

INDEPENDENT FACILITATOR AGREEMENT

This Agreement (the "**Agreement**") is dated as of the {{TODAY}}, is between the **MENTAL HEALTH COMMISSION OF CANADA ("MHCC")** and _____ ("**You**").

WHEREAS MHCC has developed the program "The Working Mind First Responders" (the "**Program**");

AND WHEREAS You have successfully completed a training program designed to enable You to deliver the Program to people wanting to learn about and promote mental health and reduce the stigma around mental illness in the workplace (the "**Training Program**");

AND WHEREAS You will deliver the versions of the Program to your various clients (a "**Client**") (hereafter, the "**Services**")

AND WHEREAS You and MHCC (collectively, the "**Parties**") desire to enter into this Agreement to describe the obligations of both You and MHCC as to the Services:

Each of the Parties hereby agrees as follows:

1. Your Obligations, Representations and Warranties

- (a) By entering and complying with the terms of this Agreement (including the Program Delivery Terms set out in Schedule "A"), you may deliver the Program to any Clients that you source and choose (in your sole discretion) to provide the Services.
- (b) You represent and warrant that you have full power and authority to execute this Agreement to consummate the transactions contemplated hereby and this Agreement, when duly and validly executed and delivered by You, shall constitute the valid and binding agreement with You, enforceable against You in accordance with its terms.
- (c) You represent and warrant that you shall not have any other agreements or arrangements with any other person or organization that would be violated by signing this Agreement. You will also immediately notify MHCC of any issue that results in a conflict with the interests of MHCC. If You do not do so, this Agreement may automatically be terminated by MHCC without notice.
- (d) You represent and warrant there is no action, order, writ, injunction, judgment, or decree outstanding or claim, suit, litigation, proceeding, labour dispute, arbitral action or investigation pending, or to Your actual knowledge, threatened against or relating to You that would have a material adverse effect on your ability to enter into this Agreement or Your ability to perform the Services.
- (e) You represent and warrant agree that in the delivery of the Program, You will comply with all applicable laws, regulations, rules and standards imposed by government, regulatory or other authorities (including applicable professional regulatory bodies) and abide by MHCC's policies as provided to you in writing (collectively, the "**Policies**") and the Program Delivery Requirements set out in Schedule "A."

- (f) You represent and warrant that You shall competently and diligently perform all Services with (i) the highest professional standards of the industry and (ii) the training you received by MHCC. Unless MHCC previously agrees in writing, You will provide the Services without changing any of the materials (e.g. manuals, presentations, and related handouts) provided to You by MHCC during the Training Program (the "**Training Materials**").
- (g) Except for the purpose of distributing the Training Materials in conjunction with the delivery of the Services, You shall not copy, reproduce, duplicate or disseminate the Training Materials, or any portions thereof, in any form without the express written consent of MHCC, which may be unreasonably withheld.
- (h) You shall: (i) adopt any updates or modifications provided to You by MHCC and modify the Training Materials and/or Services as required; (ii) advise MHCC of any feedback with respect to the Training Program, the Training Materials or the Services; and (iii) only provide certificates to those Clients who have successfully completed the Program; (v) charge no less than \$100 CDN to each individual Client to attend the Program; (iv) must purchase access codes and provide one to each individual Client before attending the Program; and (vi) submit your list of Clients attending the Program within three (3) days of completing the Program via the link provided by MHCC.
- (i) You acknowledge that to remain qualified to deliver the Services, you must deliver a minimum of 2 courses per anniversary year, based on your certification month of the Program.

2. Term and Termination

- (a) You agree that after any termination or expiry of this Agreement, you will have no right to: (i) provide the Services or use the Training Program or the Training Materials in any way; (ii) train third parties on how to deploy the Program; (iii) train third parties on how to use or personally benefit from the Program; (iv) represent that You are currently qualified to provide the Services in any way to the public; and (v) will be obligated to certify that you have destroyed or returned all of the Training Program and Training Materials to MHCC, including any digital copies of same.
- (b) MHCC may, in its sole discretion immediately terminate this Agreement if MHCC discovers a breach of the Policies or Article 1, "Your Obligations, Representations and Warranties" of this Agreement.

