

TENNIS AUSTRALIA COACH MEMBERS' WEBPAGE AGREEMENT

This Agreement governs your use, in any manner, of your personalised Webpage which is provided by Tennis Australia Limited, (ABN 61 006 281 125) of Melbourne Park, Batman Avenue, Melbourne, Victoria, 3000 trading as 'Tennis Australia'.

By checking the box that says "By ticking this box, I declare that I have read, understood and agree to the webpage agreement available at *tennis.com.au/coaches/membership/policies.*" and/or using the Webpage, you acknowledge, that you have read this Agreement and agree to be bound by its terms and conditions. If you do not agree to the terms of this Agreement, do not check the box and do not use the Webpage.

You acknowledge and agree that the Webpage is to be used for business purposes only, and not for personal, domestic or household purposes.

RECITALS

- A The Coach is a current qualified Tennis Australia coach member.
- B Tennis Australia has offered its coach members the opportunity to promote their business using a Webpage.
- C The Coach has requested that TA provide him/her with access to the Webpage. TA has agreed to do so and the Coach has agreed to accept the Webpage on the terms and conditions of this Agreement.

AGREEMENT

1. INTERPRETATION

1.1 Definitions

In this Agreement, unless the subject or context otherwise requires:

- (a) "Agreement" means this agreement and any schedules attached.
- (b) "Coach" means the tennis coach who has a current Tennis Australia qualified coach membership and who agrees to the terms and conditions of this Agreement;
- (c) "Details" means the Coach's name, qualifications, contact details and coaching locations;
- (d) "Intellectual Property Rights" means all present and future registered and unregistered copyright, trade mark, design, patent, semi-conductor or circuit layout rights, confidential information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including any such rights relevant to:
 - (i) text, graphical, audio or other material displayed on a Webpage;
 - (ii) User Data; or
 - (iii) software associated with a Webpage;
- (e) "Link" means a hypertext link connecting a Webpage to another Webpage;
- (f) "Parties" means the Tennis Australia and the Coach;

- (g) "Prohibited Content" means any content on a Webpage that:
- (i) is, or could reasonably be considered to be, in breach of the *Broadcast Services Amendment (Online Service) Act 1999* (Cth); the *Competition and Consumer Act 2010* (Cth); or any other applicable law or applicable industry code or is otherwise illegal, offensive or inappropriate;
 - (ii) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful;
 - (iii) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights; or
 - (iv) is, or could reasonably be considered to be, prejudicial to the objects and interests of TA or the Coach or which may bring TA, its Member Associations, or the Coach or any of their members associations or sponsors into disrepute;
- (h) "User" means a person other than the Parties who seeks access over the Internet to the Webpage;
- (i) "User Data" means all data entered by a person accessing the Webpage and all data in relation to the use of the Webpage Users; and
- (j) "Webpage" means the personalised Webpage which includes the Details, which is provided to you and hosted by or on behalf of TA.

2. TERM OF THE AGREEMENT

This Agreement commences on the date on which the Coach agrees to its terms and conditions by checking the box below and will continue for the duration of the Coach's membership as a TA coach member, unless terminated earlier in accordance with clause 5.

3. TA'S RIGHTS AND OBLIGATIONS

3.1 TA will, at its sole cost and expense:

- (a) provide the Webpage to the Coach 'as is'; and
- (b) provide the Coach with access to the Webpage and enable the Coach to update his or her Details.

3.2 If the Webpage contains any Prohibited Content, TA reserves the right to deny the Coach access to the Webpage and to block the Webpage from being viewed on the Internet.

3.3 TA may in its absolute discretion alter or amend, or permit any person to alter or amend the Webpage without the written consent of the Coach.

4. COACH OBLIGATIONS

4.1 The Coach will:

- (a) update the Details on the Webpage as they change from time to time;
- (b) ensure that his/her Details on the Webpage do not contain:

