

Glow International Terms and Conditions

Online Academy

1. Introduction

- 1.1 Glow International Pty Ltd as trustee for the Glow International Trust (ABN 22 177 389 006) ("Glow International") owns and operates the Website and Online Academy to provide Subscribers with the Services.
- 1.2 These Terms and Conditions together with any documents referred to within them apply to the Subscriber's use of and Subscription to the Website and any Glow Services. By browsing the Glow Website, signing up for or using Glow Services through the Online Academy, the Subscriber acknowledges having read and agrees to be bound by these Terms and Conditions which constitute an agreement between the parties.

2. Registration of account

- 2.1 To register an account with Glow, the Subscriber must follow the instructions on the Website and the Sign-Up Agreement and provide the required Data.
- 2.2 Glow, in their absolute discretion, may refuse to allow any person, business or organisation to register or create an account with us or cancel or suspend any existing account.

3. Term

- 3.1 Subscription to the Website and the Online Academy is for the Minimum Term.
- 3.2 Services purchased by the Subscriber commence on the start date specified upon payment of the Fee.
- 3.3 At the end of the Term, unless the Subscriber has given notice in writing to Glow no less than 14 days before the end of the Term that it wishes to cancel the Subscription, the Subscription will automatically continue a month to month basis.

4. Use of our Services

- 4.1 During the Term, Glow grants to the Subscriber a limited, non-transferable, non-sub licensable, non-exclusive right to the Services, including the Website and Online Academy.
- 4.2 The Subscriber agrees to use and access the Services, Website and Online Academy in compliance with all applicable local, state, national, and international laws, rules and regulations. The Subscriber must not, and must not agree to, and must not authorise, encourage or permit any third party to:
 - (a) use the Services, Website or Online Academy to upload, transmit or otherwise distribute any content that is unlawful, defamatory, harassing, abusive, fraudulent, obscene, threatening, abusive, hateful, contains viruses, or is otherwise objectionable as reasonably determined by Glow;
 - (b) use the Services, Website or Online Academy for any fraudulent or inappropriate purpose;
 - (c) duplicate, make derivative works of, reproduce or exploit any part of the Services, Website or Online Academy without the prior express written permission of Glow;
 - (d) use any robot, spider, other automated device, or manual process to monitor or copy any content from the Services, Website or Online Academy other than downloading materials and content specifically designed for that purpose; or
 - (e) rent, lease, distribute, or resell the Intellectual Property contained within the Services, Website or Online Academy, or use the same for developing a competitive solution or contract with a third party to do so.
- 4.3 Glow will:
 - (a) undertake that the Services will be provided to the Subscriber and performed with reasonable skill and care.

- (b) provide the Subscriber with basic support in connection with your use of the Services and access to the Website and Online Academy, at no additional charge.
 - (c) not warrant that the Subscriber's use and access to the Services, Website and Online Academy will be uninterrupted or error-free; nor that the Services, and/or the information obtained by the Subscriber through the Services will meet the Subscriber's requirements.
 - (d) Not be responsible for any delays, delivery failures, or other loss or damage resulting from the transfer of Data over communications networks and facilities, including the internet, and the Subscriber acknowledges that the access and use of the Services, Website and Online Academy may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.4 Glow shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your Data in accordance with the *Privacy Act 1988 (Cth)* as amended from time to time. Glow will not:
- (a) disclose Subscriber Data except as compelled by law, or as expressly authorises in writing by the Subscriber; or
 - (b) access Subscriber Data except to provide the Services and prevent or address service or technical problems, or at the Subscriber's request in connection with customer support matters.
- In the event Glow is compelled by law to disclose Subscriber Data, written notice will be provided to the Subscriber, if permitted by law. Please see our privacy policy at [add link].
- 4.5 The Subscriber agrees that it is the Subscriber's responsibility to keep the Data up to date.

