

## Positive Duty Platform Terms and Conditions

Welcome to Positive Duty! We provide a cloud-based platform (**Platform**) where you can view on-demand videos and learning content.

In these Terms, when we say **you** or **your**, we mean both you and any entity you are authorised to represent (such as your employer). When we say **we**, **us**, or **our**, we mean Positive Duty Pty Ltd (ACN 672 613 115).

These Terms form our contract with you, and set out our obligations as a service provider and your obligations as a customer. You cannot use our Services unless you agree to these Terms.

Some capitalised words in these Terms have defined meanings, and each time that word is used in these Terms it has the same meaning. You can find a list of the defined words and their meaning at the end of these Terms.

For questions about these Terms, or to get in touch with us, please email: [admin@positiveduty.com.au](mailto:admin@positiveduty.com.au).

*These Terms were last updated on 4 July 2024.*

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### OUR DISCLOSURES

Please read these Terms carefully before you accept. We draw your attention to:

- our privacy policy (on our website) which sets out how we will handle your personal information;
- clause 1.3 (Variations) which sets out how we may amend these Terms;
- clause 4 (Subscription) which sets out important information about your Subscription, including whether you can cancel your Subscription and whether your Subscription auto-renews; and
- clause 10 (Liability) which sets out exclusions and limitations to our liability under these Terms.

We may receive a benefit (which may include a referral fee or a commission) should you visit certain third party websites through a link on our Platform, or for featuring certain goods or services on our Platform.

**These Terms do not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.**

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### 1. Engagement and Term

- 1.1 These Terms apply from when you sign up for an Account, until the date on which your Account is terminated in accordance with these Terms. We grant you a right to use our Services for this period of time only.
- 1.2 You must be at least 16 years old to use our Platform.
- 1.3 **Variations:** We may amend these Terms at any time, by providing written notice to you. By clicking "I accept" or continuing to use our Platform after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you may close your Account and cancel your Subscription with effect from the date of the change in these Terms by providing written notice to us. If you cancel your Subscription:
  - (a) you will no longer be able to access our Services (including our Platform) on and from the date of cancellation; and
  - (b) if you have paid Subscription Fees upfront, you will be issued a pro-rata refund based on the portion of the Subscription Period remaining.

### 2. Our Services

- 2.1 We provide the following services to you:
  - (a) access to our Platform;
  - (b) access to our troubleshooting support (**Support Services**); and
  - (c) access to our helpdesk and advice portal (**Advice Portal**), where you can submit queries and receive guidance from our advisors on general workplace matters (**Advice Services**),  
(collectively, our **Services**).
- 2.2 If you require Support Services, you may request these by getting in touch with us through our Platform.
- 2.3 Unless we agree otherwise, Support Services cannot be used to support any other products or services, and does not include training, installation of software or hardware, software development or the modification, deletion or recovery of data or any on-site services.
- 2.4 Where we require access to your premises or computer systems in order to provide our Services, you agree to provide us with such access free from risk to the safety of our employees and contractors.

- 2.5 Our Services including the Advice Services provided through the Advice Portal are for general informational purposes only and do not constitute financial, legal, risk management or other professional advice. You should seek independent professional advice before acting on any information or guidance provided through the Advice Services.
- 2.6 We will not be responsible for any other services unless expressly set out on in these Terms or on our Platform.
- 2.7 **Additional Services:** If you require additional services, we may, in our sole discretion, provide such additional services (to be scoped and priced in a separate contract provided by us).
- 2.8 **Third Party Products or Services:** Where you engage third parties to operate alongside our Services (for example, any third-party software systems you wish to integrate with our Platform), those third parties are independent of us and you are responsible for (meaning we will not be liable for) the goods or services they provide, unless we expressly agree otherwise under clause 2.7.
- 2.9 We provide the Advice Services without any warranties or representations whatsoever, whether express or implied. We expressly disclaim any implied warranties of merchantability or fitness for a particular purpose with respect to the Advice Services.

### 3. Account

- 3.1 You must sign up for an Account in order to access and use our Platform.
- 3.2 You may invite Authorised Users to access and use our Services under your Account. Each of your Authorised Users will require a login (which is linked to your Account), in order to access and use our Platform. You are responsible for ensuring that your Authorised Users comply with these Terms. You may change who your Authorised Users are at any time through your Account, and what access rights or permissions they have when using our Platform. Any limitations on the number of Authorised Users you can have will be set out in your Account or on our Platform.
- 3.3 While you have an Account with us, you agree to (and to ensure your Authorised Users agree to):
- (a) keep your information up-to-date (and ensure it remains true, accurate and complete);
  - (b) keep usernames and passwords secure and confidential, and protect them from misuse or being stolen; and
  - (c) notify us if you become aware of, or have reason to suspect, any unauthorised access to your Account or any logins linked to your Account.

