.2 (including if your payment is denied due to insufficient funds), we may do any one or more of the following:

- (a) restrict or suspend the Services in accordance with clause 5.2 above;
- (b) terminate this agreement in accordance with clause 12 or otherwise under these terms of use.

### 6.4 Refund

We will not refund any unused portion of your Subscription Fee.

### 6.5 Fee disputes

If you dispute the amount of the Subscription Fees charged to your Payment Account, you must do so in accordance with the Payment Account provider's applicable procedures.

## 7. Your conduct and obligations

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### 7.1 General obligations

You agree to:

- (a) comply with these terms of use and all applicable laws and regulations; and
- (b) use the Services in good faith and for your personal use only.

### 7.2 Prohibited conduct

You must not:

- (a) post or send any material, or do anything which is unlawful, offensive, abusive, indecent, defamatory or menacing, or in breach of any rights of others;

- (b) cause annoyance, inconvenience or needless anxiety to others;
- (c) post commercial advertisements or promotional material; or
- (d) collect information (including information about other users) for purposes outside these terms of use. In particular, you must not harvest information from the Services for commercial purposes without our prior consent.

We reserve our right to suspend your access or immediately terminate your subscription if, in our sole opinion, you breach your obligations under these terms of use or post comments which are abusive to other subscribers.

## **8. Disclaimer and limitation of liability**

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### **8.1 Disclaimers**

- (a) You acknowledge and agree that the Services contains general information and may include material from many different sources. We make no representation and do not warrant that the information provided on the Services is complete, accurate or current.
- (b) The information accessible in the Services is not a replacement for professional advice, and does not take into account your specific circumstances.
- (c) You agree that we provide the Services as a platform, and are not responsible or liable to you or any third-party for the actions or inactions of another member in relation to you.
- (d) Neither we nor any of our directors, employees, contractors or other representatives will be liable for any Loss, damage or personal injury whatsoever which may arise out of or in connection with your use of the Services, to the extent permitted by law.

### **8.2 Implied terms**

- (a) To the full extent permitted by law:
  - (1) any term which would otherwise be implied into these terms of use is excluded. However nothing in these terms of use excludes a compulsory consumer guarantee which applies under the *Competition and Consumer Act 2010* (Cth) and which cannot be excluded, restricted or modified.
  - (2) you acknowledge that we provide the Services on an 'as is, where is' basis, and we make no warranties or representations, express or implied, as to the Services (and any information or documentation provided in connection with them), whether provided by us, third party contractors or other users.

- (b) If any law implies or imposes terms into these terms of use which cannot be lawfully excluded, such terms will apply, save that our liability for breach of any such term will be limited in accordance with the remainder of this section.

### **8.3 Limitation of liability**

- (a) To the extent we are held liable in connection with these terms of use (whether in contract, under a right of indemnity, tort or statute), then our cumulative liability will be limited (at our option) to any one or more of the following:
  - (1) re-supplying the services to which the liability relates or the supply of equivalent services; or
  - (2) refunding you (subject to the cap on liability in this clause) the amount of your Subscription Fees under this agreement.
- (b) This limitation of liability extends to Loss, damage or personal injury caused directly or indirectly by your access to or inability to access the Services and your reliance on any information provided in the Services, even if we have been advised of the possibility of such damages or injury.
- (c) Irrespective of anything else in these terms of use, to the extent that we are liable in connection with these terms of use (whether in contract, under a right of indemnity, tort or statute), then our cumulative liability in the aggregate (to the fullest extent permitted by law) will not exceed the amount of the Subscription Fees (if any) paid from you to us under this agreement in the 1 month before our liability arose.

## **9. Indemnity**

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- (a) You agree to indemnify, and hold harmless us and our directors, employees, contractors or other representatives from all liabilities, claims and expenses, including legal fees that arise from your use or misuse of the Services.
- (b) We reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defences.

## **10. Links to third party websites**

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For your convenience, the Services may provide links or references to other websites or applications. We do not control or endorse these websites or applications, and are not responsible or liable for the accuracy, legality, or any other aspect of the content of such websites or for any damage or injury arising in connection with your access to such websites.