5. Fees

- 5.1 The Subscriber must pay the Fees to Glow for their Subscription in accordance with the terms of this Agreement.
- (a) Fees are payable through an online portal on the Website, and can be paid on a monthly basis (or as otherwise agreed in writing by the parties)
- 5.2 All Fees in this Agreement are:
- (a) Non-cancellable and non-refundable;
 - (b) Are exclusive of GST payable and if payable in accordance with the applicable legislation will be shown separately on any tax invoice at the applicable rate.
- 5.3 Glow is entitled to review the Fees at any time provided that the Subscriber is provided with 60 days written notice prior to any change in Fees becoming applicable.

6. Suspension

- 6.1 If Glow has not received payment of the Fees within 21 days of the due date, Glow may suspend or disable the Subscription, account, password and access to all or part of the Services, Website or Online Academy and Glow is under no obligation to provide any and all of the Services while the invoice(s) concerned remain unpaid.

7. Cancellation

- 7.1 In accordance with clause 3.3, the Subscriber is solely responsible for the cancellation of the account. The Subscription may be cancelled after the Minimum Term, by providing 14 days written notice to us, by emailing info@markcarter.com.au.

8. Termination

- 8.1 Glow may terminate this Agreement at any time in the event the Subscriber materially breaches this Agreement and does not remedy such breach within 30 days of written notice provided by Glow. This includes the non-payment of Fees in accordance with clause 5.1 and 5.2 of this Agreement.

- 8.2 Glow may terminate any Subscription immediately if it determines that the Subscriber is in breach of clause 4.1 and/or 4.2 of this Agreement.
- 8.3 In the event a Subscription is terminated, other than in instances where it is terminated by Glow for non-payment or breach of clause 4.1 and/or 4.2, the data will be held by Glow and may be provided to the Subscriber upon written request.
- 8.4 If a Subscription is terminated due to non-payment or a breach of clause 4.1 and/or 4.2, Glow has no obligation to maintain any Data and may thereafter, unless legally prohibited, delete all of Data in our systems.
- 3.5 Either party may terminate this Agreement without liability to the other if:
- (a) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
 - (b) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party; or
 - (c) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - (d) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - (e) the other party ceases, or threatens to cease, to trade; or
 - (f) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

Intellectual Property Rights

- 9.1 The Subscriber acknowledges and agrees that Glow and/or its licensors own all intellectual property rights in the Services, Website and Online Academy. This Agreement does not grant the Subscriber any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, Website and Online Academy.
- 9.2 The Subscriber acknowledges and agrees that Glow and/or its licensors own and retain all right, title and interest in and to transactional and performance data related to your use of the Services, Website and Online Academy. Glow may collect, use and disclose all such transactional and performance data for their business purposes provided that such use does not reveal Subscriber identity, confidential information or any personally identifiable information that belongs to the Subscriber.
- 9.3 The Subscriber retains all right, title and ownership interest to the Data.
- 9.4 The Subscriber has no obligation to give Feedback relating to the Services, Website and/or Online Academy. To the extent Glow receives any Subscriber Feedback, such Feedback may be used by Glow to improve the Services, Website, Online Academy or for any other purpose. Accordingly, if the Subscriber provides Feedback, the Subscriber agrees that Glow will own all such Feedback, and Glow affiliates, licensees, clients, partners, third-party providers and other authorised entities may freely use, reproduce, license, distribute, and otherwise commercialise the Feedback in the Services or other related technologies, and the Subscriber hereby assigns, irrevocably, exclusively and on a royalty-free basis, all such Feedback to Glow.
- 9.5 From time to time during the Term, Glow may develop, author or prepare Deliverables, for use by the Subscriber. In such case, Glow will own and retain all right, title and interest in and to such Deliverables and hereby grant to the Subscriber a limited, non-transferable, non-sub licensable, non-exclusive license for Subscriber use during the Term. Glow may reuse any Deliverables, provided that such use does not reveal the identity or confidential information of the Subscriber.

