

COSMO Advantage® Course Agreement

ON THIS DATED (THE "EFFECTIVE DATE"), VITAL STRENGTHS COACHING LLC DBA COSMO ADVANTAGE ("VS") IS WILLING TO GRANT YOU ("CUSTOMER") CERTAIN RIGHTS TO ATTEND ITS COURSES AND USE ITS MATERIALS UPON THE CONDITION THAT CUSTOMER ACCEPT ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS COURSE AGREEMENT (THE "AGREEMENT"). PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY.

BY CLICKING ON "I ACCEPT" BELOW, CUSTOMER INDICATES ITS OR YOUR AGREEMENT WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOUR ACCEPTANCE REPRESENTS THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE "CUSTOMER" SHALL REFER TO YOUR ENTITY. IF YOU DO NOT AGREE WITH THESE TERMS OR IF YOU DO NOT HAVE THE AUTHORITY TO BIND YOUR ENTITY, THEN DO NOT ACCEPT THESE TERMS AND CONDITIONS, DO NOT ATTEND THE COURSES, AND DO NOT ACCESS OR RECEIVE ANY OF THE MATERIALS OF VS.

1. **Course and Materials.** VS will use commercially reasonable efforts to provide its course or courses (the "Course" or "Courses") to Customer under the terms and conditions of this Agreement. Upon signing up for a course, VS will let Customer know the name of the Course and provide Customer with the number of classes for each Course. The classes will be provided to Customer on days and times set forth by VS and by a delivery method (online, live, etc.) as set forth by VS. VS may, in its discretion, reschedule or alter certain classes as needed. VS shall also provide Customer with certain Course materials (the "Materials") pursuant to the terms and conditions of this Agreement.

2. **Payments.**

2.1 **Fees.** Customer must pay VS all fees for the Courses that Customer signs up for (the "Fee"). This payment of the Fee must be made at the time that Customer signs up for the Course. VS will disclose the Fee amount to Customer at the time that Customer signs up for the Course.

2.2 **Refunds.** Customer may withdraw from a Course and receive a refund of ninety percent (90%) of the Fee for that specific Course provided that such notice of withdraw is received by VS at least one (1) week prior to the first class for the Course and provided that Customer has not received electronic access to any Materials for the Course. If Customer receives access to any Materials, then no refund will be given for any Fees.

3. **Intellectual Property.**

3.1 **VS Intellectual Property.** As between VS and Customer, VS retains all worldwide right, title, and interest in and to the Courses and Materials, including, but not limited to, all Intellectual Property. "Intellectual Property" means all worldwide intangible legal rights or interests evidenced by or embodied in (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any

trademark, service mark, trade dress, trade name, or other indicia of source or origin; and (d) any other similar rights. All rights in the Courses and Materials not expressly granted by VS to Customer in this Agreement are reserved to VS. Except as expressly provided in this Agreement, no other rights or licenses are intended or conveyed herein, whether by implication, estoppel, or otherwise.

3.2 **Trademarks.** VS retains all worldwide right, title, and interest in and to its Marks, and this Agreement shall not be deemed to grant to Customer any ownership rights in such Marks. Except as otherwise expressly provided, Customer may not use VS's Marks, whether registered or not, in any manner whatsoever, without securing the prior written approval of VS. Except as otherwise agreed to in writing, Customer may not in any way suggest or imply, other than as expressly set forth herein, that it is affiliated with, endorsed, or sponsored by VS. "Marks" means trademarks, service marks, trade names, logos and such other business identifiers.

3.3 **Customer's Right to Use.** VS hereby grants to Customer a non-exclusive right to use the information provided in the Courses and the Materials provided by VS to Customer for Customer's own personal use. VS hereby grants to Customer a non-exclusive right to use the information provided in the Courses and only the Materials entitled "Illustration Packet" provided by VS to Customer for Customer's professional use in coaching others provided that any reference to the Courses, the information in the Courses, or the Materials entitled "Illustration Packet" must clearly and legibly reference VS and attribute such information and Materials to VS. Except as provided herein, Customer may not provide access to the information provided in the Courses or the Materials to any third party or for any other purpose without the express written permission of VS. Without limiting the previous sentence, Customer may not use the Materials to train coaches at any time. Customer may also not use the Materials in any way that competes with VS or disparages VS in any way.

4. Confidentiality and Protections.

4.1 Agreement Confidential. Customer agrees not to disclose the terms and conditions of this Agreement, the information contained in the Courses, or the Materials to any person or entity without VS's prior written consent.

4.2 No Removal of Proprietary Legends. Customer shall not remove, obscure, or deface any language in the Materials setting forth proprietary rights, copyright protection, or confidentiality of VS.

4.3 Reports of Third-Party Misappropriation. Customer shall immediately report to VS any attempt by any person to copy or distribute any information from the Courses or the Materials to a third party.

