

Kaluarachchi Group Pty Ltd

Kaluarachchi Group Apps Terms of Use

Kaluarachchi Group Pty Ltd ACN 684 850 351

1. Background

Thank you for visiting our Terms of Use (**Agreement**), we are Kaluarachchi Group Pty Ltd ACN 684 850 351 (**Kaluarachchi Group, we, our, us** and other similar terms). We provide a number of software applications catering to a number of consumers which we refer to within this Agreement as our Apps (**the Apps** or **Kaluarachchi Group Apps**).

This Agreement outlines the terms and conditions associated with your use of the Apps. Certain Apps have App specific terms which apply only to the use of that individual App. App specific terms are set out in clause 5.

It is your obligation to ensure that you have read, understood and agree to the most recent version of these terms available on our Website.

2. Agreement

2.1 Accepting this Agreement

By creating an Account for, or downloading an App, you agree to comply with and be legally bound by the terms and conditions of this Agreement. If you do not agree to these terms, you have no right to continue using any of the Apps.

Unless the App specific provisions state otherwise, you must not use the App if you are not able to form legally binding contracts or are under the age of 18. If you create an Account on behalf of your employer or any other entity, you represent and warrant you hold authority to enter into this Agreement on behalf of that entity and that the entity will comply with the obligations contained herein.

2.2 About this Agreement

Throughout the Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined throughout this Agreement and in clause 19. They aid to clarify the terms and conditions.

For general inquiries, please feel free to email us at info@kaluarachchigroup.com.au. For support regarding any specific App, please refer to the contact details provided in Clause 5.

2.3 Separate Agreements

For the avoidance of doubt, the formation of a contract for the use of an individual App constitutes a separate agreement between us and you. Either party may terminate the agreement associated with one App without terminating the use of another.

3. Term

This Agreement will commence when you create an Account for any of the App and will continue for the Subscription Period or until the date of termination of the Subscription of that relevant App in accordance with clause 17.

If the Subscription to the App is not terminated in accordance with clause 17, prior to the expiry of the then current Subscription Period, the Subscription to that App will automatically renew for a period equal to the current Subscription Period.

4. Licence

We grant you a non-transferrable, non-exclusive and revocable licence to access any of the Apps, for the Subscription Period and subject to and conditional upon your compliance with the terms and conditions of this Agreement.

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The grant of the licence to access any of the Apps in this clause is subject to and conditional upon you purchasing, and maintaining a Subscription to that App. For the avoidance of doubt, Subscription to one App, applies only to that App and does not grant you a license to our entire suite of Apps.

The features available to you are determined by the inclusions and usage restrictions set out in the Subscription Package which you choose at the time of subscribing to any of the Apps. You acknowledge and agree that if you exceed the usage restrictions or wish to make use of alternate or new features of any of the Apps, you may be required to upgrade your Subscription.

5. App specific terms

5.1 Your use of the Rearviewmirror App

The terms set out in this section 5.1, apply only to the use of our social media and lifestyle mobile application that helps couples navigate relationships, known as Rearviewmirror (**Rearviewmirror**).

Rearviewmirror is designed to support and enhance relationships by providing tools for communication, goal-setting and shared experiences. However, Rearviewmirror does not provide professional counselling, therapy or relationship advice. Any content, suggestions or features within Rearviewmirror are for informational and entertainment purposes only and must not be relied upon as a substitute for advice from a qualified professional.

We make no representations or warranties regarding the effectiveness of Rearviewmirror in improving relationships, resolving conflicts, or achieving specific relationship goals. The success of any relationship depends on various factors beyond our control and we do not guarantee any particular results from using Rearviewmirror.

Rearview may provide facilities whereby you may set up notifications so that you are aware of activity on Rearview relevant to you. By using Rearview, you consent to us providing relevant notifications via electronic messaging systems. You are solely responsible for configuring and disabling notification options made available to you.

Please feel free to email us at rearviewmirrorapp@gmail.com if you have any questions regarding Rearviewmirror.

6. Payment

Payment must be made according to the Payment Terms.

Unless expressed otherwise, Subscription Fees are quoted in Australian Dollars and are inclusive of GST, withholding taxes, duties and charges imposed or levied in Australia, or overseas, in connection with this Agreement.

You are responsible for all bank fees and charges applied by the payment gateway provider, which you use.

