

# Terms and Conditions of Use (TOU)

## Regarding all products and services by Kimberly Case LLC [www.drkimcase.com](http://www.drkimcase.com)

Please read these Terms and Conditions of Use ("TOU") carefully. You must agree to these TOU before you are permitted to use any Kimberly Case LLC (free or paid) digital or downloadable resources, website content, online course, one-on-one or group coaching, class, program, workshop, training, or enter any online private forums operated by Kimberly Case LLC (for any purpose), whether on my website or a third-party website such as an online course platform (e.g., Teachery, Zoom, Facebook) (collectively "the Program").

**If you do not agree with these TOU, you may not use the Program.**

As used in these TOU, the term "Releasees" is defined to include the following: (i) Kimberly Case LLC, its subsidiaries, affiliated companies, owners, members, managers, directors, officers, past and present employees, agents, coaches, representatives, successors and assigns (collectively "the Company"); (ii) any Company volunteers; (iii) Kimberly Case.

1. **The Program** refers to an free or paid program or service by Kimberly Case, LLC:

- i. All Program materials, including videos, audio, worksheets, and homework assignments;
- ii. Access to a course, consultation, group program, talk, workshop, or other professional service;
- iii. Access to an online community.

### 2. Participants

This Program is intended and only suitable for individuals aged 18 and above. Some of the content in this Program may not be appropriate for children. Company hereby disclaims all liability for use by individuals under the age of 18.

The Company reserves the right to offer additional program elements from time to time, for any subgroup of participants. These additional program elements are a bonus, not a part of the services included in the base version of the Program. The selection of the participants who may participate in any additional program elements is at the sole discretion of the Company.

### 3. Refunds

Your satisfaction with the Program is important to us. However, because of the extensive time, effort, preparation and care that goes into creating and providing the Program we have a no refund policy. Unless otherwise provided by law, you acknowledge that we do not offer refunds

for any portion of your payment for any of our Program and no refunds will be provided to you at any time. By using and/or purchasing our Program, you understand and agree that all sales are final and no refunds will be provided.

Company reserves the right, in its sole discretion, to determine how to discipline a participant who violates these Terms. The Company may terminate your access and participation in the Program without notice and without refund.

Since we have a clear and explicit Refund Policy in these TOU that you have agreed to prior to completing the purchase of the Program, we do not tolerate or accept any type of chargeback threat or actual chargeback from your credit card company or payment processor. If a chargeback is placed on a purchase or we receive a chargeback threat during or after your purchase, we reserve the right to report the incident to all three credit reporting agencies or to any other entity for inclusion in any chargeback database or for listing as a delinquent account, which could have a negative impact on your credit report score. The information reported will include your name, email address, order date, order amount, and billing address. Chargeback abusers wishing to be removed from the database shall make the payment for the amount of the chargeback.

#### **4. Intellectual Property Rights**

##### **a. Ownership of the Content**

The words, videos, voice and sound recordings, training materials, design, layout, graphics, photos, images, information, materials, documents, data, databases and all other information and intellectual property accessible on or through the Company website, any third-party website the Company may use to distribute or host the Program, and contained in e-mails sent to you by the Company, as well as the look and feel of all of the foregoing ("the Content") is property of the Company and/or our affiliates or licensors, unless otherwise noted, and it is protected by copyright, trademark, and other intellectual property laws.

##### **b. The Company's Limited License to You**

If you view, purchase or access any Program or any of the Content, you will be considered our Licensee. For the avoidance of doubt, you are granted a revocable, non-transferable license for personal, non-commercial use only, limited to you only.

*This means you may view, download, print, and use one copy of individual pages of the Program and Content for your own personal learning purposes only.*

You may not republish, reproduce, duplicate, copy, sell, display, disclose, distribute to friends, family, or any other third party, even if for no profit or benefit to you. You may not use any material from the Program or Content for commercial purposes or in any way that earns you or any third party money. By downloading, printing, or otherwise using the Program or Content for personal use you in no way assume any ownership rights of the Content – it is still Company property. Any unauthorized use of any materials found in the Program or Content shall constitute infringement.

You must receive our written permission before using any of the Program or Content for your own commercial use or before sharing with others.

The trademarks and logos displayed on the Program or Content are trademarks belonging to the Company, unless otherwise indicated. Any use including framing, metatags or other text utilizing these trademarks, or other trademarks displayed, is strictly prohibited without our written permission.

All rights not expressly granted in these terms or any express written license, are reserved by us.

