

DAILY FIX ME - TERMS AND CONDITIONS OF USE

Last updated 07 April 2020

Daily Fix Me ("**DFM**") is a motivational application (**DFM App, Website, site, App**) and community created as a service to individuals and companies through its website and application ("**Services**").

"DFM" means On Point Holdings Pty Ltd ACN 618 965 807 its affiliates or related entities.

1. TERMS AND CONDITIONS

1.1 These Terms and Conditions govern your use of DFM App, whether you be an individual, an organisation or a business. In these Terms and Conditions "website" means an internet website, the DFM App, web app, web application, app and any other like software utilised by DFM from time to time.

2. ACCEPTANCE OF THESE TERMS AND CONDITIONS OF USE

PLEASE READ THESE TERMS AND CONDITIONS BEFORE SUBSCRIBING TO THE DFM WEBSITE OR APP.

If you do not agree to these Terms and Conditions and our Privacy Policy, Cookies Policy and any other policies we introduce from time to time (**Policies**), do not use the DFM App. By continuing to browse or view content using the DFM App, you are deemed to have fully and unconditionally accepted and agreed to these Terms and Conditions.

3. ACKNOWLEDGEMENT

By downloading and using the DFM App, you acknowledge that you are providing your express consent to receive commercial messages and notifications from DFM, for the purposes of advertising, promoting and providing special offers relating to DFM pursuant to the requirements of the *Spam Act 2003* (Cth).

4. PERMISSIONS WE ASK FOR:

- 4.1 By agreeing to our Terms and Conditions including our Policies, the user is allowing DFM to:
- a) Send you push notifications.
 - b) Access your location including your GPS information to get your exact location, the wireless network you are using, local cell tower information, current WI-FI points as well as access to your compass.
 - c) Allows us to show you notifications on your app icon.
 - d) Access information about your device hardware and software including for example: which operating system version you are using, advertising identifiers, device identification, language, microphone, time zone you are in and generally other information available on your device.

4.2 Sensors in your phone, watch or tablet including:

- a) Accelerometer
- b) Digital Compass (Magnetometer)
- c) Gyroscope Sensor
- d) Ambient light Sensor
- e) GPS Sensor (Global Positioning System)
- f) Proximity Sensors
- g) NFC Sensors (Near Field Communication)

4.3 We use the above information to activate different features in our app and for gathering information to provide the best experience when using DFM.

5. YOUR AGREEMENT & SUBSCRIPTION

5.1 In accessing, registering or using the App or Website, including any and all webpages, the Services and products, information, text and images offered or provided on the Website, you are deemed to have read and personally agreed to the Terms and Conditions.

5.2 We offer monthly subscriptions for individual users and twelve (12) month subscriptions for company users ("**Subscriptions**"). Payment for each Subscription is governed by these Terms and Conditions including the Payment terms found at clause 7 of these Terms and Conditions.

5.3 An individual user's Subscription will start with a free trial for a fixed period of seven (7) days. Free trials are only available to new users, and are at our sole discretion, and if you attempt to sign up for an additional free trial, you will be immediately charged with the standard Subscription Fee.

5.4 We reserve the right to revoke your free trial at any time. Unless you cancel before the end of the trial period, your free trial will expire and you will be charged the Subscription Fee.

5.5 We may offer promotional offers and special discounts from time to time which will be subject to separate terms and conditions to be read in conjunction with these Terms and Conditions.

6. RENEWAL & TERMINATION

6.1 For business subscribers, your Subscription will automatically renew for the same term of your initial Subscription unless you opt out of your Subscription recurring by accessing the settings component of your profile on the Website and de-select the option pertaining to automatic renewal of your Subscription, or by electing to not renew the Subscription at the end of the term of Subscription, when you receive a notification from DFM regarding your renewal.

6.2 Individual subscribers, your Subscription Fee continues each month until you opt out.

If your Subscription is an In-App Purchase you must disable the 'auto-renew function' in your device settings, or through the relevant App Store on your relevant user profile.

6.3 You may cancel your Subscription (please note a refund will not be issued when cancelling) to the App or Website by notifying the App or Website and we can then deactivate any account in your name, your membership of the App or Website and archive any information about you, or your account, stored in our database as well as cease the provision of any information to you. (Your information archived will be stored for 7 years from the date of purchase and/or Subscription at which point in time it will be deleted or destroyed).

