

BEING MY BEST – RESILIENCE PROGRAMME AND FACILITATOR TRAINING WITHIN SCHOOLS

BEING MY BEST TERMS & CONDITIONS OF TRADE FOR FACILITATORS

This Facilitator Agreement ("Agreement") is entered into by Being My Best Limited by its authorised signatory, Susan Lyon (hereinafter referred to as "Being My Best", which shall include its successors and permitted assigns) and _____ "the Facilitator".

1. Being My Best is engaged in the business of providing education and mentoring services, including resilience teaching to students within schools.
2. The Facilitator is providing teaching services to students within schools.
3. The parties wish to enter into this Agreement to confirm the terms and conditions of the Agreement and agree as follows:

Definitions

The Facilitator agrees that the definitions listed below have their respective defined meanings, unless the context, expressly or by necessary implication, require otherwise:

"Confidential Information" means knowledge of customer needs and preferences, trade secrets, methods of operation, markets, other valuable information, confidential information for Being My Best's business and activities. Confidential Information shall also include financial information, such as the Being My Best's prices, personnel information; and customer information.

"Content" shall mean any and all software, technology, designs, materials, information, communications, text, graphics, links, electronic art, animations, illustrations, artwork, audio clips, video clips, photos, images, reviews, ideas, and other data or copyrightable materials or content, including the selection and arrangements thereof, that is made available by Being My Best, whether directly or indirectly, to the Student, in accordance with this Agreement.

"Student" shall mean the student and/or end user of the services of Being My Best, and shall include the pupil and their parents (or the legally appointed guardian, as the case may be) as well as third party resellers and/or other corporate and institutional clients of Being My Best.

"Indemnified Liabilities" shall have the meaning ascribed to it in Clause 8.

"Indemnified Parties" shall have the meaning ascribed to it in Clause 8.

"Services" shall mean any and all services, whether through online and offline medium provided either directly and/or indirectly by Being My Best.

"Session" shall mean any online, live and interactive streaming session along with physical teaching sessions between the Student and the Facilitator.

“**Term**” shall mean the period of two (2) years from the date on the certificate of accreditation provided by Being My Best to the Facilitator on completion of their training.

1. GENERAL INTERPRETATION

In this Agreement, except to the extent that the context otherwise requires:

- a) References to a statute, ordinance or other Law shall be deemed to include any references to a statute, ordinance or other Law as amended, supplemented or replaced from time to time in accordance with its terms and (where applicable) subject to compliance with the requirements set forth therein and shall include regulations and other instruments under such statute, ordinance or other Law;
- b) References to Clauses, Annexures and Schedules are reference to clauses in and annexures and schedules to this Agreement unless the context requires otherwise and the Annexures and Schedules to this Agreement shall always be deemed to form part of this Agreement;
- c) The headings are inserted for convenience only and shall not affect the construction of this Agreement;

2. DUTIES OF FACILITATOR

- a) The Facilitator shall provide the services for the Term in a professional manner, according to the NZ Teacher’s Code of Ethics.
- b) The Facilitator acknowledges and understands that the services provided to the Student may vary on a case to case basis based on the respective needs of the individual Students.
- c) The Facilitator and the student shall record in a form acceptable to Being My Best, the qualitative and/or anecdotal assessment of each Student’s progress in the topics that are being taught in accordance with the terms of this Agreement. The child’s teacher and parents/caregiver are to receive a copy.
- d) The Facilitator shall at all times abide by the Being My Best curriculum and shall under no circumstances deviate from the same. The Facilitator will deliver each programme in sequence, from the first to the final session in full.
- e) The Facilitator represents and warrants that they do not own or control any rights to the Content and have the right to use the Content under license only from Being My Best.
- f) The Facilitator acknowledges and understands that they shall have no claim or other recourse against Being My Best for infringement of any proprietary right with respect to the Content.