3. Independent Contractor Status

- (a) You are an independent contractor of MHCC and are not an employee, partner or agent of MHCC. This Agreement does not create a partnership, joint venture, agency or employer/employee relationship between the Parties and therefore, you will not bind MHCC to any agreement or contract. Except for the Materials (as defined hereafter) provided by MHCC, You shall provide all tools and equipment required for the performance of the Services. You agree that there are no employee-related benefits or fringe benefits receivable in connection with Your performance of the Services or execution of this Agreement.
- (b) You agree that You will not be the sole or exclusive provider of the Services, and that this Agreement does not prevent MHCC from entering into a similar agreement to this with third parties.

- (c) You acknowledge being advised by MHCC (or Your employer) to take out and maintain either comprehensive general liability insurance as a private contractor or You will be employed by an employer having comprehensive general liability insurance in an amount not less than Two Million (\$2,000,000) per occurrence, which covers Your activities as an instructor. MHCC reserves the right to request proof of insurance in writing from You.

4. Confidentiality and Privacy

- (a) **"Confidential Information"** For the purposes of this Agreement "Confidential Information" means all confidential and proprietary information of a party, including all information in any form that (i) derives economic value, actual or potential, not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, or (ii) is provided to or obtained by a Client or MHCC in circumstances where, by its nature or the nature of its disclosure, such party ought reasonably to know has value in being not generally known by the public (including, without limitation, any information that is marked or indicated as confidential at the time of disclosure). For greater certainty, the Training Materials are deemed Confidential Information. Notwithstanding the foregoing, Confidential Information does not include information if, and only to the extent that, You can establish the following with written documentation:

- (i) is or becomes a part of the public domain through no act or omission by You;
- (ii) was in Your lawful possession prior to the disclosure and (i) had not been obtained by You either directly or indirectly from the discloser and (ii) was not subject to any obligation of confidentiality;
- (iii) is lawfully disclosed to You by a third party without restriction on disclosure; or
- (iv) is independently developed by You without any direct or indirect use of or reference to the discloser's Confidential Information whatsoever.

- (b) You agree that at all times (including after the termination of this Agreement), You will not make use of such Confidential Information other than in accordance with the performance of its obligations under this Agreement and not to release, disclose, communicate it or make it available to any person other than:

- (i) legal or financial advisors retained by You who reasonably need to know the Confidential Information in connection with this Agreement and who are legally bound to protect the received Confidential Information from unauthorized use or disclosure on terms and conditions at least as strict as this Agreement, or
- (ii) as required by law, rule, regulation, or court order, provided that You (i) provide prompt advance notice to MHCC and such cooperation and reasonable assistance as MHCC requests in seeking protection or confidential treatment for such Confidential Information, and (ii) You strictly disclose only those parts of such Confidential Information that are required to be disclosed by such law, rule, regulation or order.

- (c) If requested by MHCC, you will return to MHCC the Confidential Information in Your control or possession and any work prepared relating to the Confidential Information, and (except as

required to perform its obligations under this Agreement or to comply with applicable laws or professional regulatory body requirements) no copies of the Confidential will be made or retained.

- (d) You agree to conduct Your activities with respect to personal information (namely, information about an identifiable individual, including information that relates to the physical or mental health of an individual and/or to the provision of health care to the individual, but excluding business contact information provided the collection, use or disclosure as the case may be, of the business contact information is for the purposes of contacting an individual in that individual's capacity as an employee or an official of an organization and for no other purpose ("**Personal Information**")) in accordance with applicable law and where Personal Information is disclosed by or on behalf of Client or any individual to You, to: (A) use and disclose such Personal Information only for those purposes authorized, (B) at the request and option of the Client return or cause to be returned, or destroy or cause to be destroyed, such Personal Information; (C) promptly advise the Client of any request by an individual to access, correct or otherwise challenge the accuracy of such Personal Information, or any other communication received by You in respect of such Personal Information, including, without limitation, any withdrawal or variation of consent by an individual, and to work, in a timely manner, with the Client to respond to such requests; (D) use all reasonable efforts to protect and safeguard such Personal Information including, without limitation, to protect such Personal Information from loss or theft, or unauthorized access disclosure, copying, use, modification, disposal or destruction and promptly advise MHCC should any such loss, theft or unauthorized activity occur; and (E) only disclose such Personal Information to a third party in accordance with applicable laws.
- (e) You agree to handle Confidential Information and Personal Information in Canada only. For greater certainty, "Handle" means to receive, collect, use, store, access, process, record, transfer, retain, dispose of, destroy, manage or otherwise Handle Personal and Confidential Information.