### **c. Unauthorized Use**

Your use of any materials found in the Program or Content other than that expressly authorized in these TOU or by a separate written assignment, is not permitted ("Unauthorized Use"). You agree to pay liquidated damages of five (5) times the total fees paid for the Program in the event of your Unauthorized Use, or a minimum of \$5,000 if you did not pay fees for the Program, in addition to any legal or equitable remedies the Company may be entitled to pursue. This is not a penalty but an agreed liquidated damages charge for the Unauthorized Use.

You agree that any violation or threatened violation of the Intellectual Property Rights terms in these TOU would cause irreparable injury to Us that may not be adequately compensated by damages, entitling Us to obtain injunctive relief, without bond, in addition to all legal remedies.

### **d. Your License to the Company; Use in Testimonials and Marketing.**

By posting or submitting any material during the Program such as comments, posts, photos, designs, graphics, images or videos or other contributions, you are representing to us that you are the owner of all such materials and you are at least 18 years old. You are also granting us, and anyone authorized by us, an unlimited, royalty-free, perpetual, irrevocable, non-exclusive, unrestricted, worldwide license to use, copy, modify, transmit, sell, exploit, create derivative works from, distribute, and/or publicly perform or display your contributions, in whole or in part, in any manner or medium, now known or developed in the future, for any purpose, and granting us the right to make it part of the Company's current or future Program and Content. This right includes granting us proprietary rights or intellectual property rights under any relevant jurisdiction without any further permission from you or compensation by us to you.

You also consent to photographs, videos, and/or audio recordings, including teleconference calls, webinars, or other communications, that may be made by the Company during the Program that may contain you, your voice and/or your likeness. In the Company's sole discretion, we reserve the right to use these photographs, videos, and or/audio recordings and/or any other materials submitted by you to the Company or created by the Company in connection with your participation in any Program, without compensation to you at any time, now or at any time in the future.

### **e. Request for Permission to Use the Content**

If you wish to use any of the Content, or any other intellectual property or property belonging to us, you should request permission in writing BEFORE you use the Content by sending an email to [casephd@gmail.com](mailto:casephd@gmail.com).

If you are granted permission by the Company, you agree to use the specific Content that the Company allows and only in the ways for which the Company has given you its written permission. If you choose to use the Content in ways that the Company does not specifically give you written permission, you agree now that you will be treated as if you had copied, duplicated and/or stolen such Content from us, and you consent to immediately stop using such Content and to take whatever actions as we may request and by the methods and in the time frame that we prescribe to protect our intellectual property and ownership rights in the Program and Content.

## **5. Your Conduct in the Program; Confidentiality**

Please choose carefully the materials that you upload to, submit to, or embed on any website operated by the Company and any third-party forums operated by the Company. Any material you post on the Company's website or in any third-party forums operated by the Company may become public.

Company is not legally bound to keep your information confidential. Nevertheless, Company agrees to keep all information about our relationship strictly confidential except in very rare circumstances where disclosure is required by law, for example when a court might issue a subpoena for the file or information, or if you threaten to harm yourself, or others. You acknowledge that our communications are not covered by any doctor-patient privilege or other privilege.

You agree to keep all information you learn about other Program participants, their business, or clients (as applicable), strictly confidential except in very rare circumstances where disclosure is required by law.

You are responsible for your material and for any liability that may result from the material you post. You participate, comment, and post material at your own risk. Any communication by you on the Company's website and any third-party forums operated by the Company, whether by leaving a comment, participating in a chat, public or private forum, or other interactive service, must be respectful. You may not communicate or submit any content or material that is abusive, vulgar, threatening, harassing, knowingly false, defamatory or obscene or otherwise in violation of any law or the rights of others. You agree to post comments or other material only one time.

The Company, in its discretion, may delete or modify, in whole or part, any post, comment or submission to the Company's and any third-party forums operated by the Company. The Company does not, however, have any obligation to monitor posts, comments, or material submitted by third parties. The Company neither endorses nor makes any representations as to the truthfulness or validity of any third-party posts, comments, or material on the Company website or any third-party forums operated by the Company. The Company shall not be responsible or liable for any loss or damage caused by third-party posts, comments, or materials on the Company website and any third-party forums operated by the Company.