5. Representations and Warranties.

5.1 DISCLAIMERS. VS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW) WITH RESPECT TO THE COURSES OR MATERIALS. VS EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES (A) THAT VS IS NOT AN INSURER, (B) THAT CUSTOMER HAS NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS SET FORTH IN THIS AGREEMENT; AND (C) THAT CUSTOMER HAS READ AND UNDERSTOOD ARTICLE 6, WHICH SETS FORTH VS'S MAXIMUM LIABILITY IN THE EVENT OF LOSS OR DAMAGE TO CUSTOMER.

5.2 Customer Representations and Warranties.

5.2.1 Compliance with Laws. Customer represents and warrants to VS that, when Customer uses the information contained in the Courses or uses the Materials (as allowed above), Customer shall comply with all Laws that are applicable to Customer. "Laws" mean all laws, statutes, rules, regulations, decrees, practices, and all other legal requirements of any kind or nature that are applicable to and legally binding upon a party.

5.2.2 Content. Customer warrants to VS that Customer (and not VS) shall undertake sole responsibility to verify the accuracy, reliability, timeliness, intended use, and completeness of the information provided in the Courses and the Materials before using or relying upon it in any manner whatsoever.

6. Limitation on Remedies.

6.1 EXCLUSION OF DAMAGES. VS SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER THIRD PARTY FOR ANY COSTS OF COVER OR FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING ANY LOSS OF USE,

INTERRUPTION OF BUSINESS, LOSS OF BUSINESS PROFITS, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT AND THE PROVISION OR USE OF THE INFORMATION IN THE COURSES OR THE MATERIALS, EVEN IF VS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE EXCLUSIONS SHALL APPLY DESPITE ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY OR REMEDY.

6.2 LIMITATION OF LIABILITY. IF, DESPITE ANY OF THE OTHER PROVISIONS OF THIS AGREEMENT, THERE SHALL BE ANY LIABILITY OF VS TO CUSTOMER OR ANY OTHER THIRD PARTY THAT ARISES OUT OF OR IS IN ANY WAY CONNECTED TO THIS AGREEMENT, VS'S AGGREGATE LIABILITY FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EITHER JOINTLY OR SEVERALLY, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO VS. CUSTOMER ACKNOWLEDGES THAT VS IS NOT AN INSURER; THAT THE PAYMENTS MADE BY CUSTOMER HEREUNDER ARE BASED SOLELY ON THE VALUE OF THE COURSES AND MATERIALS AND ARE NOT SUFFICIENT TO WARRANT VS ASSUMING ANY RISK OF CONSEQUENTIAL OR OTHER DAMAGES TO CUSTOMER DUE TO VS'S NEGLIGENCE OR FAILURE TO PERFORM. DUE TO THE NATURE OF THE COURSES AND MATERIALS, IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES, IF ANY, WHICH MAY RESULT (PROXIMATELY OR OTHERWISE) FROM VS'S NEGLIGENCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT. THIS LIMITATION OF LIABILITY REFLECTS AN ALLOCATION OF RISK BETWEEN THE PARTIES IN VIEW OF THE FEES CHARGED, IS NOT A PENALTY, AND SHALL BE EXCLUSIVE. THE LIMITATIONS IN THIS AGREEMENT SHALL APPLY DESPITE ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY OR REMEDY.

7. Term; Breach; Termination.

7.1 Termination. VS may terminate this Agreement at any time and for any reason.

7.2 Effect on Rights; Survival. Upon termination of this Agreement, Customer shall cease use of all information provided in the Courses, return all Materials, and cease use of all Materials. Except as expressly provided otherwise herein, termination of this Agreement shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party's obligations under this Agreement. Upon termination of this Agreement, all licenses and rights to use the

Marks, information provided in the Courses, and the Materials granted under this Agreement shall terminate, and the rights and obligations of Sections 3, 4, 5, 6, 7, 8, and 9 in their entirety shall survive.

8. Defense and Indemnification.

8.1 Limited Covenant to Defend. Customer (the "Defending Party"), at its own expense and subject to the terms and conditions of this Section 8.1, shall defend the claims brought against VS (the "Invoking Party") by third parties to the extent that the claim, if true, would constitute a breach by the Defending Party of the representations and warranties set forth in Section 5 above. The defense shall only extend to those portions of the claim that, if true, would constitute a breach of such representations and warranties. This defense shall not constitute an admission of guilt by such Defending Party and the terms and conditions of this Section 8 shall govern such defense.

8.2 Expenses and Monetary Awards. If a third-party claim, of which the Defending Party has a duty to defend in accordance with Section 8.1 results in losses to the Invoking Party, then the Defending Party will pay or otherwise satisfy any monetary obligation entered against the Invoking Party or loss sustained by the Invoking party as a result of such third party claim as those amounts become due.

8.3 Additional Counsel. If the Defending Party defends the Invoking Party in a lawsuit, arbitration, negotiation, or other proceeding concerning a claim pursuant to this Article 8, then the Invoking Party may engage separate counsel, at the Invoking Party's expense, to monitor and advise the Invoking Party about the status and progress of the matter.

