

## JENKOTA LIMITED – COACH AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE CLICKING ON THE “ACCEPT” BUTTON AT THE BOTTOM OF THIS DOCUMENT. THIS AGREEMENT INCORPORATES JENKOTA’S PRIVACY POLICY [LINK]. BY CLICKING ON THE “ACCEPT” BUTTON YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT AND THE PRIVACY POLICY. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT OR THE PRIVACY POLICY, CLICK THE “DO NOT ACCEPT” BUTTON AND YOU WILL NOT BE ABLE TO USE THE SYSTEM.

### 1 Licence

- 1.1 In this Agreement “you” means the reader and “User” means a third party permitted by Jenkota to use the Jenkota executive coaching system (“System”).
- 1.2 Provided that you have paid and continue to pay to Jenkota all applicable fees from time to time, and subject to the terms of this Agreement, Jenkota Limited (company number 03847607) whose registered office is at Allen House, 1 Westmead Road, Sutton, Surrey SM1 4LA, UK (“Jenkota”) grants to you a non-exclusive, non-transferable licence to access and use:
  - 1.2.1 the System via the Jenkota website;
  - 1.2.2 the software hosted by or on behalf of Jenkota forming part of, or used to access, the System (“Software”);
  - 1.2.3 the document, audio and video files and other information and materials made available through the System (excluding any materials uploaded by you) (“Content”).
- 1.3 Where indicated in the System, you may download, print and/or store certain Content provided that no trade mark, copyright or other proprietary notices contained in or appearing on such Content are removed or altered in whole or in part. You may not otherwise copy, reproduce, distribute or exploit any Content.
- 1.4 You may use, and provide services to Users using, the System, Software or Content for your own purposes but shall not do so on behalf of any third party.
- 1.5 You shall keep all login details and passwords for the System strictly confidential and shall not disclose the same to any third party. You shall be responsible for any loss or damage resulting from use of any such details or passwords by any third party.
- 1.6 You shall not:
  - 1.6.1 use the System in such a way that disrupts, interferes with or restricts the use of the System by Users; or
  - 1.6.2 modify, delete, interfere with or misuse the System or any part of it, nor attempt to do so.
- 1.7 Save to the extent expressly permitted by law, you shall not download, reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the Software or create derivative works based on the whole of or any part

of the Software or incorporate the Software into any other software program, nor attempt to do any of the same.

## **2 Uploading materials**

- 2.1 You may upload materials to the System in text, audio-visual and other formats as permitted by Jenkota from time to time ("Coach Materials"). Any Coach Materials will be visible only to you and to Users to whom Jenkota is aware that you are providing services.
- 2.2 You grant to Jenkota for the term of this Agreement a royalty-free, non-exclusive, worldwide licence to use, reproduce, publish, distribute, play and make available to the public the Coach Materials.
- 2.3 You warrant that:
  - 2.3.1 you are the sole owner of the intellectual property rights in and to the Coach Materials and have full power to enter into this Agreement;
  - 2.3.2 the Coach Materials are your own original work and do not infringe the intellectual property rights of any third party; and
  - 2.3.3 the Coach Materials do not contain anything which is obscene, blasphemous, libellous, defamatory or otherwise unlawful.
- 2.4 You will indemnify Jenkota against all claims, losses, damages, costs (including legal fees) and expenses arising out of any breach of the above warranties.
- 2.5 Jenkota reserves the right at any time at its sole discretion to remove any Coach Materials uploaded to the System. Jenkota may also take steps to prevent you from uploading further Coach Materials if it appears to Jenkota that you are creating problems for Users, exposing Jenkota to legal or financial risk and/or are in breach of this Agreement.

## **3 Intellectual property rights**

- 3.1 You acknowledge that Jenkota owns, or is licensed to use, all copyright and other intellectual property rights of whatever nature in and relating to the System, Software and Content.
- 3.2 Subject to clauses 3.3 and 3.4, Jenkota hereby indemnifies you and will keep you indemnified against any damages that are awarded to be paid to any third party in respect of any claim being brought against you that the normal use of the System, Software or Content in accordance with this Agreement infringes the copyright of such third party provided that you:
  - 3.2.1 immediately notify Jenkota in writing of any such claim;
  - 3.2.2 do not make any admission as to liability or compromise or agree any settlement of any claim without the prior written consent of Jenkota or otherwise prejudice Jenkota or any other third party's defence of such claim;

- 3.2.3 give Jenkota, or such person as Jenkota shall direct, immediate and complete control of the conduct or settlement of all negotiations and litigation arising from such claim; and
- 3.2.4 give Jenkota and such other third parties as Jenkota shall direct all reasonable assistance with the conduct or settlement of any such negotiations or litigation.
- 3.3 In the event of a claim that the use by you of the System, Software or Content in accordance with the provisions of this Agreement infringes the copyright of a third party, Jenkota shall have the right to terminate this Agreement immediately upon written notice to you.
- 3.4 In the event of any claim attributable to the use by you of the System, Software or Content other than in accordance with the provisions of this Agreement, the provisions of clause 3.2 shall not apply and you shall indemnify Jenkota against all losses, damages, costs (including legal fees) and expenses which Jenkota may incur as a result of such claim.

