

TERMS AND CONDITIONS

1. ACCEPTANCE

1.1 **Parties:** These Terms are between Performance Advisory Aust and NZ Pty Ltd (ACN 21 601 650 855), its successors and assignees (referred to as “we” “us” or “our”) and you, the person, organisation or entity that purchases Services from us (referred to as “you” or “your”), each a “Party” and collectively the “Parties”. These Terms apply to all sales made by us to you.

1.2 **Acceptance:** You have requested the Services that you have selected on our Site. You accept these Terms by:

- 1.3
- (a) accepting these Terms online;
 - (b) confirming by email that you accept these Terms;
 - (c) instructing us to proceed with the Services; or
 - (d) making part or full payment for the Services.

1.4 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details at the end of these Terms. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older.

1.5 We will not commence performing the Services until you have paid the first instalment of our Fees.

2. REGISTRATION

- 2.1 To become a member of our Site, you are required to register your details with us and make payment.
- 2.2 Once payment is confirmed to us by our merchant provider you will receive an email informing you of your password and log in details.
- 2.3 It is your responsibility to keep your account details confidential. You are liable for all activity on your account, including purchases made using your account details.

3. COACHING SERVICES AND TRAINING

- 3.1 We provide sales skills and coaching services, online training and Licensed Materials.
- 3.2 We run three distinct programs, our Ignite Program, Accelerate Program and Velocity Program (**Program**). At the time of making payment on our Site, you are required to

choose which Program you wish to sign up for. The Fee payable by you or your Payment Provider will correspond with the Program you have chosen.

4. SERVICES AND PERIOD

4.1 The Services include the Licensed Materials and training included in your chosen Program.

4.2 We will provide the Services for the agreed Period set out on our Site, unless we agree to a Variation. At the end of that Period, if neither Party exercises their right of termination in accordance with these Terms, these Terms will automatically renew for successive terms equal to the Period, for the same Fees, or an increased Fee as agreed between the Parties.

4.3 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.

4.4 The Fees and Services can be varied by written agreement between us, including by email. If you request a Variation to the Services, for example you may wish to change Programs, we have discretion as to whether we make the Variation. If we can perform the Variation, we will inform you of the Fee and Period, and if you agree, you or your Payment Provider agrees to pay the varied Fee. If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.

4.5 COOLING OFF PERIOD

- (a) We offer a 14 day cooling off period to our clients. You are therefore entitled to terminate these Terms within 14 days after the earlier of accepting these Terms or making any payment to us (**Cooling off Rights**).
- (b) If you choose to exercise your Cooling off Rights, you must provide us written notice to that effect.
- (c) If you exercise your Cooling off Rights, we will return to you or your Payment Provider within 30 days any money which you have paid to us, less the Administration Fee of \$99.00 and handling fee of \$99.00 totally \$198.00.
- (d) You will not be entitled to any Cooling off Rights in the event that these Terms are renewed or varied or where you have accepted any Services.

5. PRICE, INVOICING AND PAYMENT

5.1 You or your Payment Provider agree to pay us the Fees, per the Payment Schedule, using the

- Payment Method. All amounts are stated in Australian dollars.
- 5.2 Fees are payable monthly in advance. If an amount is unpaid after the payment date, we may cease to provide the Services to you until we receive payment.
- 5.3 We may charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date.
- 5.4 If amounts due to us are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 5.5 We reserve the right to report bad debts to independent credit data agencies.
- 5.6 If our Site states that the Fees are an estimate only, you (on behalf of your Payment Provider where relevant) acknowledge that the final Fees may be more or less than the estimated amounts. We will endeavour to inform you of any material variation as it becomes apparent.
- 5.7 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion, after the agreed Period is complete. The changes apply for Services provided after the date of the change. After a pricing change, you have the choice to continue using our Services or to cease using our Services without penalty.
- 5.8 **Payment by Subscription:**
- (a) Access to our Services will require you or your Payment Provider to pay monthly subscription fees (**Subscription Fees**).
- (b) When subscribing to our Services, you or your Payment Provider agree to pay the applicable Subscription Fees at the time you subscribe for the Services. Future Subscription Fees will automatically be charged to you (or your Payment Provider where relevant) on a monthly basis for the duration of the Period.
- (c) If we do not receive a Subscription Fee in full on its due date for any reason, we may stop providing you with the Services until we receive payment.
- 5.9 **Payment in full:**
- (a) Full access to our services will require you or your Payment Provider to pay an annual fee.
- (b) When subscribing to our Services, you or your Payment Provider agree to pay the applicable Annual Fees at the time you subscribe for the Services. Future Subscription Fees will automatically be charged to you (or your Payment Provider where relevant) on an annual basis for the duration of the Period.
- (c) If we do not receive the annual fee in full on its due date for any reason, we may stop providing you with the Services until we receive payment.
- 6. YOUR OBLIGATIONS AND WARRANTIES**
- 6.1 You warrant that:
- (a) there are no legal restrictions preventing you from agreeing to these Terms;
- (b) you will cooperate with us, and provide us with information that is reasonably necessary to enable us to perform the Services as requested from time to time, in a timely manner;
- (c) the information you provide to us is true, correct and complete;
- (d) you will not infringe any third party rights in working with us and receiving the Services;
- (e) you will not commit academic misconduct, including but not limited to, plagiarism, cheating, or acting dishonestly, in regards to any assessments we conduct as part of the Services;
- (f) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that the Parties will use all reasonable efforts to resolve your concerns; and
- (g) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions.
- 7. OUR INTELLECTUAL PROPERTY**
- 7.1 We own the Intellectual Property rights in:
- (a) our pre-existing Intellectual Property, including but not limited to copyright which subsists in all creative and literary works incorporated into our pre-existing Intellectual Property; and
- (b) Intellectual Property that we create during the course of the Services, including but not limited to copyright which subsists in all creative and literary works in all Intellectual Property that we create during the course of the Services;
- unless we assign or transfer this to you. This