9. Miscellaneous.

9.1 No Reimbursement. Each party shall be responsible for its own expenses and costs under this Agreement and each party shall have no obligation to reimburse the other party for any expenses or costs incurred by such party in connection with activities as they relate to this Agreement.

9.2 Force Majeure. If VS is unable to perform its obligations under this Agreement due to circumstances beyond its reasonable control (other than obligations for the payment of money or the maintenance of confidentiality), including, but not limited to, acts of God, earthquakes, labor disputes and strikes, riots, war, pandemic, hacker attacks, actions or decrees of governmental bodies, changes in applicable Laws, or communications or power failures, such obligations will be suspended so long as those circumstances persist.

9.3 Assignment. Except as permitted in this Agreement, neither party shall assign, transfer, or otherwise delegate any of its rights, duties, or obligations under this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the other party. Any attempt to assign, transfer or otherwise delegate any of the rights, duties, or obligations under this Agreement without the prior written consent of the other party, except in accordance with this Section, shall be void. Despite the foregoing, VS may assign its rights, duties, and obligations hereunder without approval of Customer to

a party that succeeds to all or substantially all of its assets (whether by sale, merger, operation of law or otherwise). Any assignment with consent does not release the assignor from any of its obligations under the Agreement unless the consent so states. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

9.4 Independent Contractors. Except as specifically provided in this Agreement, nothing in this Agreement shall be construed to create an agency, joint venture, partnership, or other form of business association between the parties. Neither party has the right or authority to make any contract, representation, or binding promise of any nature on behalf of the other party, whether oral or written, without the express written consent of the other party.

9.5 No Waiver. The failure on the part of either party to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future or any other right or remedy.

9.6 Governing Law and Exclusive Jurisdiction and Venue. The laws of the State of Texas will govern this Agreement without reference to conflicts of law principles. Exclusive jurisdiction and venue for all disputes arising under this Agreement shall be only with the state courts residing in Austin, Texas, or, if federal court, then the nearest federal court to Austin, Texas.

9.7 Severability. If any provision in this Agreement is found to be invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless continue in full force and effect, and if the invalid, void or unenforceable provision is an essential part of the Agreement, the parties shall immediately begin negotiations for its replacement.

9.8 No Bias. This Agreement shall be interpreted as written and negotiated jointly by the parties. It shall not be strictly construed against either party, regardless of the actual drafter of the Agreement.

9.9 Costs, Attorneys' Fees, and Experts' Fees. In the event any obligation of this Agreement must be enforced, through litigation or otherwise, the prevailing party will be entitled to recover reasonable costs and expenses incurred in enforcing the obligation, including costs, reasonable attorneys' fees and experts' fees.

9.10 Counterparts. This Agreement may be executed in duplicate and either copy or both copies are considered originals.

9.11 No Restriction. Nothing in this Agreement shall restrict VS from providing any products or services, whether with or without charge, to any third party.

9.12 Notices. Any and all notices given under this Agreement shall be in writing and may be effected by personal delivery, facsimile, commercial overnight delivery, or mail, registered or certified, postage prepaid with return receipt requested. Notices shall be sent to the parties at their respective addresses set forth on the first page of this Agreement, with a copy to such party's General Counsel. Notices shall be deemed given on the date of actual receipt (or refusal

of delivery) when personally delivered, upon confirmed transmission when sent by facsimile, one day after having been sent when sent by commercial overnight delivery, and three days after having been mailed when sent by certified or registered mail. Any written notice will be effective no later than the date actually received.

9.13 Adequacy of Consideration. Each party acknowledges that it enters into this Agreement of its own accord, for and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the adequacy of which is hereby acknowledged, and does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein. All conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by Law.

9.14 Customer Publicity Rights. Customer further grants VS permission to use Customer's comments, testimonials, feedback, name, professional credentials, likeness, photographs, and related identifying information for VS' advertising, marketing, promotional materials, website content, social media, presentations, and other business purposes unless Customer provides written notice to VS that such permission is withheld or revoked.

9.15 Entire Agreement. This Agreement constitutes the final and entire agreement between the parties, and supersedes all prior written and oral agreements, understandings, or communications with respect to the subject matter of this Agreement. This Agreement may not be modified except in writing signed by a duly authorized representative of each party. It is expressly understood and agreed that no employee, agent, or other representative of VS has any authority to bind VS with respect to any statement, representations, warranty, or other expression unless the same is specifically set forth in this Agreement. It is also understood and agreed that no usage of trade or other regular practice or method of dealing between the parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement. The parties agree that the terms and conditions contained in this Agreement shall prevail over any terms and conditions of any purchase order, acknowledgment form or other instrument.

9.16 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties hereto, and no other person or entity shall be a direct or indirect beneficiary of or shall have any direct or indirect cause of action or claim in connection with this Agreement.

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