

COMMERCIAL TERMS

Acknowledgement		This Confidentiality and Course Agreement comprise these Commercial Terms and the Agreed Terms (annexed hereto) (Agreement). By signing this Agreement, each party acknowledges that it has carefully read and understood the Agreement and agrees to be bound by its terms.
Recitals		(a) KBS offers training courses regarding kinesiology knowledge, clinical techniques and business management skills (Courses). (b) It is proposed that Confidential Information will be disclosed in connection with the Purpose set out in Item 1 (Purpose).
Date of Agreement		/ /
KBS		Name: KINESIOLOGY BUSINESS SCHOOL TRADING PTY LTD ACN 684 674 404
		Address: PO Box 718 Dee Why
Participant		Name:
		Address:
Item 1	Purpose	For the Participant's participation in the Courses.
Item 2	Participant Obligations	<p>By executing this Agreement, the Participant acknowledges and agrees that:</p> <ul style="list-style-type: none"> (a) it will comply with this Agreement and any reasonable instructions and directions given by KBS in connection with the Courses, whether before, during or after the Courses; (b) KBS, its officers, employees, contractors and facilitators teaching the Courses (collectively, KBS Personnel), and other participants of the Courses do not provide medical or mental health advice, diagnosis, treatment, care, or any other professional information or advice; (c) the information, resources and materials provided during (or in connection with) the Courses by KBS (Course Materials) do not constitute medical or mental health advice, and are not a substitute for proper medical or mental health diagnosis, treatment or care from a medical or mental health professional; (d) it will consult a doctor or other professional advisors (as applicable) regarding the Courses to ensure that the Courses and the Course Materials suit its needs and do not compromise its own wellbeing or that of any other person; (e) the Courses only provide general information, and they do not contemplate the Participant's specific circumstances or requirements; (f) as a result of Item 2(e), there are inherent risks to the Participant's health associated with its participation in the Courses, including, but not limited to physical and mental illness, and such participation (and the use of the Courses Materials) shall be at the Participant's own risk; (g) the Courses may involve therapeutic physical touch as part of the teaching activities, and the Participant consents to such physical contact and agrees that it is solely responsible for communicating any discomfort or objection to such physical contact to KBS; (h) it will respect the KBS Personnel and other participants and will not discriminate against, harass, or spread misinformation or derogatory statements regarding their gender, creed, sexuality, religion, sexual orientation, political views or personal beliefs; (i) other participants may disclose personal circumstances, experiences, and emotions during the Courses, and the Participant agrees to keep such information confidential and respond sensitively to such disclosures; (j) it will promptly inform KBS of any concern and complaint it has regarding the Courses and Course Materials; (k) it will not request the contact details of, or directly contact by any means, other participants of the Courses for the purpose of marketing or promoting its own products and/or services;

		<ul style="list-style-type: none"> (l) the Courses may be recorded and all rights, title and interest in the recordings are property of (and shall vest in) KBS on and from creation, including but not limited to all audio, video and material covered during the Courses; (m) as a precondition of its participation in the Courses, it grants to KBS a licence to use the Participant's image, voice and likeness at any time for the purposes of promoting KBS's business and contributing to the development of kinesiology studies, and the Participant consents to any such access by KBS that would otherwise infringe their Moral Rights; (n) all rights, title and interest in and to the Intellectual Property in (or relating to) KBS, the Courses and Course Materials are (and shall remain) at all times the sole and exclusive property of KBS; and (o) KBS may: <ul style="list-style-type: none"> (p) require the Participant to leave and withdraw from the Courses at any time with no refund of the Fees paid to KBS in connection with the Courses; and/or (q) refuse the Participant's attendance to any future Courses and access to any other products and services provided by KBS, if the Participant: <ul style="list-style-type: none"> (i) breaches this Agreement; (ii) does not comply with KBS's instructions and directions in connection with the Courses; (iii) acts in a manner that, in the discretion of KBS, disrupts the Course or endangers (or is likely to cause harm to) others; and/or (iv) engages in behaviours that, in the discretion of KBS, bring (or is likely to bring) KBS into disrepute. 	
Item 3	Course Fees	The Participant shall pay to KBS's nominated bank account the course fees specified on https://kinesiologybusinessschool.com/ (Website) on the date of this Agreement, and/or such other amounts as otherwise advised by KBS in writing (Fees) in accordance with the payment policies available on the Website (which may be amended by KBS at its sole discretion from time to time).	
Item 4	Special Conditions		
Executed as an Agreement	For and on behalf of KBS	Name:	Kylie Bryan
		Signature:	
		Date:	
	For and on behalf of Participant	Signature:	
Date:		/ /	

AGREED TERMS

1 DEFINITIONS

In this Agreement:

Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales.

