

**eCoach, LLC**

**Business User Services Agreement**

**Effective Date: March 1, 2015**

**PLEASE READ THIS SERVICE AGREEMENT (AGREEMENT) CAREFULLY. IT CONTAINS THE EXCLUSIVE TERMS AND CONDITIONS BETWEEN ECOACH, LLC (COMPANY) AND YOU (TOGETHER WITH ANY ENTITY OR ORGANIZATION FOR WHICH YOU REGISTER, ACCESS OR USE THE SERVICE, (CUSTOMER), REGARDING ACCESS AND USE OF THE SERVICE. YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO ENTER INTO THIS AGREEMENT, UNDER ALL APPLICABLE LAWS AND ON BEHALF OF CUSTOMER. BY SELECTING THE “ACCEPT” BUTTON OR BY ACCESSING OR USING THE SERVICE (ACCEPTANCE), YOU WILL CREATE A LEGALLY ENFORCEABLE CONTRACT WHERE CUSTOMER AGREES TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT WITHOUT MODIFICATION.**

**1. Definitions.**

***Analytics*** means statistics, metrics and other analyses that are based on or derived from the Service or Results, which are developed in the aggregate with other data or results or in a manner that does not disclose Customer's identity or Customer Data.

***Content:*** means Customer information, documents, tutorials, videos, photos, or any other items uploaded by Customer to their account or onto the Platform as part of use of the Service.

***Customer Data*** means Customer information and data directly provided by Customer during Registration or profile completion. Customer Data does not include any other information or data provided by Customer while using the Service, which may be stored, analyzed, processed and used by the Service.

***Documentation*** means any user instructions, help information and other documentation regarding the Service that is provided by Company to Customer in electronic or other form.

***Platform*** means the technology platform (which terms includes but is not limited to and any means by which it is accessed e.g. native apps, websites, enterprise websites, mobile web apps, etc.) developed and/or used by Company in providing the Service (including all related ideas, concepts, inventions, systems, hardware, software, interfaces, tools, utilities, content, templates, forms, techniques, methods, processes,

algorithms, know-how, trade secrets and other technologies, implementations and information), and including all corrections, improvements and extensions thereto.

**Registration** means the process by which Customer registers, signs up, trials, or temporarily gains access to, and use of, the Service.

**Results** means the work products resulting from the Service that are made available by Company to Customer, which are based on processing the Customer Data (such as, for example, query responses and reports).

**Service** means that certain Internet-accessed business application(s) identified during Registration, which is hosted (in a cloud environment), branded and provided on a software-as-a-service basis by Company, from time to time.

## **2. Company Service.**

**Service.** Subject to all terms and conditions in this Agreement, Company grants Customer (without right to sublicense) a nonexclusive, nontransferable right and license to (a) access and use the Service and Results, only through a web-based interface and solely for Customer's internal business purposes, and (b) use the Documentation solely in connection with Customer's authorized access and use of the Service. Customer may make a reasonable number of copies of the Documentation only for inactive backup purposes. Customer's access and use of the Service shall comply with all other conditions set forth herein or during Registration (such as, for example, any requirements regarding data formats, number or identity of authorized users, size limits, time limits or prohibited uses).

**Access Credentials.** Upon Acceptance, Customer will be provided with a process for creating access credentials for the authorized users specified during Registration. Customer is solely responsible for maintaining the confidentiality of its access credentials and other account information, and will be solely liable for any and all activities under its account. Customer shall be responsible for keeping all account information up-to-date. Customer agrees to notify Company immediately of any unauthorized use of Customer's account or any other breach of security.

**Customer Data.** Customer bears all responsibility and liability for the accuracy and completeness of the Customer Data and Company's access, possession and use as permitted herein. Other than Registration data, Company has no obligation to backup, retain or deliver any Customer Data. During the term of this Agreement, Customer hereby grants Company a nonexclusive, royalty-free, worldwide right and license to access, copy, store, process, distribute, transmit and otherwise use the Customer Data for the purposes of providing the Service (and support services) to Customer.

**Systems.** At its sole cost and expense, Customer is responsible for providing all (a) rights, licenses and permissions necessary for Company to receive and use the Customer Data, (b) modems, servers, devices, storage, software, databases, network and communications equipment and ancillary services needed to connect to, access or

otherwise use the Service from Customer's facility and (c) corresponding backup, recovery, network security and maintenance service (collectively, **Customer Systems**). Customer is responsible for ensuring that Customer Systems are compatible with the Service and comply with all configurations and specifications described in the Documentation.