### 4. Subscriptions

- 4.1 Your access to and use of the Platform is governed by the subscription terms set forth in the Client Agreement between you and us. The Client Agreement takes precedence over these Terms with respect to subscription details, including Subscription Fees, Subscription Periods, payment terms, and any auto-renewal or cancellation provisions.
- 4.2 You must maintain an active and paid Subscription under the Client Agreement to continue accessing and using the Platform and Services.

### 5. Platform Licence

- 5.1 While you have an Account, we grant you and your Authorised Users a right to use our Platform (which may be suspended or revoked in accordance with these Terms). This right cannot be passed on or transferred to any other person and, if you have a Subscription, will also be subject to the conditions of your Subscription (as set out on our Platform or in your Account).
- 5.2 You must not (and you must ensure that your Authorised Users do not):
- (a) access or use our Platform in any way that is improper or breaches any laws, infringes any person's rights (for example, intellectual property rights and privacy rights), or gives rise to any civil or criminal liability;
  - (b) interfere with or interrupt the supply of our Platform, or any other person's access to or use of our Platform;
  - (c) introduce any viruses or other malicious software code into our Platform;
  - (d) use any unauthorised or modified version of our Platform, including but not limited to for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to our Platform;
  - (e) attempt to access any data or log into any server or account that you are not expressly authorised to access;
  - (f) use our Platform in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing;
  - (g) circumvent user authentication or security of any of our networks, accounts or hosts or those of any third party; or
  - (h) access or use our Platform to transmit, publish or communicate material that is, defamatory, offensive, abusive, indecent, menacing, harassing or unwanted.

## 6. Availability, Disruption and Downtime

- 6.1 While we strive to always make our Services available to you, we do not make any promises that these will be available 100% of the time. Our Services may be disrupted during certain periods, including, for example, as a result of scheduled or emergency maintenance.
- 6.2 Our Services (including our Platform) may interact with, or be reliant on, products or services provided by third parties, such as cloud hosting service providers. To the maximum extent permitted by law, we are not liable for disruptions or downtime caused or contributed to by these third parties.
- 6.3 We will try to provide you with reasonable notice, where possible, of any disruptions to your access to our Services.

## 7. Intellectual Property and Data

- 7.1 We own all intellectual property rights in our Services (including our Platform). This includes how our Platform looks and functions, as well as our copyrighted works, trademarks, inventions, designs and other intellectual property. You agree not to copy or otherwise misuse our intellectual property without our written permission (for example, to reverse engineer or discover the source code of our intellectual property), and you must not alter or remove any confidentiality, copyright or other ownership notice placed on our Platform.
- 7.2 We own or have licenses to all content displayed on our Platform (**Content**). You do not have any ownership rights in any Content on our Platform. Subject to your compliance with these Terms, we grant you a non-exclusive, revocable, non-sublicensable and non-transferable licence to view and download the Content, solely for your own internal business use.
- 7.3 You must not (and must ensure that your Authorised Users do not), unless expressly authorised by us or these Terms:
  - (a) circumvent or disable any content protection system or technical protection measure used in our Platform or the Content;
  - (b) copy or modify, in whole or in part, any of the Content;
  - (c) reproduce, retransmit, distribute, disseminate, sell, publish broadcast or otherwise commercialise the Content to any third party; or
  - (d) breach, or allow any third party to breach, any intellectual property rights in the Content.
- 7.4 We may use any feedback or suggestions that you give us in any manner which we see fit (for example, to develop new features), and no benefit will be owed to you as a result of any use by us of your feedback or suggestions.
- 7.5 When you use our Services, we may create anonymised statistical data from your usage of our Services (for example, through aggregation). Once anonymised, we own that data and may use it for our own purposes, such as to provide and improve our Services, to develop new services or product offerings, to identify business trends, and for other uses we communicate to you. This may include making such anonymised data publicly available, provided it is not compiled using a sample size small enough to make your data or identity identifiable.