9.6 Video and audio content provided for use of the Subscriber through the Services, Website and Online Academy remains the intellectual property of Glow and is not to be downloaded, shared with third parties or displayed elsewhere.

10. Publicity

10.1 During the Term, Glow may request in writing to disclose Subscriber details as a customer and/or subscriber of the Services, and to obtain the right to display the Subscriber name and logo in Glow marketing materials and on the Website, in each case in accordance with any branding guidelines the Subscriber may provide.

11. Warranties and Liability

11.1 Glow may suspend or terminate your access to the Website and Online Academy in accordance with clauses 6 and 8 of this Agreement without liability if such action is based on Glow's good faith belief that the Subscriber have violated any provision of this Agreement (including a failure to make any payment when due).

11.2 This clause 11 sets out the entire liability of Glow (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Subscriber in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Subscriber of the Services, Website, Online Academy or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

11.3 Except as expressly and specifically provided in this Agreement:

- (a) the Subscriber assumes sole responsibility for the use of the Services, Website and Online Academy by the Subscriber, and for acts or taken or not taken by the Subscriber subsequent to any use of the Service, Website, Online Academy or provision of information, advice or recommendations by Glow or any other Subscriber.
- (b) Glow has no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Glow by the Subscriber in connection with the Services, Website or Online Academy or any actions taken by Glow at the Subscriber's direction;
- (c) Glow has no liability for any damage suffered by the Subscriber from using services, software or programs provided by a third party.
- (d) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (e) the Services, Website and Online Academy are provided to the Subscriber on an "as is" basis.

11.4 Nothing in this Agreement excludes the liability of Glow:

- 11.4.1 for death or personal injury caused by Glow's negligence; or
- 11.4.2 for fraud or fraudulent misrepresentation.

11.5 Subject to clause 11.3 and clause 11.4:

- 11.5.1 Glow is not liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 11.5.2 Glow's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement is limited to \$1,000 (one thousand dollars).

12. Indemnification

- 12.1 The Subscriber agrees to indemnify, defend and hold harmless Glow, and its affiliates, officers, agents, and employees from and against any Liability incurred as a result of any Claim to the extent arising from or connected with Subscriber use of the Services, Website and/or Online Academy in breach of this Agreement.
- 12.2 A party seeking indemnification hereunder must:
 - (a) promptly notify the other party in writing of the Claim;
 - (b) give the indemnifying party sole control of the defence of such Claim and all negotiations for the compromise or settlement thereof (provided that if any settlement requires any action or admission by the indemnified party, then the settlement will require the indemnified party's prior consent); and
 - (c) provide the indemnified party with all reasonable cooperation, information and assistance in connection with such Claim; provided, however, that failure by the indemnified party to provide prompt notice of a Claim; grant such sole control; and/or provide such cooperation, information and assistance shall not relieve the indemnifying party of its obligations under this clause 12, except to the extent that the indemnifying party is materially prejudiced by such failure. The indemnified party may be represented by its own counsel, at its own expense.

13. General

- 13.1 **Assignment:** You must not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Glow may at

any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights and obligations under this Agreement.

13.2 No partnership/agency: Nothing in this Agreement shall be construed to create a joint venture, partnership or agency relationship between the Subscriber and Glow and neither party shall have the right or authority to incur any Liability debt or cost or enter into any contracts or other arrangements in the name of or on behalf of the other.

13.3 Entire agreement: This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes and excludes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. However, the Services are provided to the Subscriber under our operating rules, policies, and procedures as published from time to time on the Website.

13.4 Force majeure: Glow is not liable for any breach of obligations under this Agreement if it is hindered or prevented from carrying out such obligations by any cause outside its reasonable control, including by lightning, fire, flood, extremely severe weather, strike, lock-out, labour dispute, act of God, war, riot, civil commotion, malicious damage, failure of any telecommunications or computer system, compliance with any law, accident (or by any damage caused by any of such events).

