

Perform Learn Develop Ltd's Terms and Conditions

Perform Learn Develop Ltd ("Perform Learn Develop") Company Number: **07763196** whose registered office is at The Old Workshop, 12b Kennerleys Lane, Wilmslow, Cheshire, SK9 5EQ agrees to provide ("Client") with services as defined within Clause 2.1 (the "Services") and on the terms outlined in this document ("Terms" or this "Agreement"). The Client and Perform Learn Develop each a 'Party' and together the 'Parties'.

1. Formation and period

- 1.1 The consideration of this agreement shall be deemed to be the value of the mutual undertakings and obligations it contains.
- 1.2 This agreement shall commence on TBA ("Commencement Date") and shall last for a period of 1 year from and including the Commencement Date.
- 1.3 Without affecting its other rights under this Agreement, either party can terminate this Agreement forthwith by written notice to the other if any of the following applies to the other: it commits a material breach of this Agreement; it fails or ceases to perform its duties under this Agreement to the reasonable satisfaction of the other party; or it becomes insolvent or ceases or threatens to cease to trade; or it is in breach of the applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
- 1.4 If the Client has terminated this Agreement by giving Perform Learn Develop notice under clause 1.3 then the Client will pay Perform Learn Develop for any Services which it has performed in accordance with this Agreement but not yet been paid for, on a quantum meruit basis.

2. Services

- 2.1 Mentoring software - during the Term Perform Learn Develop will provide a dedicated e-mentoring system with the following key features: mentoring portal and matching algorithm to facilitate a mentoring program; online mentoring guides and tutorials; additional e-learning materials to support career development and employability; electronic collaboration tools to support the mentor and mentee's mentoring engagement, integrated surveys and an administration function with tracking and reporting capability. The contract price includes all implementation services.
- 2.2 Without prejudice to Clause 1.4, Perform Learn Develop will use reasonable endeavours to resolve any malfunction(s) to any aspects of the Services without delay.

3. Data Protection and Confidentiality

- 3.1 Perform Learn Develop shall at all times act in compliance with the Data Protection Act 2018 ("DPA") and the GDPR and shall keep the personal data (as defined under the DPA) provided to it by the Client or the Client's users of the Services ("Personal Data") processed by Perform Learn Develop under this Agreement safe and confidential, and will ensure that only such of its employees who may be required by Perform Learn Develop to assist it in meeting its obligations under this Agreement shall have access to the Personal Data. Perform Learn Develop agrees to process all Personal Data for which the Client is the data controller (as defined by the DPA) in accordance with its obligations under the DPA. Further, Perform Learn Develop will ensure that all Personal Data is

collected only once appropriate fair processing notices (as approved by the Client) have been provided to Service users.

- 3.2 The Parties shall only transfer Personal Data to one another using secure methods.
- 3.3 Perform Learn Develop undertakes to have in place during the Term appropriate technical and organisational security measures to:
 - 3.3.1 prevent unauthorised or unlawful processing of Personal Data;
 - 3.3.2 prevent accidental loss or destruction of, or damage to, Personal Data;
 - 3.3.3 ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - 3.3.4 ensure a level of security appropriate to the nature of the Personal Data to be protected.
- 3.4 Perform Learn Develop undertakes to ensure that all of its staff with access to Personal Data have been appropriately trained to handle and process the Personal Data in accordance with its technical and organisational security measures and the DPA.
- 3.5 Personal Learn Develop undertakes to comply with its obligation to report a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data to the Information Commissioner's Office ("ICO") and (where applicable) users of the Services and shall notify the Client of any personal data breach irrespective of whether there is a requirement to notify the ICO or users of the Services.
- 3.6 On termination or expiration or discharge of this Agreement Perform Learn Develop shall erase and delete to its fullest permanent extent Personal Data as notified by the Client or return to the Client all Personal Data provided to it by the Client and/or otherwise acquired by Perform Learn Develop for the purposes of the provision of the Services under, and/or the performance of the Terms by Perform Learn Develop.
- 3.7 Except as authorised or required by a Party's duties to its professional advisers in connection with this Agreement each Party shall keep secret and shall not use or disclose, and shall use best endeavours to prevent the use or disclosure of, any of the other Party's confidential information, which includes but is not limited to information relating to the organisation, transactions, finances, technology, processes, specifications, methods, designs, formulae or other of a Party's activities or affairs or those concerning its staff and/or suppliers ("Confidential Information"). This condition shall not apply to information that becomes part of the public domain other than through a breach of this clause.
- 3.8 All pre-existing intellectual property owned by a Party shall remain that Party's property. All intellectual property rights arising out of the provision of the Services (including without limitation, copyright, patents, design rights, registered designs, trademarks, service marks and know-how and the rights to apply for any of the foregoing) shall be owned by the Party that created it.

4. Price

- 4.1 Fees for any additional services beyond those set out within the Terms and/or Schedule 1 that will be provided will be agreed in advance in writing with the Client. The fees applicable to any additional service shall be those published at the time that service is delivered save for where the Parties have agreed a price in writing.
- 4.2 All prices are stated exclusive of any VAT that will be applied at the appropriate prevailing rate applicable to any service.