7. Trial Services

We may make all or some of the Apps available to you free of charge, on a demonstration or trial basis (**Trial Service**).

Unless otherwise specified, the trial period commences from the date you create a trial Account and terminates in 7-14 days (**Trial Period**) and access to that App will automatically continue at the expiration of the Trial Period unless either party gives notice that the Trial Services are to conclude.

Upon completion of the Trial Period, unless the Subscription is terminated, you will be charged for your use of the App.

To the maximum extent permissible at law, we provide the Trial Services “as is” and without warranty or indemnity and all other terms of this Agreement otherwise apply.

8. Requirements for use

8.1 Access

You acknowledge and agree the Apps will only be accessible using the internet, by users with a valid Account and will not be available "locally" from your own servers or devices.

In order to make full use of any mobile application version of the Apps, you must allow your device access to certain services. If you refuse to grant access to those mobile device services, the mobile version of that App may not function as anticipated, or at all.

8.2 Support

Current support for the Apps is provided in accordance with the support arrangements made available via the relevant App or on our Website and may vary from time to time.

8.3 Outages and system maintenance

If it is necessary to interrupt your use of the Apps, we will endeavour to provide you with reasonable notice (where possible) of when, and the anticipated duration for which, the Apps will be unavailable.

You acknowledge access to the Apps may be changed, interrupted or discontinued for many reasons, some of which are beyond our control and during routine maintenance there may be updates to the Apps which may change the interface and manner in which it functions.

To the maximum extent permitted at law, we are not liable for any loss, foreseeable or not, arising from any interruption to access any of our Apps, whether planned or not, and any such interruptions will not constitute a breach by us of this Agreement.

9. Your use of the Apps

9.1 Registering an Account

In order to use the Apps, you are required to provide us with Personal Information. You agree to provide any information reasonably requested by us for the purpose of setting up your Account. You warrant that all of the information you provide to us is accurate and complete in all respects, you will inform us by updating your Account details whenever any such information changes and you will not provide false or misleading information.

We reserve the right to reject any new Account in our absolute discretion.

9.2 Account security

Maintaining the security of your Account is important to ensuring your Personal Information, and that data which we process on your behalf, remains safe. We work hard to keep the Apps secure and we ask you to contribute.

You agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit, except that an authorised employee or agent may create an Account on behalf of your business. You also agree not to disclose your Account security credentials to another person or permit them to access your Account. You are responsible for the activities undertaken using your Account which occur via the Apps, whether such activities are authorised by you or not.

9.3 Lawful use of the Apps

You undertake not to upload, store or access any data on the Apps if such access or storage would infringe a person's Intellectual Property right, breach any Privacy Law or breach any other law or

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applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth or a State or Territory of Australia or the jurisdiction in which you operate).

9.4 Conduct which is expressly prohibited

You must not use or include any part of the Apps in any service bureau or fee generating service offered to third parties.

You must not:

- (a) in any way tamper with, hinder or modify the Apps;
- (b) use the Apps directly or indirectly for any activity or transmit any information or material unlawfully, or which is obscene, indecent, uses offensive language, defames, abuses, harasses, stalks, threatens, menaces or offends any person;
- (c) knowingly transmit any viruses or other disabling features to or via the Apps;
- (d) use any screen capture, data mining, robot, crawler or similar data gathering, reproduction or data extraction tools to collect information from the Apps or our Website for any purpose including the sending of unsolicited emails, soliciting our or another user's clients or duplicating the content of the Apps;
- (e) install or store any software applications, code or scripts on or through the Apps except where such features are made available to you;
- (f) intentionally disable or circumvent any protection or disabling mechanism of the Apps;
- (g) gain access to parts of the Apps that you are not authorised or entitled to access under your Subscription;
- (h) use the Apps in any way which could be reasonably expected to interfere with or damage our systems, any other operator's systems, or another user's enjoyment of the Apps; or

- (i) attempt, facilitate or assist another person to do any of the above acts.

9.5 Our right to suspend

We reserve the right to limit or suspend your licence to access any of the Apps if you fail to pay the Subscription Fee, or if in our reasonable opinion, you are in breach of any of your obligations or warranties in this Agreement. Suspending your Subscription will not constitute a breach of this Agreement by us, nor will it alter your obligation to pay the Subscription Fee.