- g) The Facilitator acknowledges and affirms that they are responsible for any Content statements, observations, information (whether in written or oral form, or through bodily gestures or otherwise) that they submit or contribute during the Sessions.
- h) The Facilitator shall not make any misrepresentations and/or provide false information with regards to Being My Best during the Sessions or in relation to their own expertise with respect to the Being My Best Content.
- i) Where a Facilitator is unavailable for any Session, for any reason whatsoever, they shall advise their school, School Principal, Deputy Principal or SENCO and continue with that Session when available.
- j) The Facilitator shall always maintain a positive attitude throughout any Session and role model the use of strategies when needed.
- k) The Facilitator shall only work in quiet, ambient surroundings amenable to learning while taking a Session.
- l) The Facilitator shall keep the NZ Special Education Needs Coordinator (SENCO) in their school informed of any issues or problems with each student, as and when they develop.
- m) The Facilitator undertakes to date, record and notify SENCO promptly when the Student engages into any activity, conversation and/or conduct which falls outside of the Services prior to, during the continuance of, and after any Session.
- n) The Facilitator shall not make any disparaging statements in relation to any person and/or organisation during their interaction with the Student, whether during a Session or afterwards, including but not limited to the school they have been a part of and any of its Facilitators, teachers, instructors and members in the administration and support staff as well as authorised representatives. Facilitators must always remain professional, unbiased and only provide professional services based on the Content provided by Being My Best.

3. RIGHTS OF BEING MY BEST

- a) Notwithstanding anything contained herein, the Facilitator, inter alia, extends an exclusive, freely transferable, perpetual, royalty free license to Being My Best to use any content developed by the Facilitator for any reason whatsoever, including but not limited to its commercial exploitation.
- b) Being My Best shall have the sole right to receive payments from any person in relation to the Services and any part thereof. For clarification of doubt, it is hereby stated that under no circumstances shall the Facilitator derive any monetary benefit, whether directly or indirectly, in the form of monies and/or otherwise, from any person, in relation to the Content.
- c) Being My Best reserves the right to enter into independent Facilitator partnerships/agreements with third parties, in relation to the same Content that is provided by Being My Best. For avoidance of doubt, it is hereby clarified that this Agreement does not give the Facilitator any rights in relation to any and all parts of the Services and/or any other product or services of Being My Best.

- d) Subject to applicable law, Being My Best reserves the right to use any and all information that has been provided by the Facilitator, whether in non-aggregated form or otherwise, for any marketing and/or promotional purposes (including but not limited to videos, photos, content etc).
- e) Notwithstanding anything contained herein, Being My Best shall have a unilateral right to terminate this Agreement.
- f) Subject to Applicable Law, Being My Best reserves the right to ask for more information from the Facilitator which is directly connected to the Services (including but not limited to reference checks, police or similar reports, educational qualification checks etc.)
- g) Being My Best reserves its right to monitor and/or record the use of all or any part of any Session.

4. PAYMENTS

- a) Being My Best reserves the right to amend the pricing, pricing bands or structure in any transaction that falls within the purview of this Agreement from time to time for any reason whatsoever, subject to due notification of such amendment to the Facilitator (direct notification or via Being My Best's website) and the Facilitator specifically disclaims any and all rights that vest upon him under any contract, law or equity in this regard.
- b) Notwithstanding anything contained herein, the Facilitator agrees and acknowledges that the consideration paid by them or their school, shall be the full and complete remuneration for any and all services envisaged under this Agreement.

5. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date on which the Facilitator accepts these terms in accordance with the process of registration and approval of the Facilitator by Being My Best.

6. DECLARATIONS, REPRESENTATIONS, WARRANTIES AND COVENANTS

- a) Each Party hereby warrants that they have the legal right, power and authority to enter into, deliver and perform this Agreement.
- b) The Facilitator undertakes to do all preparation prior to the Sessions and to structure lessons in such a way as to optimize time to the benefit of the student.
- c) The Facilitator specifically covenants that they shall keep confidential all information of Being My Best.
- d) Notwithstanding anything contained herein, the Facilitator does not have the right to assign any of his/her duties or obligations under this Agreement.

- e) The Facilitator represents and warrants that they have the full right to provide Being My Best with the intellectual property rights (if any) envisaged under this Agreement;
- f) The Facilitator shall comply with all applicable laws in the course of performing their obligations under this Agreement.
- g) The Facilitator agrees and acknowledges that they are in no way covered by Being My Best in any matter(s) of insurance.

7. EVENTS OF DEFAULT

Being My Best shall, pursuant to Clause 11, have the right to terminate the Agreement with the Facilitator in case of the following events (hereinafter referred to as "**Events of Default**"):

- a) any breach of the duties of the Facilitator under this Agreement.
- b) violation of any of the rights of Being My Best under this Agreement.
- c) breach of any covenants, declarations, representations and/or warranties of the Facilitator under this Agreement.

8. INDEMNIFICATION

The Facilitator shall indemnify Being My Best and its directors, employees, agents, successors, and assigns ("**Indemnified Parties**") from and against any and all liability incurred by the Indemnified Parties as a result of, arising out of or relating to

- a) any misrepresentation by the Facilitator to the Indemnified Parties.
- b) any misrepresentation of the Facilitator to any Third Party, including but not limited to any customers of the Services, with respect to the Indemnified Parties.
- c) an Event of Default.
- d) the breach of any obligations by the Facilitator of this Agreement.

