



## Performance Matters

### High Performance Team Training (HPT)

#### TERMS AND CONDITIONS

PLEASE READ TERMS AND CONDITIONS CAREFULLY BEFORE USING ANY OF THE ONLINE TRAINING SERVICES OFFERED BY PERFORMANCE MATTERS ("PM") DESCRIBED BELOW. YOUR COMPANY ("YOU"), BY INITIALLYING THE BOX ON THE HIGH PERFORMANCE TEAM (HPT) AGREEMENT, ACKNOWLEDGE THAT YOU READ AND UNDERSTAND THESE TERMS AND CONDITIONS AND AGREE TO BE BOUND BY THEM, WHICH MAY BE UPDATED FROM TIME TO TIME WITHOUT NOTICE TO YOU.

- 1. Online Training Services.** Subject to the terms of this Agreement, PM hereby grants to you a limited, non-transferable, royalty-free, and non-exclusive license for the High Performance Team Training & E-Learning System ("HPT") and content. Use shall be strictly in accordance with the terms of the High Performance Team (HPT) Agreement. You are responsible for providing and maintaining all computer equipment and software and telecommunications services necessary to access HPT. Nothing in these Terms and Conditions grants or transfers to you or to any third party any ownership rights in HPT, including the software and other intellectual property rights related to HPT. Except as specifically set forth below, PM owns and retains all right, title, and interest in HPT and any and all related materials.
- 2. Payment.** For access to and use of HPT, you agree to pay the amounts set forth in PM's High Performance Team (HPT) Agreement for the number of seats for which you are purchasing a license. You hereby acknowledge and agree that the fees are payable for each seat upon acceptance of this Agreement and will be charged based on the agreed payment details whether you use the Services or not. Payment details are provided on the High Performance Team (HPT) Agreement. You agree to pay all attorney and collection fees arising from efforts to collect any past due amounts from you. PM may increase rates at any time provided notification is given thirty (30) calendar days prior to the rate increase.
- 3. Restrictions of Use.** All pages within HPT and any material made available for download (collectively "HPT") are the property of PM and/or its affiliates. HPT is protected by federal and international copyright and trademark laws and no portion of the materials on these pages may be reprinted, republished, modified, or distributed in any form without the express prior written permission of PM. Access to HPT is for your Company use and may not be shared with any third party. Any rights not expressly granted by these Terms and Conditions are reserved by PM.
- 4. Content Availability.** Content will be accessible to you via the Internet twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of Services due to causes beyond the control of PM or which are not reasonably foreseeable by PM, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures.
- 5. Modifications and Changes to Services and/or Website.** Content, availability and access and all other features, attributes or aspects of HPT and Website are subject to change, modification, additions or deletions at any time without notice in PM's sole discretion.
- 6. Links or Pointers to Other Sites.** PM makes no representations whatsoever about any other website that you may access through HPT. When you access a non-PM Website, you understand that it is independent from PM and PM has no control over the content on that website. In addition, a hyperlink to a non-PM website does not mean that PM endorses or accepts any responsibility for the content, or the use, of the linked website. It is up to you to take precautions to ensure that whatever you select for your use or download is free of such items as viruses, worms, trojan horses, and other items of a destructive nature.
- 7. Prohibited Activities.** You may not modify, reverse engineer, or decompile the Content or Services or create derivative works based on the Content or Services. You may not distribute, rent, lease, sell, license, or otherwise transfer rights in HPT to any other person or entity or make any other commercial use of HPT. Except for downloading of files, which is authorized, you may not save or reproduce the Content to your computer(s) or any other storage medium.
- 8. Disclaimer of Warranties.** HPT IS PROVIDED AS-IS, WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PM DOES NOT WARRANT THAT HPT WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF HPT WILL BE UNINTERRUPTED OR

ERROR-FREE, OR THAT DEFECTS IN HPT WILL BE CORRECTED. PM DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF HPT OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PM OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. YOU ARE ENTIRELY RESPONSIBLE FOR AND ASSUME ALL RISK FOR USE OF HPT. PM IS NOT RESPONSIBLE FOR TRANSMISSION ERRORS OR CORRUPTION OR SECURITY OF INFORMATION CARRIED OVER TELECOMMUNICATION LINES.