**Limitations.** Company will use commercially reasonable efforts to make the Service available to Customer at all times, subject to downtimes for scheduled maintenance, upgrades, repairs and emergency outages. Company will not be responsible or liable for any failure in the Service.

**Support.** Company will use commercially reasonable efforts to provide Customer with technical support for the Service in accordance with its standard practices. Customer agrees that Company may charge in accordance with its then current policies for any support service resulting from problems, errors or inquiries related to the Customer Data or Customer Systems.

**Security.** Company will use commercially reasonable efforts to maintain security in accordance with its policies in effect from time to time. Customer acknowledges and agrees that the Service is provided using cloud-computing resources, which are remote from and not owned or controlled by Company, and that no storage device or data transmission over the Internet can be guaranteed to be 100% secure. Accordingly, Company cannot promise the security of any Customer Data or Results, and Customer hereby agrees that all Customer Data and Results are provided at Customer's own risk.

**Privacy.** Company's current **Privacy Policy** is available at <http://ecoach.coach/> and is incorporated herein by reference. Company will not intentionally disclose, distribute, transmit or use any Customer Data except (a) as reasonably necessary for Company (or its contractors) to provide the Service, (b) as authorized by Customer or as otherwise expressly permitted under this Agreement or (c) as required by court order, law or regulation, or if Company reasonably believes that such action is necessary to conform or comply with any legal, regulatory, law enforcement or similar requirement or investigation, to protect or defend the rights or property of Company or any third party or to enforce this Agreement. This provision does not apply to Content.

**Changes.** Company reserves the right, at its sole discretion and at any time, to modify or discontinue the Service and/or to modify the terms and conditions of this Agreement (in whole or in part), by giving notice to Customer. Change notices may be communicated via the Service, electronic mail or other permitted notice. Following any such notice, continued use of the Service after the effective date of the change constitutes Customer's acceptance of that change.

### **3. Payments.**

**Fees .** The fees, revenue shares, and expenses for using the Service and the terms upon which payment must be made can be found at <http://ecoach.coach/> and/or as provided to Customer. Company reserves the right to increase, modify, or update this information at any time. If Customer does not agree to increased payments or changes, then Customer is free to cease using the Service. Continued use of the Service is a binding agreement to comply with any increases, modifications, or updates.

### **4. Confidentiality.**

**Scope.** Company disclaims and does not accept any submissions or information from Customer as Confidential Information or any kind which would be protected by these provisions. The term ***Confidential Information*** means all trade secrets, know-how, patents, inventions, developments, software and other financial, business or technical information disclosed by or for Company in relation to this Agreement, but not including any information the receiving party can demonstrate is (a) already known by it without restriction, (b) rightfully furnished to it without restriction by a third party not in breach of any obligation to the disclosing party, (c) generally available to the public without breach of this Agreement or (d) independently developed by it without reliance on such information. The Platform, Documentation, Analytics and pricing information are Company's Confidential Information.

**Confidentiality.** Except for the specific rights granted by this Agreement, Customer shall not access, use or disclose any of the Confidential Information without Company's written consent, and shall use reasonable care to protect the Confidential Information, including ensuring that its employees and contractors with access (a) have a need to know for the purposes of this Agreement and (b) have been apprised of and agree to the restrictions in this Agreement. Customer shall be responsible for any breach of confidentiality by its employees and contractors. Promptly after any termination of this Agreement (or at the Company's request at any other time), Customer shall return all of the tangible Confidential Information, permanently erase all Confidential Information from any storage media and destroy all information, records and materials developed therefrom.

**Compelled Disclosure.** Nothing herein shall prevent Customer from disclosing any Confidential Information as necessary pursuant to any court order, lawful requirement of a governmental agency or when disclosure is required by operation of law (including disclosures pursuant to any applicable securities laws and regulations); *provided*, prior to any such disclosure, Customer shall use reasonable efforts to (a) promptly notify Company in writing of such requirement to disclose and (b) cooperate with Company in protecting against or minimizing any such disclosure or obtaining a protective order.