- 4.3 50% of the first year fees will fall due on signature of the Service Terms. The remainder of the first year fees will be invoiced on system 'go live'. Subsequent annual licence fees will be invoiced 12 months from the date of the 2nd invoice.
- 4.4 Payment must be made within 30 days of receipt of a valid invoice.
- 4.5 If Perform Learn Develop is ready to complete Services but is prevented from doing so by unreasonable and unjustifiable delays from Client, then Perform Learn Develop shall be entitled to payment when Perform Learn Develop is ready to complete, regardless of the provision before then of the Services underlying such payment.
- 4.6 If payment is not made on the due date, Perform Learn Develop shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 4% p.a. above the base rate from time to time of Natwest Bank plc from the due date until the outstanding amount is paid in full.

5. Guarantees and Limitations on remedies

- 5.1 NONE OF THE PROVISIONS OF THIS CLAUSE 5 APPLY IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY either Party's NEGLIGENCE, OR FRAUD (including material pre-contractual misrepresentations).
- 5.2 Perform Learn Develop warrants that: it owns the Services being provided; is authorised to enter into this Agreement; and provision of the Services will not to the best of its knowledge and belief breach any third party rights (including a third party's intellectual property rights)
- 5.3 Services under these Terms will be provided using the reasonable skill and care of a professional in the area of services provided in compliance with, all applicable law and regulations (including for the avoidance of doubt, the Equality Act 2010, the Data Protection Act 2018 and the Bribery Act 2010). All other guarantees or warranties from Perform Learn Develop of any nature, whether implied or otherwise expressed, are excluded to the maximum extent permitted by law.
- 5.4 If the Client gives any item of data, branding information or promotional materials to Perform Learn Develop in connection with this agreement then the Client indemnifies Perform Learn Develop against any direct claims up to a maximum of the financial value of this Agreement in any one contract year as stated in Schedule 1 Perform Learn Develop incurs for any allegation that such thing infringes the rights (including copyright or other intellectual property rights) of any third party provided that Perform Learn Develop
 - 5.4.1 promptly notifies Client in writing of the claim; and
 - 5.4.2 allows Client to control, and cooperates with Client in, the defence and any related settlement.
 - 5.4.3 does not make any settlement, compromise or prejudicial admission in relation to such claim without the prior consent of Client.
- 5.5 In view of the nature of the area of the Services, the Price, and the guarantees given, it is agreed that:
 - 5.5.1 Perform Learn Develop does not guarantee Services will achieve any particular result, nor that they will be free from minor defects.
- 5.6 Except as expressly provided otherwise in these terms:
 - 5.6.1 Except for clause 5.3 neither party shall be liable to the other party by reason of any representation, warranty, condition or other term, or any duty at common law, or under the express terms of these terms, for any loss of profit or loss of opportunity, or failure to make savings or any indirect, special or

- consequential loss, damage, costs, expenses or other claims which arise out of or in connection with the provisions of this agreement; and
- 5.6.2 Without prejudice to clause 5.4 (in respect of the client only) the entire liability of either party under or in connection with these terms shall not exceed the aggregate limit specified in the relevant party's insurance policy.
- 5.7 Neither Party shall be liable to the other Party or be deemed to be in breach of these Terms by reason of any delay in performing, obligations under these Terms if the delay was due to any cause beyond the Party's reasonable control (excluding delays caused by a Party's sub-contractors or permitted agents), but nothing in this clause shall limit the obligations of either Party to use its best endeavours to fulfil its obligations under this Agreement. Where such circumstances continue for more than 30 days the parties may agree an extended performance period or either Party may terminate the Agreement forthwith by written notice.
- 5.8 Each Party shall at all times procure and maintain, at its own cost with a reputable insurer, all such insurance cover as would be usual or prudent for a comparable organisation to maintain in respect of the activities carried on by it hereunder. On request, either Party will provide to the other a copy of the certificate(s) of insurance reflecting such coverage.

6. General

- 6.1 These Terms constitute the entire agreement between the parties, and supersede any previous agreement or understanding.
- 6.2 No amendment or variation of this Agreement will be valid unless confirmed as agreed in writing by an authorised signatory of each Party.
- 6.3 Nothing in these Terms is intended for the benefit of or to be enforceable by any third parties and the provisions of the Contracts (Right of Third Parties) Act 1999 are expressly excluded.
- 6.4 This Agreement is personal to the parties and may not be assigned by either Party without the other's consent, not to be unreasonably withheld. Perform Learn Develop may fulfil its obligations under these Terms by using third parties, although shall not thereby be relieved of those obligations itself.
- 6.5 The Parties shall not unlawfully discriminate either directly or indirectly on such grounds as gender, race, colour, ethnic or national origin, disability, sexual orientation, gender reassignment, marriage or civil partnership status, pregnancy or maternity, religion or belief or age within the meaning of the Equality Act 2010 ("EA") or any re-enactment thereof and all legislation and directives relating to equality and discrimination. Perform Learn Develop warrants that the Website will comply with appropriate accessibility standards and that the Services will be delivered in compliance with the EA.
- 6.6 If a Party receives a request under the Data Protection Act 2018 to disclose any information that, under this Agreement, is Confidential Information, it will notify the other Party and will consult with the other Party. The other Party will respond to the Party within 5 days after receiving the Party's notice if that notice requests the other Party to provide information to assist the Party to determine whether or not an exemption to the Data Protection Act 2018 applies to the information requested under that Act.
- 6.7 English law shall apply to these Terms, and the parties agree to submit all disputes between them to the exclusive jurisdiction of the English courts.