

## User Agreement for Dial Down Anxiety with DBT

**Last modified: July 7, 2022**

PLEASE READ CAREFULLY BEFORE YOU PURCHASE HEATHER M MCKENZIE LCMHCS PLLC'S PROPRIETARY MATERIALS INCLUDING ANY LIVE COURSE, AUDIO AND/OR VISUAL PRESENTATIONS AND/OR SUPPLEMENTARY MATERIALS ASSOCIATED WITH THIS PROGRAM.

BY ACCESSING OR USING THE PROGRAM(S), YOU ACKNOWLEDGE THAT: 1. YOU HAVE READ THIS AGREEMENT. 2. YOU UNDERSTAND IT. 3. YOU ACCEPT AND AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE, DO NOT UNDERSTAND, OR DO NOT ACCEPT THIS AGREEMENT, PLEASE DO NOT COMPLETE YOUR PURCHASE.

The following user agreement, together with any documents they expressly incorporate by reference (collectively, "Agreement") govern Your use of the online course **Dial Down Anxiety with DBT** (the "Program"). This Agreement is made between Heather M McKenzie LCMHCS PLLC, ("Heather McKenzie"), and You (the "Participant"). Collectively, the "Parties."

WHEREAS, Heather McKenzie is engaged in this business of providing educational services; and WHEREAS, You desire to engage Heather McKenzie to provide educational services to You in the form of a Live Class, Webinars, Audio and/or Visual Presentations, Recordings, and Supplementary Materials; The Parties, intending to be legally bound, therefore now agree as follows:

### **SECTION 1: MEMBERSHIP AND PROGRAM FEES**

- a. *Programs:* Under the terms of this Agreement, Heather McKenzie agrees to provide educational services to You in the form of Webinars, Audio and/or Visual Presentations, and Supplementary Materials ("Program(s)") in exchange for a Program Fee. Services offered through the Program are intended for educational purposes, and are not a substitute for medical or psychiatric treatment. Program Fees will be determined according to paragraph d. below. Your access to such Programs is made conditional on payment of such Program Fee.
- b. *Term:* The Term of this Agreement will commence upon Your acceptance of this Agreement and payment of the applicable Program Fee. You agree and understand that upon commencement of the Term of this Agreement, You will become enrolled in the Dial Down Anxiety with DBT online course.
- c. *Program Fees:* By accepting the terms of this Agreement, You agree and understand that You are committing to pay Heather McKenzie \$727.00 (single payment) or two installments of \$427, thirty (30) days apart, for access to and use of the **Dial Down Anxiety with DBT online course and materials**. You maintain access to the course content as provided to You and/or downloaded throughout the course.
  - a. *Two-installment payment option.* If final Program Fee payment for the two-installment option is not received within 30 days of the first payment, The Participant shall have five (5) business days following the due date to complete payment in full; otherwise, the Participant's access to and inclusion in the Program will be automatically terminated.

- b. *Issues with Payment.* If there is a problem with the payment transaction or method, the Participant will be notified by e-mail, and the Participant's account will be put on hold. The Participant shall have five (5) business days following the due date to complete payment in full; otherwise, the Participant's access to and inclusion in the Program will be automatically terminated.
- c. *No undue hardship.* By enrolling in this Program, the Participant agrees that registering for this Program will not create undue financial hardship.
- d. *Refund Policy.* It is Heather McKenzie's intention for each Participant in the Program to have a great experience. In light of the time, effort, and resources invested in the Program, Heather McKenzie **abides by a partial refund policy**. By accepting the terms of this Agreement, You agree and understand that You are foregoing the right to claim a refund of full fees paid for access to and use of the Program(s) offered by Heather McKenzie.
  - a. *Partial refund.* You understand that because the Program is an 8-week course, if You attend the first 4 classes and can prove that You have done the work but not seen any results, You will be eligible for a refund of the remaining 4 classes.

