

WEBSITE TERMS AND CONDITIONS OF USE

1. About the Website

- (a) Welcome to performanceadvantage.com.au (the '**Website**'). The Website provides information for and the supply of HR services within Australia (the '**Services**').
- (b) The Website is operated by Performance Advantage Pty Ltd ("Performance Advantage"). Access to and use of the Website, or any of its associated Products or Services, is provided by Performance Advantage. Please read these terms and conditions (the '**Terms** ') carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of Services, immediately.
- (c) Performance Advantage reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Performance Advantage updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

2. Acceptance of the Terms

- (a) You accept the Terms by remaining on the Website. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by Performance Advantage in the user interface.

3. Registration to use the Services

- (a) In order to access the Services, you must first register for an account through the Website (the '**Account**').
- (b) As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including:
 - (i) Email address
 - (ii) Preferred username
 - (iii) Mailing address
 - (iv) Telephone number
 - (v) Password

- (c) You warrant that any information you give to Performance Advantage in the course of completing the registration process will always be accurate, correct and up to date.
- (d) Once you have completed the registration process, you will be a registered member of the Website ('**Member** ') and agree to be bound by the Terms.
- (e) You may not use the Services and may not accept the Terms if:
 - (i) you are not of legal age to form a binding contract with Performance Advantage; or
 - (ii) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

4. Your obligations as a Member

- (a) As a Member, you agree to comply with the following:
 - (i) you will use the Services only for purposes that are permitted by:
 - (A) the Terms; and
 - (B) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
 - (ii) you have the sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Services;
 - (iii) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify Performance Advantage of any unauthorised use of your password or email address or any breach of security of which you have become aware;
 - (iv) access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of Performance Advantage providing the Services;
 - (v) you will not use the Services or the Website in connection with any commercial endeavours except those that are specifically endorsed or approved by the management of Performance Advantage;
 - (vi) you will not use the Services or Website for any illegal and/or unauthorised use which includes collecting email addresses of Members by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Website;
 - (vii) you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Website without notice and may result

in termination of the Services. Appropriate legal action will be taken by Performance Advantage for any illegal or unauthorised use of the Website; and

- (viii) you acknowledge and agree that any automated use of the Website or its Services is prohibited.

5. Trade Terms and Conditions

By making any order for Services or associated products, you agree to be bound by the Trade Terms and Conditions. The Trade Terms and Conditions are published on this Website or will be supplied to you and may be altered at any time by Performance Advantage and the current Trade Terms and Conditions will apply to any purchases made at the time.

6. Copyright and Intellectual Property

- (a) The Website, the Services and all of the related products of Performance Advantage are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services and compilation

of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, Website, code, scripts, design elements and interactive features) or the Services are owned or controlled for these purposes, and are reserved by Performance Advantage or its contributors.

- (b) All trademarks, service marks and trade names are owned, registered and/or licensed by Performance Advantage, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a Member to:
- (i) use the Website pursuant to the Terms;
 - (ii) copy and store the Website and the material contained in the Website in your device's cache memory; and
 - (iii) print pages from the Website for your own personal and non-commercial use.

Performance Advantage does not grant you any other rights whatsoever in relation to the Website or the Services. All other rights are expressly reserved by Performance Advantage.

- (c) Performance Advantage retains all rights, title and interest in and to the Website and all related Services. Nothing you do on or in relation to the Website will transfer any:
- (i) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
 - (ii) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
 - (iii) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process),

to you.

- (d) You may not, without the prior written permission of Performance Advantage and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

8. Privacy

- (a) Performance Advantage takes your privacy seriously and any information provided through your use of the Website and/or Services are subject to World

Performance Advantage's Privacy Policy, which is also available on the Website.

9. General Disclaimer

- (a) Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- (b) Subject to this clause, and to the extent permitted by law:
 - (i) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
 - (ii) Performance Advantage will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- (c) Use of the Website and the Services is at your own risk. Everything on the Website and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Performance Advantage make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of Performance Advantage) referred to on the Website, includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
 - (i) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
 - (ii) the accuracy, suitability or currency of any information on the Website, the Services, or any of its Services related products (including third party material and advertisements on the Website);
 - (iii) costs incurred as a result of you using the Website, the Services or any of the products of Performance Advantage; and
 - (iv) the Services or operation in respect to links which are provided for your convenience.
- (d) The provisions of these Terms includes any use of the Cable Calculator and the Mobile Application of Performance Advantage.

10. Limitation of liability

- (a) Performance Advantage's total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.
- (b) You expressly understand and agree that Performance Advantage, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.
- (c) The provisions of these Terms includes any use of the Cable Calculator and the Mobile Application.

11. Acknowledgements

- (a) Any and all information or result provided by Performance Advantage is for information purposes only and is not intended to be a substitute for any engineering, environmental or legal advice.
- (b) By using Performance Advantage Website, Cable Calculator, the Mobile App or any other intellectual property of Performance Advantage you acknowledge and accept that the any calculations are solely based on information provided by you under your own responsibility as well as that the use by you and is made solely at your own risk.
- (c) No warranty of any kind, either expressed or implied, is hereby made by Performance Advantage as to the completeness, exactitude, fitness for any particular purpose or any use of results based on information provided by you.
- (d) Performance Advantage hereby expressly disclaims any and all liability for any costs, expenses, losses or damages (direct or indirect) incurred by or arising from any reliance on the information or result provided by Performance Advantage.
- (e) By using Performance Advantage Website, Cable Calculator, the Mobile App or any other intellectual property of Performance Advantage you also agree to indemnify and hold harmless Performance Advantage for any costs, expenses, losses or damages (direct or indirect) incurred by or arising from any third party claims stemming from their use.

12. Indemnity

- (a) You agree to indemnify Performance Advantage, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:
 - (i) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with Your Content;
 - (ii) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so; and/or
 - (iii) any breach of the Terms.

13. Dispute Resolution

- (a) **Compulsory:**

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

(b) **Notice:**

A party to the Terms claiming a dispute ('**Dispute**') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

(c) **Resolution:**

On receipt of that notice ('**Notice**') by that other party, the parties to the Terms ('**Parties** ') must:

- (i) Within 30 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (ii) If for any reason whatsoever, 30 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Resolution Institute or his or her nominee;
- (iii) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;

(iv) The mediation will be held in Melbourne, Australia.

(d) **Confidential:**

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

(e) **Termination of Mediation:**

If 30 have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

14. Venue and Jurisdiction

(a) The Services offered by Performance Advantage is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Victoria, Australia.

15. Governing Law

(a) The Terms are governed by the laws of Victoria, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Victoria, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

16. Independent Legal Advice

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

17. Severance

(a) If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.