6.4 We can terminate your Licence, Subscription and/or participation in the Forum in our sole discretion if we believe you have breached any of the Terms and Conditions of the Licence and/or you have or are facilitating the unlawful activity of a third party in respect of the Website and further, we are at liberty to take any other action necessary to enforce these Terms and Conditions.

7. PAYMENTS

7.1 In purchasing the Services from the App or Website ("**Purchase**") you agree to:

(a) pay using a valid credit card (or other form of payment as we may allow);

(b) provide us with current and complete information as detailed in the purchase order form including full legal name, street address, telephone number, email address, credit card details and billing information as required and without limiting any of our rights and remedies if we discover or believe that any information provided by you is inaccurate or incomplete, we reserve the right to refuse to continue with your Purchase, or put on hold or terminate your access to the App or Website, the Services provided by us at any stage at our sole discretion and you forfeit any right to a refund of any payment made by you for the Purchase;

(c) pay all costs, fees, charges, applicable taxes and other charges as may be incurred in respect of the Purchase ("the costs"); and

(d) all costs are in AU Dollars unless otherwise indicated.

7.2. You acknowledge and agree that prices will vary depending on the type of Subscription as well as the region you are located.

8. INTELLECTUAL PROPERTY

8.1 DFM's intellectual property include the entire content included in the DFM App including, but not limited to text, images, logos, graphics, audio, video or

code is owned by DFM, its affiliates or related entities. Where content on the DFM App is provided by persons other than DFM then that content is deemed to be owned by the person providing it and is protected by Australian and International copyright laws.

- 8.2 You must not transmit, broadcast, edit, adapt or make use of any content on the App belonging to DFM, without its prior express permission in writing. Where any content of the App is downloaded or printed you agree that such content is to be used solely for private and non-commercial purposes.

9. COPYRIGHT

- 9.1 The *Copyright Act 1968* protects the right of a copyright owner to publish or reproduce material such as films, music, books, photographs and computer software (copyright material).
- 9.2 You must not post, copy, transform, publish, distribute or share copyright material on the DFM App without the express permission of the copyright owner. If you post copyright material which violates the copyright owner's rights, we may remove the content or disable your account if necessary.
- 9.3 If you infringe a DFM's intellectual property rights, we will disable your account indefinitely if necessary.

10. USING THE DFM APP

- 10.1 The DFM App is the online application used by you to view motivational quotes and any other content supplied by DFM.
- 10.2 When using the DFM App, you acknowledge and agree that you must set up a user account which may require you to provide the following information: a) your full name;
- b) your mobile telephone number;
 - c) your username/email address;
 - d) your password; and
 - e) any other information DFM deems necessary from time to time.
- 10.3 You are responsible for maintaining confidentiality of all your personal details, password and payment details. You agree to accept full responsibility for all of your activities on the DFM App.
- 10.4 The DFM App must only be used by persons over the age of thirteen (13) years. DFM reserves the right to refuse service, terminate your access to the DFM App, or cancel your account without any notice to you.
- 10.5 In making the DFM App available for use, you acknowledge that DFM:

- a) does not provide you with any goods or services but rather facilitates your ability to view DFM quotes;
- b) does not guarantee that the DFM App systems will be error free or any errors will be corrected;
- c) does not guarantee that the DFM App will be free from any viruses, harmful components or any other unintended third party interference; and
- d) reserves the right to alter or remove any corrupted content that subject to or was caused by a software fault, error or malicious attack.

11. USERNAME AND PASSWORD (BUSINESS AND ADMIN USERS ONLY)

11.1 When you as a user becomes a member, you will be asked to create a Username and Password for your account.

11.2 Your Password that **MUST** contain a minimum of 6 characters and up to 15 characters. The Password must contain a minimum of one Upper case character, one lower case character and at least one number.

11.3 You are solely responsible for selecting your username and password in relation to using the DFM App and any of its affiliates or related entities will not be responsible or liable to you resulting from:

- a) an inappropriate or poor choice of username or password;
- b) a failure to change your password on a regular basis;
- c) a failure to promptly inform DFM of a possible identity theft; or
- d) a failure to keep your username and password hidden and secret.

12. ACCESS AND RESTRICTIONS

12.1 You acknowledge and agree that from time to time access to the DFM App may be denied for any one or all of the following reasons:

- a) maintenance and/or repairs;
- b) upgrades and enhancements;
- c) DFM server down time or failure;
- d) DFM systems down time or failure; or
- e) software utilised by DFM is corrupt or has failed.