## SECTION 2: NO WARRANTIES

- a. *Program Benefits:* The Program is intended to equip You with information to better control Your lived experience, but The Program is not a substitute for a licensed medical professional. Any use of specific terminology related to any medical conditions or disorders is done so colloquially in the context of commonly used language or as part of a peer discussion. Any recommendation of any third-party resources, websites, products, or services are offered by Heather McKenzie for educational purposes only.
- b. *Success not Guaranteed:* By accepting the terms of this Agreement, YOU agree and understand that Heather McKenzie provides Program(s) for educational purposes only and **guarantees no specific results or benefits from the program provided**. The Program and all content and materials provided are being provided as self-help tools for the Participant's own use only for informational and educational purposes. Further, You acknowledge that everyone's success is different, and dependent on factors such as Your own commitment, capability, and motivation. Any examples of outcomes or testimonials are not meant as a promise or guarantee of Your own success.
- c. *Participant Responsibility:* At all times, it is the Participant's sole responsibility to consult with their own medical or mental health professional for any questions related to a medical or mental health situation. THE PROGRAM DOES NOT IN ANY WAY PROVIDE MEDICAL CARE OR MENTAL HEALTH SERVICES. THE CONTENT OF THE PROGRAM IS NOT AND SHOULD NOT BE CONSIDERED MEDICAL ADVICE OR A SUBSTITUTE FOR INDIVIDUAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. The Participant shall agree that Heather McKenzie is not responsible for the Participant's physical, mental, emotional, and spiritual health, or any other result or outcome that the Participant may experience through this Program.

- d. *Limited Liability*: The Participant agrees they shall not hold Heather McKenzie liable under any circumstances for any result or non-result or any consequences which may come about due to the Participant's enrollment or completion in the Program. In no event will Heather McKenzie be liable to YOU or any party related to You for any damages, whether under a theory of contract, warranty, tort (including negligence), products liability or otherwise, even if Heather McKenzie has been advised of the possibility of such damages. Limitations herein described shall be applied to the greatest extent enforceable under applicable law.
- e. *Commitment to the Program*. By accepting the terms of this Agreement, YOU commit and agree to faithfully execute all of the lessons, practice assignments, and coursework in the Program(s) to the best of Your ability. You also acknowledge that creating results requires tremendous effort and You are prepared and committed to faithfully make that effort.

### **SECTION 3: CONFIDENTIALITY & SECURITY**

- a. *Confidentiality Related to Group Gatherings*. During the Program, the Participant will be offered the opportunity to take part in a group call, meeting, or other activity where Participants in the Program may gather together, whether by phone, or via video-conferencing technology. Participant acknowledges their consent and understanding that:
  - a. Any sharing of information by the Participant in a group setting is entirely voluntary by the Participant, and there is no obligation by the Participant to share information that would otherwise be reasonably considered confidential;
  - b. The confidentiality of any information a Participant chooses to share may not be entirely protected due to the group setting. As such, Heather McKenzie shall not be responsible for any unauthorized use of any or all information that the Participant may share with the other Participants in a group setting.
- b. *Recording of Group Gatherings*. The Participant shall acknowledge their understanding and consent that all group activities will be recorded, where applicable, and shared with other Program Participants within a certain amount of time following the group gathering. By enrolling and participating in the Program, including in group activities with other Participants, the Participant consents to the recording of their voice, image and/or name and likeness.
- c. *Security*: If You choose or are provided with a user name, password or any other piece of information as part of Program access and security procedures, You must treat such information as confidential, and You must not disclose it to any other person or entity. You also acknowledge that Your account is personal to You and agree not to provide any other person with access to this Program or portions of it.
  - a. You agree to notify Heather McKenzie immediately of any unauthorized access to or use of Your Program materials or any other breach of security. You also agree to ensure that You exit from Your account at the end of each session. You should use particular caution when accessing Your account from a public or shared computer so that others are not able to view or record Your password or other personal information.