## 11. Intellectual property rights

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- (a) The Services are protected under Australian and international copyright and other laws governing protection of Intellectual Property Rights.
- (b) Intellectual Property Rights in images, trade marks and other content in the Services are owned by us or our licensors. You must not sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, create derivative works from, adapt, or edit such materials.
- (c) Feel free to post links to public article pages on social media or other sites, but please do not deep-link to either the Members Area or to embedded frames or images. Please contact us if you wish to re-post articles or images from the website on another site, as some such materials (including images) are subject to third party licences.

## 12. Termination

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### 12.1 Suspension of access

If in our absolute discretion we determine that you have committed a breach of these terms of use, we may immediately and without further notice to you, suspend your licence to use the Services, by technical or other means.

### 12.2 Termination of agreement

Either we or you can terminate this agreement at any time by giving written notice to the other.

### 12.3 Effect of termination

On termination, you lose the right to access and use the Services. The following provisions of these terms survive termination:

- (a) our rights to use and disclose your feedback;
- (b) our other members' and/or visitors' rights to further re-share content and information you previously shared through the Services, to the extent copied or re-shared prior to termination;
- (c) clauses 8 (Disclaimer and Limitation of liability), clause 14 (General terms) and any other provision of these terms of use which by its nature is intended to survive termination; and
- (d) any amounts owed to the party before termination.

## 13. Violations

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### 13.1 Reporting

Please support the Zinger.me community and report any violations of these terms of use by contacting us by email at [help@Zinger.me](mailto:help@Zinger.me).

### 13.2 Costs

If you breach these terms of use, in addition to any other remedies we may have, you are responsible for all duties, charges and legal fees (on a solicitor/own client basis) we incur in enforcing our rights.

## 14. General

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### 14.1 No assignment

You must have our prior written consent before you assign, transfer or novate all or any part of your rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it.

### 14.2 Jurisdiction

These terms of use shall be governed by and construed in accordance with the laws of Queensland, Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland, Australia.

### 14.3 Severability

If any provision of these terms of use is ruled by a court to be illegal, invalid, unenforceable or in conflict with any law, it will not affect the validity and enforceability of the remaining provisions.

### 14.4 Further assurance

We and you must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

### 14.5 Notices

- (a) You can give us notice under this agreement by email at [help@Zinger.me](mailto:help@Zinger.me).
- (b) We can give you notice under this agreement in the following ways:
  - (1) a banner notice on the website or in the mobile app;
  - (2) by email at the address you provide in your personal profile in the Services; or
  - (3) any other means including mobile phone, telephone or mail.
- (c) You agree to keep your contact information up-to-date.

## 15. Definitions and interpretation

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### 15.1 Definitions

**Claim** means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or

- (c) it involves a third party or a party to this agreement.

**Consequential Loss** means any of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement, including any of the above types of loss arising from an interruption to a business or activity.

**Exceptional Circumstance** means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this agreement. Such circumstances include:

- (d) adverse changes in government regulations;
- (e) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (f) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber attacks, viruses or malware, data loss as a result of the actions of a third party;
- (g) strikes or industrial disputes;
- (h) materials or labour shortage; and
- (i) acts or omissions of any third party network providers (such as internet, telephony or power provider).

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Licence** means the licence set out in clause 4.1, as limited by clauses 4.2 and 4.3.

**Login** means your personal username and password (or other credentials) for accessing the Members Area.

**Loss** means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

**Material** means information, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

**Members Area** means the Zinger.me online chat, forums and other features provided by us from time to time to subscribers. The Members Area will be provided as a service and made accessible by the website.

**Our Technology** means all Intellectual Property Rights created, owned or licensed by us, including the Members Area functionality and the algorithms and software used by (or comprised in) the Services.

**Scheduled Maintenance** means preventative or emergency maintenance in relation to any software used, or relied upon, to provide the Services.

**Services** means the services provided by us to you, including the website, the Members Area and the mobile app.

**Subscription Fee** has the meaning given in clause 6.1.

**Term** has the meaning given in clause 3.

**Website** means the portal accessible via [www.Zinger.me](http://www.Zinger.me).

## 15.2 Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
- (1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
  - (2) one gender includes the others;
  - (3) the singular includes the plural and the plural includes the singular;
  - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
  - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
  - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
  - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
  - (8) money is to Australian dollars, unless otherwise stated; and

- (9) a time is a reference to Brisbane, Queensland time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

## 15.3 **Business Days**

- (a) If anything under this agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

## 15.4 **Parties**

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.