## 8. Confidential Information and Personal Information

- 8.1 While using our Services, you may share confidential information with us, and you may become aware of confidential information about us. You agree not to use our confidential information, and to take reasonable steps to protect our confidential information from being disclosed without our permission, and we agree to do the same for your confidential information. This also means making sure that any Authorised Users, employees, contractors, professional advisors or agents of ours or yours only have access to confidential information on a 'need-to-know basis' (in other words, the disclosure is absolutely necessary), and that they also agree to not misuse or disclose such confidential information.
- 8.2 However, either you or we may share confidential information with legal or regulatory authorities if required by law to do so.
- 8.3 We collect, hold and disclose and use any Personal Information you provide to us in accordance with our privacy policy, available on our website, and applicable privacy laws.
- 8.4 You must only disclose Personal Information to us if you have the right to do so (such as having the individual's express consent).
- 8.5 We may need to disclose Personal Information to third parties, such as our related companies or our service providers (for example, IT and administrative service providers and our professional advisors).
- 8.6 Where we are required by law to report on our activities, you acknowledge that from time to time we may request certain information from you in order to meet our requirements, and you agree to provide us with such information within the timeframes reasonably requested by us.

## 9. Consumer Law Rights

- 9.1 In some jurisdictions, you may have guarantees, rights or other remedies provided by law (**Consumer Law Rights**), and these Terms do not restrict your Consumer Law Rights. We will only be bound by your Consumer Law Rights and the express wording of these Terms.
- 9.2 Subject to your Consumer Law Rights, we do not provide a refund for a change of mind or change in circumstance.
- 9.3 If you accept these Terms in Australia, nothing in these Terms should be interpreted to exclude, restrict or modify the application of, or any rights or remedies you may have under, any part of the Australian Consumer Law (as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)). If our Platform is not ordinarily used for personal, household or domestic use, our liability for a breach of your Consumer Law Rights is limited to either resupplying our Services, or paying the cost of having our Services resupplied.

## 10. Liability

- 10.1 To the maximum extent permitted by law, we will not be liable for, and you release us from liability for, any Liability caused or contributed to by, arising from or in connection with:
- (a) your computing environment (for example, your hardware, software, information technology and telecommunications services and systems); or
  - (b) any use of our Services by a person or entity other than you or your Authorised Users.
- 10.2 Regardless of whatever else is stated in these Terms, to the maximum extent permitted by law:
- (a) neither we or you are liable for any Consequential Loss;
  - (b) a party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the actions (or inactions) of the other party, including any failure by the other party to mitigate its loss;
  - (c) (where our Services are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and
  - (d) our aggregate liability to you for any Liability arising from or in connection with these Terms will be limited to the amount of any Subscription Fees paid by you to us in respect of the supply of the relevant Services to which the Liability relates, or if you do not have a Subscription, to AU\$1,000.

## 11. Notice Regarding Apple

- 11.1 To the extent that you are using or accessing our Platform on an iOS device through a mobile application from the Apple App Store, you further acknowledge and agree to the terms of this clause. You acknowledge that these Terms are between you and us only, not with Apple Inc. (Apple), and Apple is not responsible for our Platform and any content available on our Platform.
- 11.2 Apple has no obligation to furnish you with any maintenance and support services with respect to our Platform.
- 11.3 If our mobile application fails to conform to any applicable warranty, you may notify Apple and Apple will refund the purchase price of the mobile application to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the mobile application and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our responsibility.
- 11.4 Apple is not responsible for addressing any claims by you or any third party relating to our mobile application or your use of our mobile application, including but not limited to: (1) product liability claims; (2) any claim that our mobile application fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation.
- 11.5 Apple is not responsible for the investigation, defence, settlement and discharge of any third-party claim that our mobile application infringes that third party's intellectual property rights.
- 11.6 You agree to comply with any applicable third-party terms when using our mobile application.
- 11.7 Apple and Apple subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary of these Terms.
- 11.8 You hereby represent and warrant that: (1) 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 (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

## 12. Suspension and Termination

- 12.1 We may suspend your access to our Services where we reasonably believe there has been any unauthorised access to or use of our Services (such as the unauthorised sharing of login details for our Platform). If we suspend your access to our Services, we will let you know within a reasonable time of doing so, and we will work with you to resolve the matter, or if it cannot be resolved, then we may terminate your Account and your access to our Services will end.