- b. Heather McKenzie has the right to disable any Program access at any time with sole discretion for any or no reason, including if, in Heather McKenzie's opinion, You have violated any provision of this Agreement.
- d. *Intellectual Property Rights:* You acknowledge that any Audio and/or Visual Presentations, Documentation, and other elements of the Program are the sole Intellectual Property of Heather McKenzie under United States copyright, trademark and other intellectual property laws and international treaties. **This Agreement does not grant You any ownership or other right or interest in or to the Audio and/or Visual Presentations, Documentation, and other elements of the Program, or any other intellectual property rights of Heather McKenzie**, whether by implication, estoppel, or otherwise. Any and all trademarks or service marks that Heather McKenzie uses in connection with services rendered by Heather McKenzie are marks owned by Heather McKenzie. This Agreement does not grant You any right, license, or interest in such marks, and You shall not assert any right, license, or interest in such marks or any words or designs that are confusingly similar to such marks.
- e. *Personal (non-commercial) Use Only.* The Materials being provided to the Participant by Heather McKenzie are for the Participant's use only as part of their Program enrollment under a single-user license. The Program materials and entire contents, features and functionality (including but not limited to all information, text, images, and the design, selection and arrangement thereof), are owned by Heather McKenzie, and are protected by United States and international copyright, trade secret and other intellectual property or proprietary rights laws. This Agreement permits You to use the Program materials for Your personal, non-commercial use only. The Participant is therefore prohibited from sharing, copying or duplicating, selling or reselling, trading, posting online, distributing, reproducing, or otherwise disseminating any portion of the Program or the Program Materials, whether digitally, in hardcopy, or any other format for their own personal business or commercial use or financial gain, without the prior written authorization of Heather McKenzie.
- f. *Third-Party Access Prohibited.* If You print, copy, modify, download or otherwise use or provide any other person or entity with access to any part of the Program or materials provided to You as part of the Program, You will be in breach of the Agreement. As such, Your right to access the Program materials will cease immediately and You must, at our option, return or destroy any copies of the materials You have made. No right, title or interest in any content in the Program is transferred to You, and all rights not expressly granted are reserved by Heather McKenzie. Any use of the Program not expressly permitted by this Agreement is a breach of this Agreement and may violate copyright, trademark and other laws.

#### **SECTION 4: PROGRAM PARTICIPATION AND USER CODE OF CONDUCT**

- a. *Standards and Acceptable Use:* Through the participation in the Program; the following standards and acceptable use policy shall apply. Your use must in their entirety comply with all applicable federal, state, local and international laws and regulations. Your participation in and use of the Program shall only be professional, respectful, and kind toward all other Participants, as defined by Heather McKenzie with sole discretion.

- b. *Age Restriction.* All Participants must be at least 18 (eighteen) years of age to use any portions of the Program, enroll and participate in the Program, or access any Services contained or provided herein. By participating in the Program, the Participant represents and warrants that they are at least 18 years of age, of competent and sound mind to enter into a contractual agreement, and can legally consent to the terms of and sign this Agreement. Heather McKenzie assumes no responsibility or liability for any misrepresentation of a Participant's age.
- c. *Participation:* Because this Program provides education only and does not provide health services, Heather McKenzie, serving as instructor of the Program is not a "covered entity" under HIPAA. The Program is therefore not subject to HIPAA's privacy protections and requirements. The Program provides the opportunity for You to interact with other students if You choose. ***Although the course instructor is a licensed therapist, the classes and discussions do not replace or represent medical advice or treatment.*** The licensed therapist does not offer therapy or any type of crisis intervention services through the Program.
- d. *Personal Disclosures.* Any information shared among fellow students cannot be guaranteed as confidential. Anything You communicate during the Program or with other students in the course is not covered by any legally allowed privilege. Further, as part of the Program, all students receive recordings of the class sessions. If YOU choose to participate in class discussions via written or oral comment, there is no guarantee of confidentiality. You affirm that anything You communicate will not violate any law or the rights of any person or entity and You have the legal right to supply such information.
- e. *Promotional Material:* By accepting the terms of this Agreement and affirmatively seeking the benefits of participation in the Program(s) offered by Heather McKenzie, You affirmatively agree and acknowledge that Heather McKenzie may at any time reproduce and/ or disseminate any testimonial(s) describing or otherwise referencing, either directly or indirectly, Your experience participating in such Program(s), including any specific results experienced by You over the course of such participation. You agree and acknowledge that this includes any written statements and/or images captured or otherwise recorded over the course of attendance at any event(s) related to such Program(s). You further represent that any such statements or testimonials that You make shall be correct, accurate, and truthful.
- f. *Communications:* Without limiting the foregoing, Your communications and postings must not:
- Include any unsolicited advertisement, promotional materials, surveys or contests.
  - Include any unlawful content or any communication which advocates illegal activity.
  - Include any content containing material that could be considered harmful, obscene, pornographic, violent, abusive, profane, threatening, hateful or otherwise objectionable.
  - Include, or provide links to, any content containing material that harasses, victimizes, degrades, or intimidates an individual or group of individuals on the basis of religion, race, ethnicity, sexual orientation, gender, age, or disability.
  - Include, or provide links to, any postings containing defamatory, false or libelous material.
  - Include any content that infringes or violates any intellectual property or other rights.
  - Impersonate another person or entity.
  - Manipulate identifiers in order to disguise the origin of any content that You deliver.