5. Intellectual Property and Work Product

- (a) Any and all materials, including the Training Program, Training Materials that we may provide to You in connection with this Agreement (materials, Training Program and Training Materials are collectively referred to as the "Materials") are protected by copyright and various other intellectual property rights owned exclusively by MHCC. MHCC grants to you a non-exclusive, non-assignable, non-transferable, non-sublicensable, revocable license to the Materials in Canada only for the sole purpose of providing the Services to the Client. For greater certainty, you may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any information, products or services based on or derived from the Materials without MHCC's prior written consent, which may be unreasonably withheld.
- (b) The Parties agree that all work product, materials, documents and intellectual property (including, for example, all inventions, designs, ideas, discoveries, works, creations, patents, feedback copyrights and trademarks) and all intellectual property rights developed by You in the course of, or in connection with, the provision of the Services and the delivery of the Materials (collectively "**Work Product**") will be the property of and owned by MHCC. You hereby assign to MHCC all right, title and rights to any Work Product automatically upon the inception, creation or development of same. You waive all moral rights (as defined by applicable law) that you may have in the Work Product.

6. Indemnity and Limitation of Liability

- (a) You will defend, indemnify MHCC, its affiliates and their respective directors, officers, partners, employees, contractors, shareholders, agents and representatives (collectively, the “MHCC Indemnitees”) harmless from and against all losses, liabilities, expenses, costs and damages suffered or incurred by any of the MHCC Indemnitees (i) as a result of any suit, claim, or proceeding alleging that any Work Product infringes any copyright, patent, trademark, or right in confidential information or trade secret of a third party (“IP Indemnification Claim”), (ii) resulting from a breach by You of the obligations contained in Article 5, and (iii) any third party claims arising out of or related to Your breach of any representation, warranty, covenant or obligation under this Agreement.
- (b) Mitigation. If all or any part of the Work Product becomes or in Your opinion may become, the subject of an IP Indemnification Claim, You shall, in addition to complying with the indemnification obligations in Section 6(a), at its own expense promptly (i) replace the infringing Work Product with a compatible, functionally equivalent, non-infringing Work Product, as applicable, (ii) modify or take other action so that the Work Product becomes non-infringing, provided the Work Product, as applicable, remains a compatible, functional equivalent of the original Work Product, as applicable, or (iii) procure the right of MHCC to continue using the Work Product, in each case without any additional cost to MHCC. If, after reasonable commercial efforts You are unable to perform any of the foregoing three alternatives, then MHCC, at its option, may terminate this Agreement.

7. LIMITATION OF LIABILITY

EXCEPT FOR YOUR OBLIGATION OF INDEMNIFICATION PURSUANT TO ARTICLE 6, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, CONTRACTORS SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, CONTRACTORS SHAREHOLDERS, AGENTS OR REPRESENTATIVES, OR ANY OTHER THIRD PARTY FOR (I) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, EVEN IF THAT PARTY IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY, ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT WHETHER UNDER CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OR (II) DAMAGES UNDER THIS AGREEMENT IN EXCESS OF THE FEES PAYABLE TO YOU HEREUNDER.

8. Notices

- (a) Any notice under this Agreement will be in writing and will be delivered personally to the Party to whom it is sent by prepaid, registered mail or e-mail, addressed as follows:

MHCC

Attention: Julie Donaldson
Email:
jdonaldson@openingminds.org

You

Name: _____

Email: _____

and each notice will be deemed to be given on the date of delivery in the case of delivery, two (2) days after mailing in the case of mail, and one (1) day after the time of transmission in the case of e-mail. No notice may be given by mail during a postal strike in Canada. The Parties may change their designated address by notice as provided above.