13 YOUR OBLIGATIONS WHEN USING DFM

13.1 DFM requires you as the User, whether a registered User or not, to agree and acknowledge the following:

- a) You will not post unauthorised commercial communication such as spam on our site or transmit to any other User on this site.
- b) You will not upload a virus or malicious malware to this site.

- c) You will not collect any User Content via any electronic, digital or any other means without written consent of DFM.
- d) You will not hack anyone's content or account.
- e) You will not troll against any and all DFM Users.
- f) With the exception of accessing RSS feeds, you will not use any robot, spider, scraper or other automated means to access the site for any purpose without our express written permission.
- g) You will not take any action that imposes, or may impose in our sole discretion an unreasonable or disproportionately large load on our infrastructure, interfere or attempt to interfere with the proper working of the website or App or any activities conducted on the website or App, or bypass any measures we may use to prevent or restrict access to the website or App.
- h) You will not operate any motorised transportation including but not limited to motor cars, motor bike, moped, or trucks, heavy machinery, boats, marine vehicles, cranes bikes, motorbikes or other engine, battery recreational equipment or devices whilst using or visiting our website or App.
- i) You will not be distracted from any activity you are currently or were doing prior to checking the site, your feed or viewing video content, advertisements or anything posted on our site.
- j) You will not leave children, the aged, disabled, special needs persons, pets, friends or any other person or animal unattended whilst they are left in your care, when you are using our website or App.
- k) Please do not walk, run, jog or exercise whilst viewing our site. Take all care in protecting yourself and others whilst using our site or any site associated with DFM. Your safety and the safety of others is your responsibility and lies solely in your hands. Be responsible. LOOK WHERE YOU ARE GOING!
- l) Do not share any of your password login information with any person. If you share this information to anyone, you are allowing them to access your account and they may post or share illegal or inappropriate content under your account. DON'T GIVE OUT YOUR INFORMATION TO ANYONE.
- m) As the User, you agree and acknowledge not to violate any local, state, national, foreign or international statute, regulation, rule, order, treaty or other law applicable in that jurisdiction.
- n) The User agrees and acknowledges not to create any account under another person's name or a false name or impersonate another person, company or organisation when using our site.
- o) The User agrees and acknowledges not to try to hack or gain access to our DFM site nor should you use data mining, robots or similar data gathering or extraction methods for gaining information to our site, nor should you try to gain access to any part of our site, gain access to user personal information,

accounts information, server or networks as used by DFM through any means whether it be hacking, password mining or any other methods of access to the site or information contained herein.

- p) DFM uses all possible means to ensure the safety of its Users, however DFM cannot guarantee the safety of information as shared by you.

14 WHAT WE EXPECT FROM OUR USERS:

- 14.1 If we believe someone has infringed the rights of another user, we reserve our right to remove this content at our discretion.
- 14.2 No user shall gather information of another user which may be personal or sensitive information about a user whether of a personal or financial manner.
- 14.3 You must not do anything that may infringe another user or company's intellectual property in accordance with clauses 8, 9 and 10 of these Terms and Conditions.
- 14.4 DFM reserves its rights to delete any user account that we believe is infringing other people's rights.

15 YOUR ACCOUNT SECURITY AND REGISTRATION

15.1 As a user of DFM you are providing us with your personal information. All users are required to warrant and guarantee the following:

- a) You will only provide true information when you are creating your account and you will keep your information current.
- b) You will not create an account in the name of any other person or use any other person's information in creating an account which you control.
- c) If DFM has deleted or restricted your account, you will not create another account in your name or alternative name without the consent of DFM.
- d) You will not transfer your account to anyone without DFM's written consent. You also acknowledge and agree that should you transfer your account without our consent, you will be held responsible for any activities, whether criminal or otherwise, of that account.
- e) Should a dispute arise about a user name that may be subject to copyright or trade mark breach, we reserve our right to delete this name or suspect or terminate the account.

16 YOUR PRIVACY

16.1 DFM is an organisation that respects and values your privacy and agrees to use all reasonable endeavours to keep your private and personal information safely and securely stored at all times to avoid misuse, loss, unauthorised

access, modification or disclosure and handle your private and personal information in an appropriate manner.

16.2 DFM gathers information in accordance with DFM's Privacy Policy, our obligations under the *Privacy Act 1998* (Cth) and the additional rights provided to Users located in the European Union (**EU**) under the General Data Protection Regulations (**GDPR**).