- Include any content containing personal information, such as phone numbers, social security numbers, account numbers, addresses or employer references.
  - Use this Program in any manner which could damage, disable, impair or otherwise interfere with the use of this Program or other users' devices, or cause damage, disruption or limitations to any software, hardware, or telecommunications equipment.
  - Obtain or attempt to obtain any materials or information through any means not intentionally made available through this Program, including harvesting or otherwise collecting information about other participants such as email addresses.
- g. *Limitations to communication.* It is not possible to screen or prevent all content communicated or delivered through this Program, and interception of objectionable material cannot be ensured. Accordingly, Heather McKenzie assumes no liability for any action or inaction regarding transmissions, communications or content provided by any Program participant, user or third party. Heather McKenzie has no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

## SECTION 5: DISPUTE RESOLUTION

- a. *Mediation/Arbitration:* In the event of any disputes between the Parties regarding this Agreement or the Program, or the termination of this Agreement, the Parties agree to notify each other in advance, in writing. The Parties shall agree that if they are unable to reach a resolution within thirty (30) days from the date of their written notification to the other Party, the Parties shall agree to submit all disputes arising under this Agreement to mediation or arbitration in Wake County, North Carolina before a certified mediator or arbitrator, jointly selected by both Parties unless otherwise agreed to in writing by both Parties. **The Parties shall agree that the only remedy that can be awarded is the full refund of the Program Fee.** No other actions or financial awards of consequential damages, or any other type of damages, shall be permitted to be granted. Both Parties agree that the mediator/ arbitrator's decision is final and binding and may be entered as a judgment into any court having the appropriate jurisdiction.
- b. *Attorneys' Fees and Legal Expenses:* If any proceeding or action shall be brought to recover any amount under this Agreement, or for or on account of any breach of, or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court, and shall be made a part of any award or judgment rendered.

## SECTION 6: TERMINATION

- a. *Termination.* Either Party may terminate this Agreement at any time for any reason, with or without cause. If either Party wishes to terminate this Agreement, they may do so by providing ten (10) days' written notice to the other Party in writing of their intent to terminate the Agreement. Additionally:

- a. Heather McKenzie specifically reserves the right to terminate this Agreement if the Participant violates any of the terms and provisions within the Agreement, outlined herein, including, but not limited to, violating the intellectual property rights of Heather McKenzie as detailed under this Agreement, failing to comply with applicable laws or other legal obligations, and/or publishing or distributing illegal material.
- b. The Participant may also terminate this Agreement at any time by contacting Heather McKenzie in writing and requesting termination.
- c. At the termination of this Agreement, any provisions that would be expected to survive termination by their nature shall remain in full force and effect; this includes all of the terms regarding the Refund Policy and Intellectual Property terms.
- d. The Participant acknowledges their understanding and acceptance that if either Party terminates this Agreement, the Participant shall not be entitled to any refund under any circumstances.