13.5 No waiver: No waiver by Glow of any default of the Subscriber under this Agreement operates or is construed as a waiver of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by Glow to the Subscriber is in any way releases, discharges or otherwise affects Liability under this Agreement.

13.6 Notices: Unless otherwise stated within this Agreement, notices to be given to either party must be in writing and be delivered by electronic mail at the email address supplied on entering into this Agreement or the Sign-Up Agreement, or as otherwise updated by notice.

13.7 Survival: The provisions of clauses that either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such.

13.8 Severability: If any provision of this Agreement is held to be unlawful, invalid or unenforceable, that provision is deemed severed, and where capable, the validity and enforceability of the remaining provisions of this agreement is not be affected.

13.9 Governing law: This Agreement (and all non-contractual relationships between you and us) are governed by and construed in accordance with the law of New South Wales and both parties hereby submit to the exclusive jurisdiction of the courts of New South Wales.

14 Definitions

In these Terms and Conditions:

Agreement means these Terms and Conditions and other documents referred to therein;

Business Day means any day other than a Saturday, Sunday, bank holiday or public holiday in New South Wales;

Claim means any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, and proceeding, right of action, claim for compensation and claim for abatement;

Costs mean any costs, charges, expenses, payments or other expenditures of any nature (whether direct, indirect or consequential and whether accrued or paid);

Data means the information provided, inputted or uploaded to the Website by the Subscriber;

Deliverables mean downloadable material supplementary to the Services and includes but is not limited to customised documents, designs, programs, documentation and other tangible materials provided, created and owned by Glow;

Fee means the total amount payable in respect of the Service pursuant to the Sign-Up Agreement;

Feedback means any suggestions, enhancement requests, recommendations, comments or other feedback provided by the Subscriber to Glow;

Glow means Glow Pty Ltd as trustee for the Glow Trust (ABN 22 177 389 006), trading as and referred to as "Glow", "Mark Carter", "we", "our" or "us", and its representatives, subsidiaries, affiliates, related parties, officers, directors, employees, agents, partners, and independent contractors;

GST means the Goods and Services Tax;

Liability means liability in or for breach of contract, breach of duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with these Terms and Conditions, including, without limitation, liability expressly provided for under these Terms and Conditions or arising by reason of the invalidity or unenforceability of any term of these Terms and Conditions (and for the purposes of this definition, all references to these Terms and Conditions shall be deemed to include any collateral contract);

Minimum Term means a period of 3 months from the date of this Agreement;

Online Academy means the Subscriber only area of the Website;

Services means ongoing membership of the Online Academy which includes but is not limited to:

- (a) Business coaching;
- (b) Leadership and talent development;
- (c) Sales training and customer engagement;
- (d) Personal and professional development;
- (e) Business management support;
- (f) Training and the provision of online courses;
- (g) Relevant data management; and
- (h) any Deliverables, goods and services provided through the Website;

Sign-Up Agreement means the agreement entered into by the Subscriber setting out the terms of the Subscription entered into prior to the commencement of Services;

Subscriber means user of the Services, subject to the terms of the Subscription, and may be an individual user, an employer, or a training organisation, and referred to as "you", or "your";

Subscription means Subscriber access to and use of the Services and the Website for a Fee paid to Glow for the period of the Term;

Term means the period that the Agreement remains in effect, subject to clause 3.1 of the Agreement, or until the Agreement is terminated in accordance with clause 8 of this Agreement;

Website means <https://www.markcarter.com.au/> and any associated mobile applications

14.1 Interpretation

- (a) Headings are for ease of reference only and do not affect the interpretation or construction of this Agreement.
- (b) Words imparting the singular include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.
- (c) Words denoting persons include natural persons, partnerships, limited Liability partnerships, bodies corporate and unincorporated associations of persons.
- (d) References to "includes" or "including" or like words or expressions mean "without limitation".