Confidential Information of the Discloser means:

(a) all commercial, financial, legal and technical and other advice, correspondence, material, memoranda, opinions, information which has commercial value to the Discloser, including without limitation, any techniques, sketches, drawings, models, processes, apparatus, equipment, algorithms, software programs, software source documents, formulae related to the current, future and proposed products and services of the Discloser, non-technical information relating to the Discloser's products and services, such as the pricing, margins, merchandising plans and strategies, finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data, sales and marketing plans, future business plans, and any other information which is proprietary and confidential to the Discloser, and information in whatever form that:

(i) is disclosed to the Recipient by or on behalf of the Discloser (whether before or after the date of this Agreement), or which is otherwise acquired directly or indirectly by the Recipient from the Discloser or any adviser to the Discloser; or

(ii) relates directly or indirectly to the Intellectual Property of the Discloser, or relates directly or indirectly to the respective past, existing or future performance, operations, activities, administration, technology and know-how associated with the Discloser.

(b) notes, summaries, compilations, conclusions, calculations, computer records (including data, copies, models, reproductions and recordings) or other material in whatever form made or derived in whole or in part from, or from inspection or evaluation of, any information of the type referred to in paragraph (a) above; and

(c) all Intellectual Property in (or relating to) the Courses, Course Materials and its business,

but excludes any information that is:

(d) in the public domain other than by a breach of this Agreement or any other duty of confidence; or

(e) independently learned or developed by the Recipient without references to any information provided by the Discloser, provided that the Recipient can furnish evidence to substantiate the same to the Discloser's satisfaction.

Discloser means KBS.

Intellectual Property means all present and future industrial and intellectual property rights, including without limitation:

(f) inventions, patents, copyright, trade business, company or domain names, rights in relation to circuit layouts, plant breeders' rights, registered designs, registered and unregistered trademarks, know how, trade secrets, and the right to have confidential and/or commercially sensitive

information kept confidential, and any and all other rights to intellectual property which may subsist anywhere in the world; and

(a) any application for or right to apply for registration of any of those rights.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as defined in the *Copyright Act 1968* (Cth).

Notice means:

(a) notice; or

(b) a consent, approval or other communication required to be in writing under this Agreement.

Permitted Person means a person who:

(a) has been approved in writing by the Discloser; or

(b) is an employee, contractor, director, officer, solicitor or professional adviser of the Recipient,

and who has:

(c) a need to access the Confidential Information for the Purpose; and

(d) been notified that the Confidential Information is confidential and is aware of (and has agreed to be bound by) the terms of this Agreement.

Purpose takes its meaning from Item 1 of the Commercial Terms.

Recipient means the Participant.

2 CONFIDENTIALITY

2.1 Confidential Information

(a) The Recipient acknowledges that the Confidential Information is valuable to the Discloser, and the Recipient agrees to keep that Confidential Information confidential on the terms of this Agreement.

(b) The Recipient must take reasonable precautions including, without limitation, physical security, as may be necessary to preserve the confidentiality of the Confidential Information.

(c) Nothing in this Agreement restricts the Discloser from dealing with its Confidential Information (provided that such information is not Confidential Information of the Recipient).

2.2 Permitted Use

The Recipient must not use the Confidential Information for any purpose other than the Purpose, or in a manner that causes commercial, financial, or competitive disadvantage to the Discloser, unless the Discloser has provided its express prior written consent to such use.

2.3 Obligations

(a) The Recipient must not publicise, demonstrate, distribute or otherwise disclose the Confidential Information (whether that disclosure is oral, written, electronic or in any other form), including

without limitation, on social media, online platforms, and at public events, other than with the express prior written consent from the Discloser or in accordance with this clause 2.3.