9. INTELLECTUAL PROPERTY

- a) Other than the Content (ownership of which is subject to the terms of this Agreement), Being My Best shall own all right, title and interest (including patent rights, copyrights, trade secret rights, mask work rights, trade mark rights and all other rights of any sort throughout the world) relating to any and all inventions (whether or not patentable), works of authorship, mask works, designations, designs, know-how, ideas and information which are subject matter of Services (collectively referred to as "**Intellectual Property**").
- b) The Facilitator will hold in confidence and not disclose or, except in performing its duties under this Agreement, use any Intellectual Property.

- c) Upon termination and as otherwise requested by Being My Best, the Facilitator will promptly return to Being My Best all items and copies containing or embodying Intellectual Property, if any.
- d) Notwithstanding anything contained in this Agreement, Intellectual Property includes all rights of integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights," "artist's rights," "droit moral," or the like.
- e) Notwithstanding anything contained herein, in relation to the Content, the Facilitator extends a royalty free, irrevocable, exclusive and freely transferable license in perpetuity to Being My Best to make use of any content made available by the Facilitator (as well as derivative works and adaptation based on it) in any manner that Being My Best deems fit. For the avoidance of doubt, the applicability of this clause shall survive the termination of this Agreement.

10. RESTRICTIVE COVENANTS OF THE FACILITATOR

- a) The Facilitator shall not assist any other person or organization in competing or in preparing to compete with Being My Best.
- b) During the Term of this Agreement the Facilitator shall not, either directly or indirectly solicit or entice away or endeavour to assist any other third party in an endeavour to solicit or to entice away from Being My Best any employee, prospective customer and/or customer.
- c) During the Term of this Agreement, the Facilitator agrees not to take any action which is intended, or would reasonably be expected, to harm Being My Best or its or their reputation or which would may reasonably be expected to lead to unwanted or unfavourable publicity to Being My Best.
- d) The Facilitator acknowledges and understands that for the Term of this Agreement, it is best and safe practice during the provision of the Services, to have access and participate with a third party trained to provide supervision for the Facilitator as part of the Being My Best programme.
- e) The Facilitator acknowledges and agrees that on or before the end of the Term the Facilitator will have to complete a one-day refresher course with Being My Best to ensure their accreditation to facilitate the Being My Best programme within their school is maintained for a further term.

11. TERMINATION

In case of an Event of Default, Being My Best may terminate this Agreement upon five (5) calendar days written notice unless the breach is remedied within the notice period however Being My Best reserves the right to immediately terminate the Facilitator's agreement at their sole discretion.

12. GOVERNING LAW AND ARBITRATION

- a) This Agreement and its performance shall be governed by and construed in all respects in accordance with the Laws of New Zealand
- b) When any dispute is under arbitration, the Parties shall continue to exercise their remaining respective rights and fulfil their remaining respective obligations under this Agreement.

13. ASSIGNABILITY

Notwithstanding anything contained herein, the Facilitator shall not be entitled to assign their rights and obligations under the Agreement to a third party. Being My Best reserves the right to assign any and all of its rights, duties, obligations and liabilities under this Agreement. The Parties shall execute such documents as may be necessary or desirable to give effect to such assignment.

14. CONFIDENTIALITY

- a) The Facilitator shall maintain the utmost confidentiality, regarding the Contents, Confidential Information and Sessions at all times.
- b) The Facilitator shall not make any announcements to the public or to any third party regarding the arrangements contemplated by this Agreement without the prior written consent of Being My Best.
- c) For the avoidance of doubt this Clause 14 shall be applicable in relation to the Facilitator disclosing their association with Being My Best on their online social media profiles.

15. AMENDMENTS AND WAIVERS

Any provision of this Agreement may be amended or waived if, and only if such amendment or waiver is in writing and signed by each of the Parties, or in the case of a waiver, by the Party against whom the waiver is to be effective. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

16. INDEPENDENT CONTRACTORS

The Parties are independent of each other and will have no power or authority to create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency or joint venture, or employer-employee relationship.

17. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties hereto with respect to the services provided under this Agreement and the rights and obligations of the Parties, superseding and replacing all negotiations, prior agreements, discussions, memoranda or heads of agreements, made prior to the date hereof amongst the Parties.

Signed by: _____

Name: _____

School: _____

Date: _____