9. Miscellaneous

- (a) This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, undertakings, negotiations, and discussions, whether oral or written, of the Parties. Any change to this Agreement must be in writing and agreed to by the Parties. No waiver of a provision under this Agreement will be deemed to constitute a waiver of any other provisions, nor will the waiver constitute a continuing waiver unless otherwise expressly provided.
- (b) Neither Party shall be liable for failure to perform any of its respective obligations hereunder if such failure is caused by events outside its reasonable control, including, without limitation, acts of God, war, acts of terrorism or natural disasters. The delayed Party shall (a) notify the other party immediately and in detail of the commencement and nature of such event and the probable consequences thereof and (b) use commercially reasonable efforts to recommence performance as soon as reasonably possible.
- (c) In this Agreement, words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and masculine gender; and words importing persons include individuals, sole proprietors, corporations, partnerships, trusts and unincorporated associations.
- (d) You acknowledge that MHCC may assign all or part of its benefits, rights, or obligations under this Agreement to its related entity, Mental Health Commission of Canada – Opening Minds ("OM"), provided OM agrees to be bound by the terms contained herein and assumes the obligations assigned on the effective date of such assignment.
- (e) Sections 4, 5, 6, 7, and 9 will survive any termination or expiry of this Agreement.
- (f) This Agreement shall be governed by and construed under the laws of the Province of Ontario and the federal laws of Canada applicable therein, without reference to principles of conflict of laws, and each party unconditionally and irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.
- (g) This Agreement may be executed in counterparts, any one of which need not contain the signature of more than one party, but all of which, together, shall comprise one and the same agreement.
- (h) This Agreement and all rights and obligations may not be assigned in whole or in part by either party without the prior written consent of the other, except the rights and obligations of MHCC may be assigned to another entity in connection with a reorganization, merger, consolidation, acquisition, restructuring, or sale of all or substantially all of the business of MHCC relating to the Services, as the case may be.
- (i) Neither party shall be liable for failure to perform any of its respective obligations hereunder if such failure is caused by events outside its reasonable control, including, without limitation, acts

of God, war, acts of terrorism or natural disasters. The delayed party shall (a) notify the other party immediately and in detail of the commencement and nature of such event and the probable consequences thereof and (b) use commercially reasonable efforts to recommence performance as soon as reasonably possible.

- (j) The parties confirm that it is their express wish that this Agreement shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté expresse que cette convention soient rédigés en langue anglaise seulement.
- (k) If any provision of this Agreement is found to be invalid or unenforceable, it will not affect the validity or enforceability of any other provision, and the invalid provision will be deemed severable.
- (l) This Agreement will be binding upon the respective heirs, administrators, executors, successors and permitted assigns of the Parties.
- (m) You shall not subcontract or assign the Services or any of Your obligations under this Agreement to a subcontractor, other third party or worker.
- (n) You acknowledge having read and understood this Agreement in its entirety and the obligations set out in it, including the Schedule and that You have been provided with a reasonable opportunity to seek independent legal and other professional advice in connection with it.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement as of the date first written above.

_____ Date: _____

_____ Date: _____

Julie Donaldson
Director, Program Delivery - Opening Minds

Please initial page 8

Schedule "A"

Program Delivery Terms

The Program can be delivered virtually or face-to-face as follows:

- Employee:

- (a) module per day (3 sessions) – facilitated within 2 weeks;
- (b) 2 modules on one day, 1 module on another day – facilitated within 2 weeks; and
- (c) All 3 modules in one day.

- Manager:

- (a) 1 module per day (4 sessions) – facilitated within 2 weeks.
- (b) 2 modules per day – facilitated within 2 weeks.
- (c) All 4 modules in one day

- Group size for face-to-face delivery: 8-25 participants maximum
- Group size for virtual delivery: 8-15 participants maximum

In order to qualify to receive a certificate, the participant must have been participating and attending **all modules**. A participant can miss up to 30 minutes in total.

You must ensure that the participant has redeemed their access code to retrieve the participant handout prior to attending Module 1.

Please confirm you have reviewed Appendix A by initialing this page.