You are strictly forbidden from the following:

- Causing damage to any Company website or third-party forums operated by the

#### Company

- Using any Company website or third-party forums operated by the Company for any unlawful, illegal, fraudulent or harmful purpose or activity
- Using any Company website or third-party forums operated by the Company to copy, store, host, transmit, send, use, publish or distribute any spyware, virus, worm, Trojan horse, keystroke logger or other malicious software
- Using any Company website or third-party forums operated by the Company to transmit, send or deliver unsolicited communications or for other marketing or advertising purposes
- Systematically or automatically collecting data from any Company website or third-party forums operated by the Company
- Sharing private and proprietary information from the Program or other participants with anyone else
- Discriminatory speech, hate speech, comments, or actions against another member based on their sex, gender, age, ethnicity, race, socio-economic status, disability, or other labels
- Harassing, fighting with, or being disrespectful to other participants

We may also post separate rules regarding your behavior in any online community or forum, whether hosted on the Company's website or a third-party website, which may be updated from time to time. You agree that you are bound by those rules and they are expressly incorporated into these TOU.

If, in the Company's sole discretion, your conduct violates these TOU in any way, you agree that the Company may immediately and permanently terminate your participation in the Program and your access to the Content without refund.

The Company does its best to create a safe and welcoming space for all participants, however, Company cannot guarantee that all participants will follow these guidelines. Company, in its sole discretion, may remove any participant's comments, posts, content or materials, however, Company does not have a duty to review all comments, posts, content and material shared within any online private forums or groups or on any group call. Therefore, Company shall not be held liable for any participant's comments, actions, posts, content or materials that result in another participant's trauma or discomfort.

## **6. Username and Password**

To access certain features of the Program, including any private membership areas, you may need a username and password. You agree to keep your username and password confidential. During the registration process for any service or product, online community, or online access, you agree to provide true, accurate, current and complete information about yourself. If the Company has reasonable grounds to suspect that you have provided false information, shared your username and password with anyone else, or forwarded any non-public material from the Program to any other person, the Company has the right to suspend or terminate your account and refuse any and all current or future use of the Program or any Content, in whole or part, without refund. Any personally identifiable information you provide as part of the registration process is governed by the terms of the Company's website Privacy Policy.

## **7. Termination or Cancellation**

The Company reserves the right in its sole discretion to refuse or terminate your access to the Program and Content, in full or in part, at any time without notice. In the event of cancellation or termination, you are no longer authorized to access the part of the Program or Content affected by such cancellation or termination. The restrictions imposed on you in these TOU with respect to the Program and its Content will still apply now and in the future, even after termination by you or the Company.

**Participant has opted for a payment plan option for the Program (i.e. monthly payments) but would like to cancel their access and participation in the Program**

If you have opted to pay for any Program via payments, and you would like to cancel your access and participation in the Program, you must provide the Company with at least 30 days written notice (including e-mail) before your next recurring charge. You will continue to have access to the materials and Content of the Program until the end of the then-current payment period. You will not be issued a refund for any remaining days or months of the Program after your cancellation.

In the event you decide to cancel, any remaining installment, default, or late payments will be due immediately.

**8. Personal Responsibility, Assumption of Risk, Release, Disclaimers**

- f. You acknowledge that, by engaging with the Company for the Program, you voluntarily assume an element of inherent risk, and knowingly and freely assume all risk and responsibility for injuries to any persons or damages to any property, and release, covenant not to sue, and hold Releasees harmless for any and all liability to you, your personal representatives, assigns, heirs and next of kin, for any and all claims, causes of action, obligations, lawsuits, charges, complaints, controversies, damages, costs or expenses of whatsoever kind, nature, or description, whether direct or indirect, in law or in equity, in contract or in tort, or otherwise, whether known or unknown, arising out of or connected with your participation in the Program, whether or not caused by the active or passive negligence of the Releasees.

In the event that the release and hold harmless provision is held unenforceable for any reason, you agree to limit any damages claimed to the total paid to the Company for the Program.

- g. The Program and Content provide information and education only, and do not provide any financial, legal, medical or psychological services. None of the Program or Content prevents, cures or treats any mental or medical condition. The Program and Content is not intended to be a substitute for professional advice that can be provided by your own accountant, lawyer, financial advisor, or medical professional. You are responsible for your own financial, legal, physical, mental and emotional well-being, decisions, choices, actions and results. You should consult with a professional if you have specific questions about your own unique situation. The Company disclaims any liability for your reliance on any opinions or advice contained in the Program.