## **SECTION 7: MISCELLANEOUS**

- a. *Non transferability:* The rights and obligations under this Agreement are personal to YOU. You may not assign or transfer any rights or obligations under this Agreement.
- b. *Indemnification:* You will, at Your own expense, defend, indemnify, and hold Heather McKenzie, its agents, and employees harmless from any and all claims, actions, liabilities, injuries, damages, losses, grants, costs, and expenses, including attorney fees, arising out of or in connection with any use of the Program(s) of this Agreement. You hereby release and discharge Heather McKenzie from all existing or potential disputes, claims, controversies, demands, obligations, liabilities, or any possible cause of action of any kind for all acts or omissions of the Program.
- c. *Force Majeure:* If any cause beyond the reasonable control of Heather McKenzie, including, without limitations, "acts of God", nature, war, curtailment or interruption of transportation facilities, threats or acts of terrorism, labor strikes, civil disturbances, unforeseen or foreseen human-initiated circumstances, health or travel restrictions, quarantines, lockdowns or precautions imposed by any government entity or agency, local, state or federal law or ordinance, or any other instances that make it inadvisable, illegal, or impossible for Heather McKenzie to perform responsibilities or obligations under this Agreement, shall excuse Heather McKenzie and make Heather McKenzie not be liable for a reasonable period of delay or for the inability to indefinitely fulfill Heather McKenzie's responsibilities and obligations.
- d. *Injunctive Relief.* The Participant hereby acknowledges that, in light of the unique nature of the protections and provisions established and contained within this Agreement, Heather McKenzie may suffer irreparable harm if the Participant were to breach any of the protections or provisions under this Agreement, and that monetary damages may be inadequate to compensate Heather McKenzie for such a breach. Therefore, if the Participant were to breach any of the provisions of this Agreement, then Heather McKenzie shall be entitled to injunctive relief, in addition to any other remedies at law or equity, to enforce such provisions.

- e. *Non-Disparagement Clause.* Participant shall agree to not publicly or privately make any negative or critical comments about the Program, Heather McKenzie, or related third-parties or affiliates. The Participant shall also agree to not communicate with any other individual or entity in a way that disparages the Program, Heather McKenzie, or harms the reputation of Heather McKenzie in any way, including online on or on social media at any time.
- f. *Amendment:* Heather McKenzie reserves the right to revise and update this Agreement from time to time with sole discretion by posting an updated version of the Agreement at [www.dialdownanxiety.com](http://www.dialdownanxiety.com). All changes are effective immediately when posted, and apply to all access to and use of the Program thereafter. You may discontinue Your use of this Program at any time. Your continued use of the Program following the posting of a revised Agreement means that You accept and agree to the changes. It is Your responsibility to check this page each time You access the Program so You are aware of any changes, as they are binding on You.
- g. *Governing law and venue:* This Agreement shall be governed by and interpreted in all respects in accordance with the laws of the United States of America and the State of North Carolina. Any suit, action or other proceeding whatsoever relating to this Agreement shall be per the terms enumerated above under Section 5, Dispute Resolution, and/or, must be brought in the courts sitting in North Carolina, County of Wake. The Parties accept the jurisdiction of such courts and waive any objections based on personal jurisdiction or venue.
- h. *Severability:* if any part of this Agreement shall be held to be unenforceable, invalid, or illegal, either legislatively or judicially, such provision will be severed from this Agreement and the rest of the Agreement shall remain in full force and effect.
- i. *Waiver.* The failure of Heather McKenzie to insist upon strict adherence to any term in this Agreement on any occasion shall not be considered a waiver nor shall it deprive Heather McKenzie of the right after that to insist upon strict adherence to that term or any term of this Agreement.
- j. *Entire Agreement.* This Agreement constitutes the entire understanding and agreement between Heather McKenzie and the Participant, and it cannot be changed or modified orally. This Agreement may only be supplemented, modified, or revised in writing and agreed upon by both parties.

BY COMPLETING YOUR PROGRAM PURCHASE, YOU ACKNOWLEDGE THAT YOU UNDERSTAND AND AGREE TO **ALL** OF THE AFOREMENTIONED TERMS, INCLUDING THOSE RELATED TO PROGRAM FEES, REFUND POLICY, AND CONFIDENTIALITY.