- Intellectual Property is protected by Australian and international laws.
- 7.2 Nothing in these Terms constitutes an assignment or transfer of our Intellectual Property rights, or a right to use our Intellectual Property, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 7.3 You must not breach our Intellectual Property rights by, including but not limited to:
- (a) altering or modifying our Intellectual Property;
 - (b) creating derivative works from the Intellectual Property; or
 - (c) using our Intellectual Property for commercial purposes such as on-sale to third parties.
- 7.4 **License:** We will license the Licensed Material to you, upon full payment of our Fees. We grant you a royalty free, non-perpetual, non-exclusive, revocable, worldwide and non-transferable licence to use the licensed material for personal purposes only.
- 7.5 This clause will survive the termination of these Terms.
- 8. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS**
- 8.1 You agree to provide information including any Intellectual Property to us to enable us to provide the Services. You:
- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
 - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
 - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 8.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
- (a) irrevocably consent to any amendment of the Intellectual Property for the purposes of us providing Services to you and to our using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
 - (b) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
 - (c) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statements.
- 8.3 This clause will survive the termination of these Terms.
- 9. CONFIDENTIAL INFORMATION**
- 9.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than where necessary, to third party suppliers, or as required by law); to use all reasonable endeavours to protect your Confidential Information from any unauthorised disclosure; and only to use your Confidential Information for the purpose for which it was disclosed by you, and not for any other purpose.
- 9.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect our Confidential Information from any unauthorised disclosure; and only to use our Confidential Information for the purpose for which it was disclosed or provided by us to you, to provide better quality services to you and not for any other purpose.
- 9.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
 - (b) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms;
 - (c) is received from a third party, except where there has been a breach of confidence; or
 - (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 9.4 This clause will survive the termination of these Terms.
- 10. FEEDBACK AND DISPUTE RESOLUTION**
- 10.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 10.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
 - (b) If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the

- mediator should be, the complainant will ask the Law Society of Queensland to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 10.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 11. TERM AND TERMINATION**
- 11.1 Either Party may terminate these Terms after the end of the Period by giving the other at least 30 days' notice in writing. If neither Party exercises their right of termination, these Terms will automatically renew, on a month by month basis, for the same Fees, or an increased Fee as agreed between the Parties.
- 11.2 Upon notice in writing of cancellation for monthly subscription, access to the resources will be revoked with no refunds.
- 11.3 For annual users, if resources have been accessed and viewed then no refunds will be provided. If no resources have been accessed and viewed, then a refund will be paid back to the institution less an administration fee of \$99.00 and handling fee of \$99.00 totalling \$198.00.
- 11.4 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 11.5 We may terminate these Terms immediately, at our sole discretion, if:
- you commit a non-remediable breach of these Terms;
 - you commit a remediable breach of these Terms and do not remedy the breach within a reasonable time as specified in the notice after receiving written notice of the breach;
 - we consider that a request for the Services is inappropriate, improper or unlawful;
 - you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - we consider that our working relationship has broken down including a loss of confidence and trust;
 - for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe; or
 - you fail to pay an amount due to us within 30 days of the due date.
- 11.6 On termination of these Terms you agree that any payments made are not refundable to you (or your Payment Provider where relevant), and you (or your Payment Provider where relevant), are to pay for all Services provided prior to termination, including Services which have been performed and have not yet been paid for by you (or your Payment Provider where relevant).
- 11.7 On termination of these Terms, you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and/or Intellectual Property.
- 11.8 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and/or Intellectual Property.
- 11.9 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 11.10 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 12. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 12.1 **Service Standard:** We will provide the Services with due care and skill, the Services will be fit for the purpose that we advertise, and we will supply the Services within a reasonable time.
- 12.2 **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 12.3 **Statutory Rights:** Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for the Services is governed solely by the ACL and these Terms.
- 12.4 **Warranties:** Except for your Statutory Rights, we exclude all express and implied warranties representations and guarantees and all