10. App Marketplace Providers

Mobile application versions of some or all of the Apps may be made available from Google Play and the Apple App Store (**App Marketplace Providers**).

This Agreement is between us and you only. We, and not the App Marketplace Provider, are responsible for the Apps, and we are solely responsible for:

- (a) their support and maintenance;
- (b) the investigation, defence, settlement and discharge of any claim which relates to an infringement of third-party Intellectual Property rights arising from the use of the Apps; and
- (c) any claim that the Apps fails to conform to any applicable legal or regulatory requirement, including product liability claims and claims arising under consumer protection laws.

The App Marketplace Provider's liability to you is limited to the refund of the purchase price of the mobile version of the Apps and any other remedies under consumer protection law. Your right to use the mobile version of the Apps is non-transferable and non-sublicensable, except to the extent the App Marketplace Provider permits family sharing or like sharing arrangements.

The App Marketplace Provider may monitor your use of the Apps and is entitled to enforce the terms of this Agreement against you. You agree to submit to their legitimate enforcement activities.

If there is any inconsistency between this Agreement and the application use rules set out in the App Marketplace Provider's terms of service, their terms of service will prevail to the extent of the inconsistency.

You represent and warrant that you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and you are not listed on any U.S. Government list of prohibited or restricted parties.

11. Privacy

You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post the new version on our Website or on the Apps.

12. Third Party Services

Certain components or features of the Apps may interface with applications or include links, data, resources, services and/or content that are provided or operated by third party service providers (**Third Party Services**).

You acknowledge and agree that, subject to any Non-excludable Condition, we are not liable for:

- (a) the availability of such Third Party Services;
- (b) any data, content, advertising or materials made available through such Third Party Services; or
- (c) any damages you incur or allege to incur, either directly or indirectly as a result of your use and/or reliance upon any such Third Party Services.

13. User Content and Intellectual Property

13.1 Your User Content

If you provide us with content, including, without limitation, text, photos, images, audio, video, code and any other materials (**User Content**), your User Content stays yours. This Agreement does not transfer ownership of User Content to us.

When you provide User Content, you grant us a non-exclusive, worldwide, perpetual, royalty-free, sublicensable, transferable right and license to use, host, store, reproduce, modify, create derivative works of (such as those resulting from translations, adaptations or other changes we make so that User Content works better with the Apps), communicate and publish, User Content for the purposes of allowing us to provide, improve, promote and protect the Apps. You waive any claims against us relating to any moral rights or similar rights worldwide that you may have in the User Content.

Certain Apps may be designed to transmit, disclose or share your User Content with third parties. Where you instruct us to, you authorise us to transmit, disclose or Share that User Content in accordance with your instructions.

You represent that you own all rights to your User Content or otherwise have (and will continue to have) all rights and permissions to legally use, share, display, transfer and license your User Content to the extent that it is used within the Apps.

While we reserve the right to take down any User Content which is in breach of this Agreement, you acknowledge and agree we are not required to monitor User Content, nor are we responsible for it.

13.2 Intellectual Property in Apps

We warrant we own or have a licence to use the Intellectual Property in the Apps.

You must not do any of the following, assist anyone to do any of the following or permit any person over whom you have effective control to:

- (a) create an adaptation or translation of all or part of the Apps in any way;

- (b) use the Apps in a manner which may infringe any other persons Intellectual Property;
- (c) incorporate all or part of the Apps in any other webpage, site, application or other digital or non-digital format; or
- (d) except to the extent that reproduction occurs automatically through its ordinary use, directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, content, architecture, or algorithms contained in the Apps.

14. Warranties

Subject to the Non-excludable Conditions and to the maximum extent permitted at law, we make no warranties or guarantees that the Apps you subscribe to are fault free, regarding the Apps' fitness for any particular purpose which we have not expressed, or regarding your access to, or the results of your access to the Apps including their correctness, accuracy, timeliness, completeness, reliability or otherwise.

15. Limitation of liability

15.1 Implied conditions

We expressly exclude all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

15.2 Limitation of liability

Subject to the Non-excludable Conditions and to the maximum extent permitted at law, we exclude all other liability for any costs, including consequential losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) the Apps being temporarily inaccessible for any reason beyond our control;
- (b) incorrect, corrupt or lost data, or any inputs or outputs of the Apps;
- (c) computer virus, trojan and other malware in connection with the Apps;
- (d) security vulnerabilities in the Apps or any breach of security that results in unauthorised access to, or corruption of data;

- (e) any unauthorised activity in relation to the Apps;
- (f) the occurrence of an Event of Force Majeure; or
- (g) any act or omission by you, your personnel, your associates or any related body corporate which is inconsistent with the intended use of the Apps.