16.3 The view our Privacy Policy, please click [here](#).

17. COOKIES

17.1 From time to time, DFM may use Cookies to us learn more about how you use the DFM App and make it easier for you to use the App on return visits. Please read our Cookies Policy [here](#).

18. UPDATES

18.1 DFM will continue to ensure that we provide our users with the best service and experience possible. From time to time we will need to make amendments to our services or Terms and Conditions or Policies (**Updates**). We will notify you of Updates from time to time. You will have the opportunity to read these and accept them in order to continue using our services.

18.2 DFM recommends you carefully read, each time you visit the website, the Terms and Conditions as they may affect your rights.

18.3 In addition, DFM may from time to time provide enhancements or improvements to the features/functionality of the Application, which may include patches, bug fixes, updates, upgrades and other modifications.

18.4 Updates may modify or delete certain features and/or functionalities of the Application. You agree that DFM has no obligation to (i) provide any Updates, or (ii) continue to provide or enable any particular features and/or functionalities of the Application to you.

18.5 You further agree that all Updates will be (i) deemed to constitute an integral part of the Application, and (ii) subject to the terms and conditions of this Agreement.

19. USE OF APIs & SDKs

Daily Fix Me uses APIs and SDKs to allow you to sign in to Daily Fix Me using your credentials from Facebook and other social media applications.

An application program interface ("**API**") verifies your credentials and facilitates authentication for you to use the Daily Fix Me App **without sharing your actual credentials with** Daily Fix Me.

In relation to Facebook, Daily Fix Me uses API to interface with the Facebook platform and exchange data about the user such as: device type, OS or Android operating system type and version, your time zone, your carrier, device screen size, processor and disk space ("**User Data**").

A software development kit (“SDK”) is used to assist Daily Fix Me to track and measure the actions users take while using this App. It allows Daily Fix Me to interact with other Apps like Facebook.

SDK’s also provide us with tracking analytics, data trends and accurate insights on how users interact with Daily Fix Me to help us enhance user experience.

If you use Facebook to login to Daily Fix Me, any use of Facebook by you is subject to Facebook’s terms and conditions, privacy policies and any of Facebook’s supplementary terms.

By agreeing to these terms and conditions, you acknowledge and agree that Daily Fix Me uses APIs and SDKs. Should you not agree to Daily Fix Me providing your User Data to Facebook and any other social media application, please **contact** Daily Fix Me via the methods set out below or delete the App from your device.

20. OMISSIONS AND ERRORS

20.1 Whilst DFM makes every effort to ensure the accuracy of the DFM App’s content, you acknowledge that periodically omissions or errors may appear in relation to some content of DFM App. If you believe that an error or omission exists on the DFM App, we kindly request that you immediately notify us of the error or omission.

20.2 You acknowledge and agree that DFM is not in any way liable to you for any direct or indirect loss, damage, cost or expenses suffered or incurred by you as a result of any error or omission appearing on the DFM App.

21. INDEMNITY

21.1 You agree to indemnify and hold harmless DFM and its related corporations, affiliates and the officers, directors, employees and agents of these entities, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to legal fees) arising from or in connection with:

- a) your use of and access to the DFM App;
- b) your violation of any term of these Terms and Conditions; and
- c) your violation of any third party right, including without limitation any copyright, property, or privacy right.

22. TERMINATION

If you breach these Terms and Conditions or create a risk to DFM or other uses of the DFM App, or do anything unlawful on the App, we will notify you by email and disable or terminate your access to the App. If we terminate your access to the DFM App all of your obligations in Clauses 5, 6, 7, 8, 14 and 18 herein remain in force.

23. GENERAL

These Terms and Conditions of Use constitute a legally binding agreement between you and DFM concerning your use of the DFM App. These Terms and Conditions of Use are governed by the laws of the State of Victoria and all Federal laws of Australia. Any claim or dispute between you and DFM that arises in whole or in part from the DFM App will be decided exclusively by a court of competent jurisdiction located in the State of Victoria.

24. SEVERABILITY

If any provision of this agreement is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

25. WAIVER

Except as provided herein, the failure to exercise a right or to require performance of an obligation under this agreement shall not affect a party's ability to exercise such right or require such performance at any time thereafter nor shall be the waiver of a breach constitute waiver of any subsequent breach.

26. CONTACT US

We are here to help you enjoy your experience using the DFM App.

Should you have any questions concerning DFM, these Terms and Conditions or any other policy, please feel free to contact us at:

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