- (b) The Recipient may disclose the Confidential Information to a Permitted Person, provided that the Recipient has (before such disclosure) informed the Permitted Person of the confidential nature of such Confidential Information and of their obligations to preserve the confidentiality of the Confidential Information in accordance with this Agreement.
- (c) The Recipient must immediately notify the Discloser if it suspects or becomes aware of any unauthorised use or disclosure of the Confidential Information.
- (d) The Recipient must ensure that each Permitted Person shall comply with this Agreement as if they were a party to it.
- (e) The Recipient will be deemed to have contravened this Agreement if a Permitted Person contravenes a term of this Agreement applicable to the Recipient.
- (f) The Recipient must do anything required by the Discloser to restrain a breach of this Agreement or any infringement of the Discloser's rights arising out of this Agreement by any person, including from a Permitted Person, whether by court proceedings or otherwise.
- (g) The obligations of confidence under this Agreement are in addition to any obligations of confidence arising at common law or equity.
- (h) The Recipient is not required to keep confidential any Confidential Information which becomes publicly known or available other than by breach of this Agreement or any other confidentiality obligations.

2.4 Disclosure required by law

- (a) The Recipient may disclose (and may permit anyone else to disclose) the Confidential Information to the extent that it is required by law, court order, the rules of a securities exchange, by a government or government agency having jurisdiction over the Recipient, or to regulatory authorities necessary in order to obtain any consents and approvals relevant to the Purpose.
- (b) The Recipient must, before making that disclosure:
 - (i) inform the Discloser of the intended disclosure and the reasons for that intended disclosure;
 - (ii) consult with and follow any reasonable directions of the Discloser to minimise such disclosure; and
 - (iii) if the disclosure cannot be avoided:
 - (A) only disclose the Confidential Information to the extent necessary to comply with the applicable law; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

2.5 Return or Destruction of Confidential Information

- (a) The Recipient must, on written Notice from the Discloser (or upon the conclusion of this Agreement or the Participant's participation in the Courses), immediately:
 - (i) return to the Discloser all documents, computer disks or other media held by the Recipient that contain the Discloser's Confidential Information or Intellectual Property in a recorded form; and/or
 - (ii) delete all such Confidential Information and Intellectual Property held in any medium in the Recipient's control,
as directed by the Discloser.
- (b) The Recipient will:
 - (i) comply with any Notice from the Discloser in accordance with clause 2.5(a); and
 - (ii) provide to the Discloser such evidence of compliance as the Discloser may reasonably require.
- (c) The Recipient's rights to use and disclose the Confidential Information under this Agreement immediately cease upon the issuing of the Notice detailed in clause 2.5(a).
- (d) The return, destruction or deletion of the Confidential Information under this clause 2.5 does not release the Recipient from its obligations under this Agreement.

3 INTELLECTUAL PROPERTY

- (a) Nothing contained in this Agreement, and no disclosure by the Discloser, shall be construed as transferring, granting or conferring any Intellectual Property or licence to the Intellectual Property of the Discloser.
- (b) The Recipient must not:
 - (i) make copies of any Intellectual Property of the Discloser without the Discloser's express prior written consent, including (in the case that the Participant is the Recipient) making physical copies of the Course Materials and/or any Intellectual Property of the Discloser and recording the Courses; and
 - (ii) apply for, or directly or indirectly assist any other person to apply for, the registration of any Intellectual Property of the Discloser in respect of any invention, process or design that is based on or utilises the Confidential Information of the Discloser.

4 FURTHER ACKNOWLEDGEMENT

The Recipient acknowledges and agrees that:

- (a) nothing in this Agreement requires the Discloser to make any information (including Confidential Information) available to the Recipient;
- (b) the making of any information available to the Recipient is at the absolute discretion of the Discloser;

- (c) the Discloser, its related bodies corporate and officers, employees, agents, advisers or consultants do not make any representations or provide any warranties (express or implied) that the Confidential Information is accurate, complete or reliable; and
- (d) it must rely solely on its own investigations and analysis and must not rely on any Confidential Information for the Purpose or otherwise.

5 EXCLUSION OF WARRANTIES

- (a) No express or implied warranty is made or given with respect to any part of the Confidential Information and the Recipient hereby acknowledges that it has not been and will not be induced to act in any way by any representation made in or about or in connection with the Confidential Information.
- (b) The Discloser shall not be liable to the Recipient for any loss or liability sustained by the Recipient in connection with the Confidential Information howsoever arising.
- (c) The Discloser assumes no duty of care to the Recipient.
- (d) The Recipient acknowledges and agrees that the Discloser's liability to the Recipient for breach of this Agreement is limited to the amounts paid by the Recipient to the Discloser under this Agreement.

6 FEE AND PAYMENT

The Participant shall pay to KBS the Fees at the time and in the manner set out in Item 3.