- material and work is provided to you without warranties, representations and guarantees of any kind.
- 12.5 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services during the Period, where it is affected by your delay in response or supply of incomplete or incorrect information.
- 12.6 **Referral:** We may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or their failure to advise or provide services.
- 12.7 **Money Back Guarantee:**
- (a) You may request a refund if the Services and/or the Licensed Materials were damaged, not fit-for-purpose or otherwise not of suitable quality, including but not limited to:
- the Services not covering the content or key topics outlined on the Site;
 - the presentation of the Services being significantly affected by a malfunction of our equipment or the absence of suitable Program materials; or
 - the Services being terminated for a significant length of time due to the ill health of a trainer;
- (Refundable Issue).**
- (b) We may reimburse any amount paid by you or your Payment Provider for the Fees, within 30 days, provided that we determine in our discretion that a Refundable Issue has occurred.
- (c) You must not have directly or indirectly caused the Refundable Issue (whether through action, omission or negligence).
- (d) A refund will not be provided purely as a result of your difficulty in grasping concepts or processes demonstrated as part of our Services or Licensed Materials, however, we may offer you additional assistance with such materials, at no extra cost, in our sole discretion.
- (e) No other refunds shall be offered to you except in accordance with this clause, or as required by law.
- 12.8 **Availability:** To the extent permitted by law, we exclude liability for:
- (a) the Services being unavailable; and
- (b) any Claims for economic loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services or the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 12.9 **Changes:** We reserve the right to postpone or re-schedule our Services, provided we provide you with at least 24 hours' written notice. All information we provide to you is correct at the time of publication, however, we reserve the right to change this information in our sole discretion. Updated Licensed Materials will be provided to you within 5 Business Days of such changes being made.
- 12.10 **Waiver and Release:** You grant us permission to record, via video and/or audio, yourself and associated parties (**Recordings**) for the purpose of providing the Services and for quality assurance purposes. You acknowledge and agree that we have the exclusive right to reproduce or authorise reproductions of Recordings in any manner we think fit, including for our Site, training materials or advertising purposes. We have permission to license the Recordings and to use the Recordings in any media for any purpose, which may include, but is not limited to, advertising, promotions, training and marketing. This clause will survive termination of these Terms.
- 12.11 **Disclaimers:** You agree that any information, insights or guidance contained in our Site, Services or Licensed Materials is not an attempt to provide financial advice. Use of our Site, Services or Licensed Materials does not establish a relationship with us as your financial advisor. The Licensed Materials are intended to be used as support tools for your professional practice not as professional financial advice. We do not provide any guarantees that our Services will increase your revenue or client base. Any financial information in our Site, Services or Licensed Materials, is provided simply for your convenience. The Site, Services and Licensed Materials are intended for general information purposes only.
- 12.12 **CPD:** You are responsible for complying with your own CPD obligations and requirements. It is your responsibility to manage your CPD points and retain all records of the Services we provide to you, including course certificates.

We are not responsible for assisting you to manage or comply with your CPD obligations.

- 12.13 **Limitation:** To the extent permitted by law, our total liability arising out of or in connection with the Services, however arising, including under contract, tort including negligence, in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates. Our total liability to you for all damages in connection with the Services will not exceed the price paid by you under these Terms for the 12 month period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made.

- 12.14 This clause will survive the termination of these Terms.

13. INDEMNITY

- 13.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - (b) your breach of these Terms;
 - (c) any misuse of the Services by you, your employees, contractors or agents; and
 - (d) your breach of any law or third party rights.
- 13.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

- 13.3 This clause will survive the termination of these Terms.

14. GENERAL

- 14.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 14.2 **Publicity:** You consent to us stating that we provided Services to you, including but not limited to mentioning you on our Site and in our promotional material.
- 14.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive

electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

- 14.4 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Fee.
- 14.5 **Relationship of Parties:** These Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.
- 14.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 14.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 14.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control.
- 14.9 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address provided at the time you order our Services. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 14.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.
- 14.11 **Entire Agreement:** These Terms and any document expressly referred to in them

represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.

15. DEFINITIONS

15.1 **Administration Fee** is set out on our Site.

15.2 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Queensland, Australia.

15.3 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute, whether indirect, incidental, special, consequential and/or incidental, and whether involving a third party or a Party to the Terms or otherwise.

15.4 **Commencement Date** is the later of your acceptance of these Terms or our receipt of your payment of the initial Fee.

15.5 **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".

15.6 **CPD** means continuing professional development.

15.7 **Fees** are set out on our Site.

15.8 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

15.9 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent

rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Licensed Material and Confidential Information.

15.10 **Licensed Material** means our online training and licensed materials, including templates, workbooks, training materials, videos, e-learning modules and systems, tests and exams created by us in order to provide the Services to you.

15.11 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).

15.12 **Payment Method** means PayPal or credit card through the PayPal pro system.

15.13 **Payment Provider** means any third party paying for the Services on your behalf.

15.14 **Payment Schedule** means monthly in advance by subscription.

15.15 **Period** is 12 months from the Commencement Date.

15.16 **Services** are set out on our Site and may include our Programs as described on our Site.

15.17 **Site** means our website at www.performanceadvisorygroup.com.au

15.18 **Terms** means these terms and conditions.

15.19 **Variation** means amended or additional services, including but not limited to changes to the Services or Fees.

Contact details:

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