- (i) Prohibited Content;
 - (ii) a Link to any website that contains Prohibited Content;
 - (iii) any viruses, trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Webpage;
- (c) comply with any additional obligations reasonably imposed on it by TA (including but not limited to the Acceptable Use Policy set out in Schedule 1).
- 4.2 The Coach represents and warrants that he or she has:
- (a) logged on to *tennis.com.au/coaches/login* and updated his or her information;
 - (b) forwarded a jpeg profile picture of him or herself to coachmembership@tennis.com.au for inclusion on the webpage. (*Profile photo with dimensions no smaller than 183x246*);
 - (c) forwarded a jpeg image of his or her business logo to coachmembership@tennis.com.au for inclusion on the webpage;
 - (d) has the right to reproduce, and grant Tennis Australia the right to reproduce, the picture submitted of him or her
 - (e) has the right to trade under the business name provided; and
 - (f) has the right to use the logo submitted and grant Tennis Australia the right to reproduce the logo submitted.
5. TERMINATION
- 5.1 Either party may terminate this Agreement, by providing 30 days notice in writing to the other party.
- 5.2 Without prejudice to any of its other rights under this Agreement or at law either party may terminate this Agreement immediately by giving notice to the other party if:
- (a) the other party commits a material breach of this agreement which is capable of remedy and the breach is not remedied within 10 business days of receipt of notice specifying the breach;
 - (b) the other party commits a material breach which is not capable of being remedied;
- 5.3 Notwithstanding anything else in this Agreement, TA may terminate this Agreement immediately, if:
- (a) the Coach ceases to be a coach member for any reason;
 - (b) the Coach's coach membership is suspended for any reason;
 - (c) the Website contains any logos, pictures or other information that is, or may be, in breach of a third parties' Intellectual Property Rights'; and/or
 - (d) the Website contains any 'Prohibited Content'.
- 5.4 Upon termination of this Agreement:

- (a) TA will block the Coach's access to the Webpage and may block the Webpage from being viewed on the internet; and
- (b) the Coach must immediately cease using the Webpage.

6. INDEMNITY

- 6.1 The Coach agrees to release, indemnify and hold harmless TA, its directors, employees and agents from and against all claims, actions, suits, proceedings, causes of action, damages, losses, demands, moneys, costs and expenses (including legal costs) arising or incurred by TA directly or indirectly in connection with any act, omission or misconduct by the Coach, or its directors, employees or agents, or with any breach or non-performance of the obligations of the Coach under this Agreement.
- 6.2 This clause 6 survives the termination or expiry of this Agreement.

7. LIMITATION OF LIABILITY

- 7.1 Tennis Australia makes no representations or warranties of any kind, express or implied as to the operation of the Webpage, the content on the Webpage or the conduct of any user of the Webpage. You expressly agree that your use of the Webpage is entirely at your own risk. However, nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy conferred on a party by the *Competition and Consumer Act 2010* (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.
- 7.2 To the fullest extent permitted by law, Tennis Australia disclaims all warranties, express or implied, including but not limited to, implied warranties of merchantability and fitness for a particular purpose or warranties concerning accuracy, currency or completeness. Tennis Australia or any of its Member Associations will not be liable for any actual or anticipated damages, costs, expenses or liabilities of any kind arising from the use of the Webpage or any content on the Webpage.
- 7.3 The maximum aggregate liability of Tennis Australia and any Member Association for any losses, damages, expenses, liabilities and claims arising out of these terms and conditions, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to a \$20 credit for Tennis Australia products or services. Where the liability of Tennis Australia and the Member Associations cannot be excluded under any law, the liability of Tennis Australia and the Member Associations will be limited to, at their discretion, either supplying you with services under these terms and conditions again, or paying the cost of supplying you with services under these terms and conditions again.
- 7.4 Notwithstanding any other clause, Tennis Australia or any Member Associations is not liable to you or to any other person for any losses or damages of any kind caused by or resulting from any wrongful, wilful or negligent act or omission by any person or any direct or indirect lost profit or revenue, exemplary damages, deletion or corruption of electronically or digitally stored information, or without limiting the foregoing, any indirect or consequential loss or damage howsoever described or claimed.
- 7.5 This clause 7 survives the termination or expiry of this Agreement.

8. MISCELLANEOUS

- 8.1 Further acts

Each party agrees to do all things that may be necessary or desirable to give full effect to every part of this Agreement if asked in writing by another party to do so.

8.2 Waiver

No waiver by any party of any default in the strict and literal performance of or compliance with any provision, condition or requirement of this Agreement, is to be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement in this Agreement, nor to be a waiver of or in any manner release any party from strict and literal performance of any compliance with any provision, condition or requirement in the future, nor will any delay or omission of any party to exercise any right in any manner impair the exercise of any such right accruing to such party thereafter

8.3 Notice

Any notice, demand or other communication to be given or required to be made pursuant to this Agreement is to be in writing and is to be given by post, facsimile or hand to a Party's address or facsimile number or email address set out in this Agreement.

8.4 Costs

Each party is responsible for its own costs in relation to the preparation and execution of this Agreement.

8.5 Provisions severable

If any provision of this Agreement is invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provision will not be affected and such invalid, illegal or unenforceable provision is to be severed from this Agreement.

8.6 Governing law

This Agreement is governed by and construed in accordance with the laws of the State of Victoria and the Commonwealth of Australia and the parties irrevocably submit to the jurisdiction of the courts of that State and of the Commonwealth.

8.7 Variation

No part of this Agreement may be amended or modified unless reduced to writing making specific reference to this Agreement and signed by the parties or their authorised representatives.