15.3 Limits to liability associated with goods and services

To the maximum extent possible under the law, we limit our liability for any breach to: in the case of goods, the re-supply of the goods or payment of the cost of the re-supply of the goods, or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and in the case of services, the resupply of the services or the payment of the cost of having the services resupplied.

15.4 Indemnity

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly from your infringement of any third party Intellectual Property rights or your breach of any law including, Privacy Law associated with this Agreement.

16. Dispute Resolution

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 16 before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days, then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, within the jurisdiction of the Agreement and, unless otherwise agreed between the parties, using a mediator nominated by the Resolution Institute. If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 16. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 16 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

17. Termination

17.1 Termination by either party

Either party may terminate any or all Subscriptions, if the other party commits a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after the receipt of notice to remedy.

We may end any or all Subscriptions if any App Account remains suspended for a period of more than 30 days or prior to any Subscription Period of any of the Apps you have subscribed to, in which case this Agreement ends at the end of the current Subscription Period of that relevant App.

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You may terminate any or all Subscriptions with us immediately by closing any of the App Accounts or notifying us in writing.

17.2 Actions upon termination

Upon terminating a Subscription, you must immediately stop using the App associated with that Subscription; we reserve the right to permanently erase any data associated with your use of that App and you will no longer have access to that App Account.

18. General

Assignment – Neither party may assign, encumber, declare a trust over or otherwise create an interest in its rights in this Agreement without other party's consent, which must not be unreasonably withheld.

Entire Agreement - This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

Governing law - The laws of Queensland, Australia govern this Agreement. The parties submit to the exclusive jurisdiction of courts exercising jurisdiction there.

Notices - The parties agree all notices, disclosures and other communications that are provided in accordance with this clause, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

- (a) which we send to you, will be sent to the email address provided to us in your Account and by accepting these terms you give your consent to receive communications from us by email; and
- (b) which you send, must be either delivered or posted by prepaid post to our registered office or sent by email to our email address set out at clause 2.2.

Relationship - Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties.

Severability - Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change its intended effect.

Variations to this Agreement - We may vary this Agreement prior to the commencement of any Subscription Period. If you do not accept the terms of the variation, you may terminate your Subscription to any App in accordance with clause 17.1. The variation takes effect at the beginning of the next Subscription Period.

19. Definitions

Unless the terms and conditions of the Agreement state otherwise, the following expressions used in this Agreement have the following meanings:

Account or the App Account means the username and access credentials used when you access any of the Apps.

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Agreement means these terms and conditions and any document incorporated into them by reference.

Event of Force Majeure means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, health epidemic, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

Intellectual Property means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Non-excludable Condition means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

Payment Terms mean the requirement to make payment immediately on commencement of any Subscription, in accordance with the selected Subscription Package in relation to any of the Apps.

Personal Information means information or an opinion about an identifiable individual (not a company), whether or not that information or opinion is true or in a material form.

Privacy Law means both the privacy laws in the jurisdiction in which you operate and the *Privacy Act 1988* (Cth) incorporating the Australian Privacy Principles.

Privacy Policy means the privacy policy available on our Website as amended by us from time to time.

Subscription means a licence to use any of the Apps you have subscribed for, to which the terms of this Agreement apply.

Subscription Fee means the periodic price for any of the Apps' Subscription Packages as set out on our Website, and if no price is specified then the use of the App is free.

Subscription Package means any of the subscription packages advertised on our Website from time to time.

Subscription Period means the period of time attached to any Subscription Package which you sign up for in relation to any of the Apps. If no period is specified then the Subscription Period is 1 month.

You or your means the person or entity using the Apps.

Us, we or our means Kaluarachchi Group Pty Ltd ACN 684 850 351.

Website means

- (a) the website located at <https://kaluarachchigroup.org/> and any of its subdomains; or.
- (b) in the case of Rearviewmirror, the website located at <https://rearviewmirrorapp.com/> and any of its subdomains.