#### **4 Disclaimer**

- 4.1 Jenkota is providing the System, the Software and the Content on an "as is" and "as available" basis. Although all reasonable steps are taken to review and monitor the Content, Jenkota does not warrant that the Content is accurate, complete or current, and where you rely on any Content you do so entirely at your own risk. Content is subject to variation at any time without notice.
- 4.2 Jenkota shall use reasonable endeavours to make the System available for use by you in accordance with this Agreement on a 24/7 basis. However you acknowledge that, owing to the nature of the internet, Jenkota cannot guarantee 100% continuous access to the System nor that the Coach Materials will always be available to the relevant Users. Accordingly Jenkota does not provide any warranty in relation to the availability of the System or the Coach Materials.
- 4.3 ALL CONDITIONS, WARRANTIES, TERMS AND UNDERTAKINGS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, TRADE PRACTICE, CUSTOM, COURSE OF DEALING OR OTHERWISE (INCLUDING WITHOUT LIMITATION AS TO QUALITY, PERFORMANCE OR FITNESS OR SUITABILITY FOR PURPOSE) IN RESPECT OF THE SYSTEM, SOFTWARE AND CONTENT ARE HEREBY EXCLUDED BY JENKOTA TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

#### **5 Data protection**

- 5.1 You acknowledge that, in the course of using the System and providing services to Users, you may have access to such Users' personal data (as defined in the Data Protection Act 1998 ("Act")). Such personal data has been collected by Jenkota and, in accessing and using it, you are acting as a data processor as defined in the Act. You may use such personal data only for the purposes of providing services to the relevant Users as contemplated by this Agreement.
- 5.2 You undertake:

- 5.2.1 to keep Users' personal data confidential and not to use or disclose it to any third party other than as permitted by this Agreement or as required by law; and
  - 5.2.2 to have in place appropriate technical and organisational measures to safeguard against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to such personal data. Such measures shall (taking into account the state of technological development and the cost of implementing such measures) be appropriate to the nature of the personal data.
- 5.3 You shall promptly notify Jenkota in the event that you receive a request for access to personal data under the Act. You shall fully co-operate and provide all assistance reasonably requested by Jenkota in order to enable Jenkota to respond to such request within the timescales provided in the Act.
- 5.4 You will indemnify Jenkota against all claims, losses, damages, costs (including legal fees) and expenses arising out of any action or claim brought by a data subject (as defined by the Act) or any other person relating any breach by you of this clause 5 or failure by you to comply with the provisions of the Act.

## **6 Limitation of liability**

- 6.1 Nothing in this Agreement shall exclude or restrict Jenkota's liability for death or personal injury resulting from Jenkota's negligence or for any fraudulent misrepresentation by Jenkota.
- 6.2 SUBJECT TO CLAUSES 6.1 AND 6.3, JENKOTA'S LIABILITY TO YOU FOR DIRECT LOSS IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR USE OF THE SYSTEM, SOFTWARE OR CONTENT SHALL BE LIMITED FOR ANY ONE INCIDENT OR SERIES OF CONNECTED INCIDENTS TO THE GREATER OF THE AMOUNTS PAID BY YOU TO JENKOTA IN RESPECT OF THIS AGREEMENT IN THE PRECEDING 12 MONTHS AND THE SUM OF £1,000.
- 6.3 SUBJECT TO CLAUSE 6.1, IN NO CIRCUMSTANCES SHALL JENKOTA BE LIABLE TO YOU WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE IN RESPECT OF DIRECT OR INDIRECT LOSS OF PROFITS, REVENUE, GOODWILL, BUSINESS OPPORTUNITY, LOSS OF OR COST OF RESTORATION OF DATA OR FOR USE OF ANY RESULTS OR CONCLUSIONS OBTAINED BY USE OF THE SYSTEM, SOFTWARE OR CONTENT, OR ANY OTHER INDIRECT, CONSEQUENTIAL, FINANCIAL OR ECONOMIC LOSS OR DAMAGE COSTS OR EXPENSES WHATEVER OR HOWEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR USE OF THE SYSTEM, SOFTWARE OR CONTENT.
- 6.4 IF ANY LIMITATION ON JENKOTA'S LIABILITY CONTAINED IN THIS AGREEMENT IS JUDGED BY A COMPETENT COURT TO BE UNREASONABLE IN THE CIRCUMSTANCES, SUCH LIMITATION SHALL BE INCREASED TO THE AMOUNT THAT JENKOTA CAN RECOVER FROM ITS INSURERS FOR THE LOSS IN QUESTION.

## **7 Termination**

7.1 This Agreement will terminate automatically:

7.1.1 if you breach any term of this Agreement; or

7.1.2 if you suspend making payments on any of your debts or announce an intention to do so; become bankrupt or enter into a voluntary arrangement or makes any other assignment for the benefit of a composition with creditors; have a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of you or any of your assets; have any security over any of your assets enforced; or any analogous procedure or step is taken in any jurisdiction.

7.2 Upon termination of this Agreement for any reason you shall promptly pay all outstanding amounts owed by you to Jenkota and destroy all copies of the Content in your possession or control.

7.3 Any termination of this Agreement shall be without prejudice to any other rights or remedies either party may be entitled to under this Agreement or at law.

## **8 General**

8.1 The failure or delay of Jenkota to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.

8.2 This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes and replaces all prior agreements, negotiations and discussions between the parties relating to it.

8.3 No variation of this Agreement shall be valid unless it is in writing and signed by an authorised representative of each of the parties.

8.4 You shall not be entitled to assign this Agreement nor any of your rights or obligations hereunder nor to sub-licence the use of the System, Software or Content.

8.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and no third party shall have any right to enforce any term of this Agreement.

8.6 If any provision of this Agreement is held to be unlawful, invalid or enforceable, in whole or in part, under any enactment or rule of law, such provision shall to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Agreement which will remain in full force and effect.

8.7 This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non-exclusive jurisdiction of the English Courts.