## **5. Proprietary Rights.**

**Customer.** Except for the limited rights and licenses expressly granted hereunder, no other license is granted, no other use is permitted and Customer (and its licensors) shall retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the Customer Data and Content. Notwithstanding the forgoing, Customer, by uploading Content, hereby grants Company a nonexclusive, royalty-free, sub-licensable, and transferable worldwide right and license to access, copy, store, process and otherwise use Customer Content in connection with (a) developing, improving, extending and testing the Platform and Service, (b) delivering the Service to Customer for the anticipated uses of the Platform and (c) marketing, in all forms and mediums, and publicizing the Company, the Platform, and the Services.

**Company.** Except for the limited rights and licenses to access and use the Service and Documentation expressly granted hereunder, no other license is granted, no other use is permitted and Company (and its licensors) shall retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the Documentation, Platform, Service and Analytics.

**Restrictions.** Customer shall not, directly or indirectly (a) use any Company Confidential Information to create any software, platform, service or documentation that is similar to the Platform, Service or Documentation, (b) attempt to access any Platform or Service component or to disassemble, decompile, reverse engineer or otherwise discover any source code or underlying organization, structures, ideas or algorithms of the Platform or Service, (c) encumber, sublicense, distribute, transfer, rent, lease, lend, access or use the Platform or Service in any time-share or service bureau arrangement, (d) copy, adapt, combine, create derivative works of, translate, localize, port or otherwise modify the Platform, Service or Documentation, (e) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction or (f) permit any third party to do any of the foregoing.

**General Learning.** Customer hereby grants Company a nonexclusive, royalty-free, worldwide right and license to access, copy, store, process and otherwise use Customer Data in connection with (a) developing, improving, extending and testing the Platform and Service and (b) designing, developing and producing Analytics. Customer agrees that Company is free to use and disclose the Analytics and aggregate measures of Service usage and performance, and to reuse all general knowledge, experience, know-how, works and technologies (including ideas, concepts, processes and techniques) related to the Results or acquired during provision of the Service under this Agreement (including without limitation, that which it could have acquired performing the same or similar service for another customer).

## **6. Limited Warranty, Disclaimers, Assumption of Risk, and Representations.**

**Customer.** Customer represents and warrants to Company that it owns all rights, title and interest in and to the Customer Data and Content, or that Customer has otherwise secured all necessary rights in the Customer Data as may be necessary to permit the access, use and processing thereof as contemplated by this Agreement.

Customer represents, warrants, and agrees that it will not contribute or upload any Content or otherwise use the Services or interact with the Services in a manner that:

- (a) Infringes or violates the intellectual property rights or any other rights of anyone else (including Company);
- (b) Violates any law or regulation;
- (c) Is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- (d) Jeopardizes the security of any user accounts (such as allowing someone else to log in to the Services using Customer's credentials);
- (e) Attempts, in any manner, to obtain the password, account, or other security information from any other user;
- (f) Violates the security of any computer network, or cracks any passwords or security encryption codes;
- (g) Runs Maillist, Listserv, any form of auto-responder or "spam" on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure);
- (h) "Crawls," "scrapes," or "spiders" any page, data, or portion of or relating to the Services or Content (through use of manual or automated means);
- (i) Copies or stores any significant portion of the Content, other than as owned by Customer;
- (j) Decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

A violation of any of the foregoing is grounds for termination of Customer's right to use or access the Services, in addition to all other legal remedies.

**Insurance and Legal Compliance.** Customer is responsible for maintaining all licenses or other legal requirements for its business, operations, or other actions as related to the Service and will maintain personal liability and business insurance in relation to all activities involved in using the Platform and Services. Customer represents and warrants that it will operate in compliance with all applicable laws in relation to all activities involved in using the Platform and Services.

**Assumption of Risk.** The activities and sporting endeavors contemplated by use of the Platform and Services are dangerous and may result in injury.

**Disclaimers.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE SERVICE AND RESULTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. COMPANY DOES NOT WARRANT ANY COACHES OR OTHER CUSTOMERS WHO MAY BE INTERACTED WITH DURING THE SERVICE. COMPANY DOES NOT WARRANT THAT THE SERVICE OR RESULTS WILL MEET CUSTOMER'S REQUIREMENTS OR RESULT IN ANY OUTCOME, OR THAT OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY HEREBY DISCLAIMS (FOR ITSELF AND ITS LICENSORS) ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICE AND RESULTS, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, ACCURACY, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

#### **7. Indemnification.**

**Customer.** Customer agrees to defend Company against any demand, suit, action or other claim by a third party that is related to any (i) use of the Services, (ii) Customer Data or Content, or (iii) breach of Customer's warranties, and to indemnify Company for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of any such claim.