- h. Earnings and Results Disclaimer. You agree that Company has not made and does not make any representations about the earnings or results you may receive as a result of your participation in the Program. The Company cannot and does not guarantee that you will achieve any particular result or earnings from your use of the Program, and you understand that results and earnings differ for each individual.
- i. Any links to third-party products, services, or sites are subject to separate terms and conditions. The Company is not responsible for or liable for any content on or actions taken by such third-party company or website. Although the Company may recommend third-party sites, products or services, it is your responsibility to fully research such third parties before entering into any transaction or relationship with them.
- j. The Company tries to ensure that the availability and delivery of the Program and Content is uninterrupted and error-free. However, the Company cannot guarantee that your access will not be suspended or restricted from time to time, including to allow for repairs, maintenance or updates, although, of course, we will try to limit the frequency and duration of suspension or restriction.
- k. THE INFORMATION, PRODUCTS AND SERVICES OFFERED ON OR THROUGH THE PROGRAM AND CONTENT ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY DOES NOT WARRANT THAT THE PROGRAM OR ANY OF ITS FUNCTIONS WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT ANY PART OF THE WEBSITE, INCLUDING MEMBERSHIP PAGES, OR THE SERVERS THAT MAKE IT AVAILABLE, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.
- l. THE COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE PROGRAM, INCLUDING ITS MATERIALS, PRODUCTS OR SERVICES, OR THIRD-PARTY MATERIALS, PRODUCTS OR SERVICES MADE AVAILABLE THROUGH THE PROGRAM.

## **9. Security**

Security for all personally identifiable information is extremely important to us. Unfortunately, no data transmission over the internet can be guaranteed to be 100% secure. As a result, while we strive to protect your personal information, The Company cannot ensure or warrant the security of any information you transmit via the internet. By transmitting any such information to the Company, you accept that you do so at your own risk.

## **10. Legal Disputes**

These TOU shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to its conflict of laws principles. The state and federal court nearest to Richmond, VA shall have exclusive jurisdiction over any case or controversy arising from or relating to the Program or Content, including but not limited to the Company's Privacy Policy or these TOU. By using the Program or Content, you hereby submit to the exclusive jurisdiction and venue of these courts and consent irrevocably to personal jurisdiction in such courts and waive any defense of forum non conveniens. The prevailing party in any dispute between the parties arising out of or related to these TOU, whether resolved by negotiation, mediation, or litigation, shall be entitled to recover its attorneys' fees and costs from the other party.

#### **11. Users Outside United States**

The Company controls and operates the Program from offices in the United States. The Company does not represent that materials on the Program are appropriate or available for use in other locations. People who choose to access the Program from other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable.

#### **12. Indemnification**

You agree to defend, indemnify, release, and hold harmless the Company and any directors, officers, agents, contractors, partners, assigns, successors-in-interest and its and their employees from and against any and all claims, damages, obligations, losses, liabilities, costs, debt and expenses (including but not limited to attorney's fees) arising from or in connection with: (i) your use of the Program or Content in violation of these TOU, (ii) any breach by you of these TOU or any representation and warranty made by you herein, (iii) any comment, post, or material you submit to the Company's website or any third-party forum or website operated by the Company, (iv) your use of materials or features available on the Program or Content (except to the extent a claim is based upon infringement of a third-party right by materials created by the Company) or (v) a violation by you of applicable law or any agreement or terms with a third party to which you are subject.

#### **13. Force Majeure**

The Company shall not be deemed in breach of these TOU if Company is unable to provide all of the Program or any portion thereof by reason of fire, earthquake, labor dispute, act of God or public enemy, epidemic, pandemic, death, illness or incapacity of the Company or any local, state, federal, national or international law, governmental order or regulation or any other event beyond Company's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, the Company shall give notice to you of its inability to perform or of delay in completing the Program and shall propose revisions to the schedule for completion of the Program or other accommodations, or may terminate these TOU.

#### **14. General Provisions.**

The Company may modify these TOU at any time. All modifications shall be posted on the Company's website and participants shall be notified when accessing the course or program or via email. If any provision of these TOU is held invalid or unenforceable, the remainder of these



TOU will remain in full force and the invalid or unenforceable provision will be replaced by a valid or enforceable provision. This is the entire agreement of the parties, and reflects a complete understanding of the parties with respect to the subject matter. These TOU supersede all prior written and oral representations.

**Your agreement to these TOU**

By clicking on the box when signing up for the Program, you are providing the electronic equivalent of your signature and assert that you have read, understood and agreed to this entire document. If you do not agree with these TOU, do not purchase or use the Program or Content.

Updated on 7/23/2022