8.8 Entire Agreement

This Agreement sets out the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings and representations.

8.9 Privacy

The Coach acknowledges that his or her personal information will be uploaded onto the Webpage and used in accordance with Tennis Australia's privacy policy located at <http://www.tennis.com.au/privacy>.

SCHEDULE 1

ACCEPTABLE USE POLICY

The Coach must comply with this Acceptable Use Policy.

If the Coach fails to comply with this Acceptable Use Policy or any other term or condition of the Agreement, Tennis Australia reserves the right to terminate the Agreement and disable the Coach's access to the Webpage.

Your use of the Webpage

- 1 Tennis Australia grants you a non-exclusive, non-transferable, revocable licence to access and make personal use of the Webpage and any information, documentation, articles or other content available on the Webpage.
- 2 The Webpage or any portion of the Webpage must not be reproduced, duplicated, copied, sold, resold or otherwise exploited for any purpose (including but not limited to collecting user names and/or email addresses, sending unsolicited emails or using the Site to advertise or solicit other users to buy, sell or hire any products or services) without the express written consent of Tennis Australia. You are not permitted to link to or frame the Webpage without Tennis Australia's express written permission.

Confidentiality of user name and password

- 3 By using the Webpage, you are responsible for maintaining the confidentiality of your Tennis Australia username and password (which are for your use only) and for restricting access to your computer. Tennis Australia accepts no responsibility for use of the Webpage, your user name or your password by an unauthorised person.

Your access to the Webpage

- 4 Tennis Australia does not warrant that you will have continuous access to the Webpage or your access or use will be error free. You acknowledge and agree that the Webpage may be unavailable to you or Users for any reason including but not limited to computer downtime attributable to malfunctions, upgrades, preventative or remedial maintenance activities, interruption in telecommunication supplies.
- 5 Tennis Australia reserves the right at any time to:
 - (i) deny or terminate all or part of your access to the Webpage where in Tennis Australia's opinion, there are concerns regarding unreasonable use, security or unauthorised access or where you have breached any of these terms or conditions; or
 - (ii) block or suspend the Webpage or delete or amend any content included on the Webpage.
- 6 Tennis Australia reserves the right to change the functionality and content (including limiting access to or ceasing to provide content) of the Webpage at any time without prior written notification to you.

Intellectual Property

- 7 You acknowledge that you do not obtain or own any intellectual property rights whatsoever in the Webpage or any content on the Webpage and all intellectual property rights subsisting in the Webpage and any User Content (defined in item 8 below) are vested in Tennis Australia or any third party licensor on creation.

Your User Content

- 8 If you post or submit any information, content, comment or other material (User Content) on the Webpage you grant to Tennis Australia a non-exclusive, royalty-free, perpetual, irrevocable, world wide and fully sublicensable right to use, reproduce, communicate, modify, adapt, publish, translate, create derivative works from, distribute and display such User Content throughout the world in any media.
- 9 You warrant that you own or otherwise control all of the rights to all User Content that you post, that you will be solely responsible for the User Content that you post, that the User Content is accurate, that the use of the User Content you supply does not violate any applicable laws or this Agreement and that the User Content will not cause injury or loss to any person.
- 10 Tennis Australia has the right but not the obligation to monitor, review and edit, re-classify or remove any User Content for any reason whatsoever and is not obliged to provide a reason for doing so. Neither Tennis Australia nor any of its Member Associations takes any responsibility or assume any liability for any User Content posted by you or any third party.
- 11 By posting User Content you agree to indemnify and keep indemnified Tennis Australia, its officers, Member Associations, and their employees, directors, contactors and agents against all claims, suits, actions, liabilities, actual or contingent costs, damages and expenses incurred by Tennis Australia in connection with any User Content.

Cookies

- 12 Cookies may be used on the Webpage to remember visitors within a session and to facilitate transaction functions. The Webpage may utilise cookies in order to understand the Webpage's usage and to improve the content, security and usability of the Webpage. We do not use cookies to collect personal information.

General

- 13 The failure of Tennis Australia to insist upon a strict performance of any of this Agreement will not be deemed a waiver of any subsequent breach or default in this Agreement.
- 14 Each provision of this Agreement is severable from the others and no severance of a provision will affect any other provision.
- 15 This Agreement is governed by the law in force in Victoria and the Commonwealth of Australia, and the parties submit to the exclusive jurisdiction of the courts in Victoria and the Commonwealth.
- 16 Tennis Australia reserves the right to vary this Agreement at any time and will post a notice for one month on the Webpage giving notice of that change. Any subsequent access to, or use of the Webpage following the change will constitute an acceptance of those variations to the Agreement.