9. Limitation of Liability. IN NO EVENT SHALL PM BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR RELATED IN ANY WAY WITH TO THIS AGREEMENT OR HPT, OR FOR ANY CLAIM BY ANY THIRD PARTY (INCLUDING FOR INTELLECTUAL PROPERTY INFRINGEMENT).
10. Exclusive Remedy. Your sole right and exclusive remedy for breach of this Agreement by PM if you are dissatisfied for any reason with HPT is to terminate this Agreement as provided in this Agreement.
11. Term and Termination. The details of term shall be defined in the High Performance Team (HPT) Agreement. Term shall continue for the length of time established, unless earlier terminated as provided in these Terms and Conditions. After completion of the initial term, the Agreement shall automatically renew on a month to month basis, unless otherwise noted in the High Performance Team (HPT) Agreement, unless written notice of the intent not to renew this Agreement is tendered by either party with no less than thirty (30) days' notice. Subscriber and renewal fees are non-refundable, and pro-rated fees or credits will not be issued upon cancellation of subscription by subscriber, even if cancellation occurs prior to anniversary date. Subscriber may terminate this Agreement upon PM's failure to cure an ongoing, material breach of this Agreement within thirty (30) days after giving PM written notice of such material breach.

PM may at any time and without advance notice modify or restrict your use of HPT, or terminate this Agreement if PM determines, in its sole discretion, that your use of HPT: (i) violates PM's Terms of Use; (ii) violates any laws, regulations, court orders, or other governmental request or order which requires immediate action; (iii) violates any intellectual property rights of PM or a third party; (iv) is disruptive or causes a malfunction of HPT; (v) may expose PM to potential legal liability; or (vi) if you fail to timely pay any amounts required under this Agreement.

12. Rights and Duties Upon Termination. Upon termination of this Agreement, all rights to HPT terminate immediately and you must remove any HPT content from your computer and any hard copies of the Content from your Company immediately. All confidentiality related to HPT continues. You remain liable for the full charge(s) for all unexpired Term(s).
13. Use of Free Tutorials. If you elect to use HPT as a guest by using one or more of the free tutorials offered from time to time on PM's website or direct, all of the terms and conditions of this Agreement will be applicable to such use, excluding however, any terms related to payment therefore.
14. Liquidated damages. Because it may be difficult or impossible to determine the damages caused if a party violates the confidentiality obligations herein, the party violating the confidentiality obligations herein shall pay the other party liquidated damages in the amount of \$20,000 for each and every violation.
15. Choice of Law, Venue and Jurisdiction. This Agreement is entered into in the State of South Carolina and shall be governed by and construed in accordance with the laws of the State of South Carolina, exclusive of its choice of law rules. Each party to this Agreement submits to the exclusive jurisdiction and venue of the state and federal courts sitting the State of South Carolina, and waives any jurisdictional, venue, or inconvenient forum objections to such courts. In any action to enforce this Agreement, the prevailing party will be entitled to costs and attorneys' fees. In the event that any of the terms and conditions are held by a court or other tribunal of competent jurisdiction to be unenforceable, those provisions shall be limited or eliminated to the minimum extent necessary, so that the remaining terms and conditions shall otherwise remain in full force and effect.
16. General Terms. Your rights and obligations under this Agreement may not be assigned or transferred without the written permission of PM and any assignment or transfer in violation of this provision shall be null and void. If any provision of these Terms and Conditions is determined to be invalid, all other provisions will remain in force. Notice or other communication between you, and PM may be given by conventional first-class mail or by email. Notices sent by first-class mail are effective on the fifth day after mailing. Notices sent by email are effective the next business day after they are sent.