**Conditions.** The indemnifying party's obligations hereunder are conditioned on (a) the party seeking indemnification providing prompt written notice thereof and reasonable cooperation, information, and assistance in connection therewith and (b) the indemnifying party having sole control and authority to defend, settle or compromise such claim. The indemnified party may participate in the defense at its sole cost and expense. The indemnifying party will not enter into any settlement that adversely affects the indemnified party's rights or interest without its prior written approval, not to be unreasonably withheld. The indemnifying party shall not be responsible for any settlement it does not approve in writing.

#### **8. Limitation of Liability.**

EXCEPT TO THE EXTENT THAT ANY EXCLUSION OR LIMITATION OF LIABILITY IS VOID, PROHIBITED OR UNENFORCEABLE BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY (OR ITS LICENSORS) BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) LOSS OF DATA, LOSS OR INTERRUPTION OF USE, OR COST TO PROCURE SUBSTITUTE TECHNOLOGIES, GOODS OR SERVICES, (B)

INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL OR (C) AGGREGATE DAMAGES IN EXCESS OF THE AMOUNT PAID TO COMPANY FOR THE SERVICE, IF ANY, DURING THE PRIOR 12 MONTHS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

## **9. Term and Termination.**

**Term.** This Agreement shall commence upon Acceptance and continue in effect for the time period specified during Registration or, if no such time period was specified, then until either party elects to terminate this Agreement at any time, for any reason or no reason.

**Effects of Termination.** Upon any expiration or termination of this Agreement, all rights, obligations and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) shall survive and (b) the provisions of Sections 3, 4, 5, 6, 7, 8, 10 and this portion of Section 9.

## **10. General Provisions.**

**Entire Agreement.** This Agreement (including any Security Policy, Privacy Policy, general Terms of Use, SLA and Registration records) constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of this Agreement (and all past dealing or industry custom). Company's general Privacy Policy and Terms of Use found at [www.ecoach.coach](http://www.ecoach.coach) and <http://ecoach.coach/> are incorporated herein by reference. To the extent that there is a conflict between the Privacy Policy and/or Terms of Use and this Agreement, this Agreement controls. Except as expressly provided herein, no change, consent or waiver under this Agreement will be effective unless in writing and signed by the party against which enforcement is sought. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is in English only, which language shall be controlling in all respects. No version of this Agreement in another language shall be binding or of any effect.

**Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, USA, without regard to its conflicts



of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Unless waived by Company in its sole discretion, exclusive jurisdiction and venue for actions related to this Agreement will be the state or federal courts located in California, and both parties consent to the jurisdiction of such courts with respect to any such action.

**Remedies.** Except as specifically provided otherwise herein, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of Section 4 or 5, the non-breaching party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of proving actual damages or posting any bond.

**Publicity.** Customer hereby consents to inclusion of its name, logos, and Content in customer lists that may be published as part of Company's marketing and promotional efforts.

**Assignment.** This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent, not to be unreasonably withheld. However, without consent, Company may subcontract performance of all or any part of the Service, and either party may assign this Agreement to any successor to all or substantially all of its business which concerns this Agreement (whether by sale of assets or equity, merger, consolidation or otherwise). This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

**Independent Contractors.** The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

## **ACKNOWLEDGMENT**

**CUSTOMER ACKNOWLEDGES THAT (A) IT HAS READ AND UNDERSTANDS THIS AGREEMENT, (B) IT HAS HAD AN OPPORTUNITY TO HAVE ITS LEGAL COUNSEL REVIEW THIS AGREEMENT, (C) THIS AGREEMENT HAS THE SAME FORCE AND EFFECT AS A SIGNED AGREEMENT, (D) COMPANY REQUIRES IDENTIFICATION OF THE CUSTOMER BEFORE ISSUING THIS LICENSE TO ACCESS AND USE THE SERVICE AND RESULTS AND (E) ENTERING INTO THIS AGREEMENT DOES NOT CONSTITUTE GENERAL PUBLICATION OF THE PLATFORM, ANALYTICS OR DOCUMENTATION.**

(updated 3-26-16)