- 12.2 We may terminate these Terms (meaning you will lose access to our Services, including access to your Account, and any Subscription will be cancelled) if:
- (a) you fail to pay your Subscription Fees when they are due;
  - (b) you or your Authorised Users breach these Terms and do not remedy that breach within 14 days of us notifying you of that breach;
  - (c) you or your Authorised Users breach these Terms and that breach cannot be remedied; or
  - (d) you experience an insolvency event (including but not limited to bankruptcy, receivership, voluntary administration, liquidation, or entering into creditors' schemes of arrangement).
- 12.3 You may terminate these Terms if:
- (a) we breach these Terms and do not remedy that breach within 14 days of you notifying us of that breach; or
  - (b) we breach these Terms and that breach cannot be remedied, and
- if you have paid Subscription Fees upfront, you will be issued a pro-rata refund of any unused Subscription Fees based on the portion of the then-current Subscription Period remaining.
- 12.4 You may also terminate these Terms at any time by notifying us through your Account or to our email for notices (as set out in clause 13.8), and if you have a Subscription, termination will take effect at the end of your current Subscription Period.
- 12.5 Termination of these Terms will not affect any other rights or liabilities that we or you may have.

### 13. General

- 13.1 **Assignment:** You may not transfer or assign these Terms (including any benefits or obligations you have under these Terms) to any third party without our prior written consent. We may assign or transfer these Terms to a third party, or transfer any debt owed by you to us to a debt collector or other third party.
- 13.2 **Disputes:** Neither we or you may commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) unless we and you first meet (in good faith) to resolve the Dispute. Nothing in this clause will operate to prevent us or you from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- If the Dispute is not resolved at that initial meeting:
- (a) where you are resident or incorporated in Australia, refer the matter to mediation, administered by the Australian Disputes Centre in accordance with Australian Disputes Centre Guidelines for Commercial Mediation; or
  - (b) where you are not resident or incorporated in Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration, with such arbitration to be conducted in Brisbane, Queensland, before one arbitrator, in English and in accordance with the ACICA Arbitration Rules.
- 13.3 **Events Outside Our Control:** We will not be liable for any delay or failure to perform our obligations (including our Services), if such delay or failure is caused or contributed to by an event or circumstance beyond our reasonable control.
- 13.4 **Governing law:** These Terms are governed by the laws of Queensland, and any matter relating to these Terms is to be determined exclusively by the courts in Queensland and any courts entitled to hear appeals from those courts.
- 13.5 **Illegal Requests:** We reserve the right to refuse any request for or in relation to our Services that we deem inappropriate, unethical, unreasonable, illegal or otherwise non-compliant with these Terms.
- 13.6 **Marketing:** You agree that we may send you electronic communications about our products and services. You may opt-out at any time by using the unsubscribe function in our electronic communications.
- 13.7 **Nature of Legal Relationship:** These Terms do not create, and should not be interpreted so as to create, a partnership, joint venture, employment or agency relationship between us and you.
- 13.8 **Notices:** Any notice you send to us must be sent to the email set out at the beginning of these Terms. Any notice we send to you will be sent to the email address registered against your Account.
- 13.9 **Publicity:** Subject to your written consent, you agree that we may advertise or publicise the fact you are a customer of ours, for example on our website or in our promotional material, and you grant us a right to display and use your logo and branding solely for that purpose.
- 13.10 **Survival:** Clauses 7 to 12 will survive the termination or expiry of these Terms.
- 13.11 **Third Party Sites:** Our Platform may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations in relation to the suitability of those websites. If you purchase goods or services from a third party website linked from our Platform, those goods or services are being provided by that third party, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third party websites through a

link on our Platform, or for featuring certain goods or services on our Platform. We will make it clear by notice to you which (if any) goods or services, or website links, we receive a benefit from by featuring them on our Platform.

## 14. Definitions

### 14.1 In these Terms:

**Account** means an account accessible to the individual or entity who signed up to our Services, under which Authorised Users may be granted with access.

**Authorised User** means a user that you have invited to use the Platform through your Account.

**Client Agreement** means the services agreement Parties have agreed to separately.

**Consequential Loss** includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us any amounts for access to or use of our Services (including our Platform) will not constitute "Consequential Loss".

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or us or you or otherwise.

**Personal Information** means any information or opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a tangible form or not.

**Platform** means our cloud-based platform that we provide you with access to as part of the Services.

**Services** means the services we provide to you, as detailed in clause 2.1.

**Subscription** means the Subscription plan you have chosen through our Platform, which you use to access certain features and benefits.

**Subscription Fees** means the fees you pay to us to access your chosen Subscription as set out in the Client Agreement.

**Subscription Period** means the duration of your Subscription (such as monthly, annually, or as otherwise set out on our Platform).