7 SURVIVAL

In addition to any other clause relating to the survival of rights and/or obligations in this Agreement, the obligations of the parties under this Agreement will survive the return or destruction of the Confidential Information, the completion of the Purpose and the conclusion of the Participant's participation in the Courses, unless the Discloser provides written notice to the Recipient releasing it from the confidentiality obligations under this Agreement in relation to the Confidential Information (or any part thereof).

8 INDEMNITY

The Recipient indemnifies the Discloser and keeps the Discloser indemnified from all claims, costs, expenses, losses and liabilities (including legal costs on an indemnity basis) suffered or incurred by it in connection with any breach of this Agreement by the Recipient or any Permitted Person.

9 INJUNCTION

- (a) The Recipient acknowledges that damages may not be a sufficient or adequate remedy for any breach of this Agreement and that, in addition to the other available remedies, the Discloser is entitled to specific performance or injunctive relief in relation to any actual or anticipated breach.
- (b) The Recipient must promptly take all steps that the Discloser may reasonably require, and must cooperate with the Discloser in any investigation, litigation or other action of the Discloser (or a related body corporate of the Discloser), relating to any actual suspected, likely or threatened breach of

this Agreement or any theft, loss, damage or unauthorised access, use or disclosure of or to any of the Discloser's Confidential Information that is or was in the possession, custody or control of the Recipient or any of its Permitted Persons.

- (c) If a breach of this Agreement occurs, or if the Discloser reasonably believes that a breach may occur, the Recipient consents to the enforcement of this Agreement by injunctive relief or specific performance without proof of actual loss or damage by the Discloser.

10 NOTICE

- (a) A Notice must be in writing and signed by or on behalf of the sender addressed to the recipient and delivered by mail, or sent by email, to the recipient's nominated address (as set out in the Commercial Terms).
- (b) A Notice given to a person in accordance with this clause is treated as having been given and received:
 - (i) on the day of delivery if delivered before 5.00pm on a Business Day, otherwise on the next Business Day;
 - (ii) if sent by pre-paid mail, on the third Business Day after posting; or
 - (iii) if sent by email, at the time shown in the delivery confirmation report on that day if the report states that delivery was completed before 5.00pm on a Business Day, otherwise on the next Business Day.

11 DISPUTE RESOLUTION

- (a) If any dispute between the parties arises out of, relates to or occurs in connection with this Agreement or its validity (**Dispute**), either party may give written notice to the other stating the details of the Dispute and requiring that the Dispute be resolved by a meeting between the parties (**Dispute Notice**).
- (b) Within 14 days after the service of a Dispute Notice, the parties must meet in good faith to negotiate a settlement of the Dispute.
- (c) The parties may have legal representation at any meeting conducted under this clause.
- (d) If the Dispute is not settled within 28 days of the receipt of the Dispute Notice, the parties agree to refer the Dispute to a mediator, to be appointed by the President for the time being of the Law Society of New South Wales.
- (e) If mediation pursuant to clause 11(d) fails to resolve the Dispute, each party is free to commence legal proceedings to resolve the Dispute.
- (f) Nothing in this clause is to be interpreted as preventing either party from obtaining interlocutory relief from an appropriate court if it is reasonably necessary to do so to protect the interests of that party.

12 GENERAL

- (a) This Agreement may be executed in any number of counterparts. A party may execute this Agreement by signing any counterpart. All counterparts taken together constitute the one instrument.
- (b) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject

matter is replaced by this Agreement and has no further effect.

- (c) This Agreement may only be amended in writing signed by all the parties and may not be amended in any other manner.
- (d) Each party must pay its own costs and expenses in respect of the negotiation, preparation and execution of this Agreement and finalising any transactions contemplated therein.
- (e) A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this Agreement with the written consent of the other party.
- (f) Each party warrants, undertakes and represents to the other party that it has the necessary power and authority to execute, deliver and perform this Agreement and to become bound by it and that all necessary actions have been taken to authorise the execution of this Agreement.
- (g) Part or all of any clause of this Agreement that is unenforceable, or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.
- (h) No waiver by a party of any breach or default by the other party is effective unless reduced to writing and signed by the party, and any such waiver does not constitute a waiver of any other continuing breach or default under this Agreement.
- (i) The Special Conditions set out in Item 4 of the Commercial Terms apply to this Agreement.
- (j) This Agreement is governed by the law in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State and the New South Wales Registry of the Federal Court of Australia in respect of all proceedings arising in connection with this Agreement.