

**Roots & Waves****TERMS AND CONDITIONS**

Bespoke and personalised individual 1:1/small group holistic mentoring and academic tutoring for home-educated young people and young people with SEND - London Borough of Sutton

TERMS AND CONDITIONS

This agreement, which includes the initial Participant / Service Schedule and these terms and conditions, sets out the terms under which Alexandra Huggett trading as Roots & Waves (Roots & Waves) provides Services to the person or organisation named as the Client in the Participant / Service Schedule (Client).

Subject to clause 1.3, the Client will be taken to have accepted these terms and conditions if the Client signs this document or otherwise indicates its assent, or if the Client orders, accepts or pays for any Services provided by Roots & Waves after receiving or becoming aware of these terms.

1 AGREEMENT

These terms and conditions apply to the provision of the Services set out in the Participant / Service Schedule (Schedule) and to all the Client's dealings with Roots & Waves in relation to the Services. Any updated or replacement Schedule agreed in writing by the parties (for example, for a later Half-Term or a Change) forms part of this agreement and, to the extent of any difference, replaces the earlier Schedule.

If there is any inconsistency between these terms and conditions and the Schedule, these terms and conditions prevail to the extent of the inconsistency, except that any participant-specific terms set out in the Schedule and described as Special Conditions prevail.

1.2 DEFINITIONS

- (a) Consumer means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession, and Consumer Client means a Client who is a Consumer. A parent or carer engaging Roots & Waves for their child will usually be a Consumer Client; a Local Authority or other commissioner will not.
- (b) Fees means the Half-Term Fees and any other fees, Change Fees, charges for Additional Services and Expenses set out in the Schedule or otherwise agreed in writing.
- (c) Half-Term means the half-term period identified in the Schedule and each subsequent half-term period during which the Services continue, by reference to the academic calendar identified in the Schedule.
- (d) Half-Term Fee means the fee payable for the Services in each Half-Term, as set out in the Schedule.
- (e) Participant means the child or young person under the age of 18 named in the Schedule who will receive the Services.
- (f) Payer/Funder means any person or organisation named in the Schedule, other than the Client, that is to pay or fund all or part of the Fees, including a Local Authority.
- (g) Session means each scheduled session of Services.

1.3 FORMATION AND SUITABILITY ASSESSMENT

- (a) Roots & Waves does not accept bookings through its website. Before agreeing to provide Services, Roots & Waves will carry out a suitability assessment, which may include an initial conversation with the Client, a meeting with the Participant and a review of information about the Participant's needs, interests and circumstances (Suitability Assessment).



- (b) Roots & Waves may, acting reasonably, decline to provide Services following the Suitability Assessment if it considers that the Services are not suitable for the Participant or that it cannot safely meet the Participant's needs. Any charge for the Suitability Assessment will be agreed with the Client in advance.
- (c) A binding agreement is formed when both the Client and Roots & Waves have signed the Schedule or, if earlier, when Roots & Waves confirms the booking in writing after the Client has confirmed in writing that it accepts the Schedule and these terms and conditions.

2 TERM

- (a) This agreement commences on the Start Date specified in the initial Participant / Service Schedule, and continues in effect until terminated by the parties in accordance with the terms of this agreement (Term).
- (b) If any Services are supplied after the expiry of the Term without the parties having entered into a replacement agreement or otherwise having expressly agreed in writing that these terms will not apply, the terms of this agreement will continue to apply for those Services.

3 SERVICES

3.1 SCOPE OF SERVICES

- (a) In consideration for the payment of the Fees, Roots & Waves will provide the Client with the services set out in the Participant / Service Schedule (Services).
- (b) Unless otherwise agreed, Roots & Waves may, in its discretion:
 - (i) not commence work on any Services until the Client has paid any Fees or deposit payable in respect of such Services; and
 - (ii) withhold delivery of Services until the Client has paid the invoice in respect of such Services.
- (c) Roots & Waves will use reasonable efforts to perform the Services in accordance with the timeframes set out in the Participant / Service Schedule (commencement date, applicable half-term, session frequency, duration, usual day/time and location).

3.2 REPORTS, CASE MANAGEMENT AND ADDITIONAL SERVICES

Unless the Schedule states otherwise, the Fees do not include written progress reports, attendance at meetings (including EHCP annual reviews, team-around-the-child and other case management meetings), liaison with schools, Local Authorities or other professionals, or the preparation of information for funding applications (Additional Services). Roots & Waves may provide Additional Services on request at the rates set out in the Schedule or otherwise agreed in writing in advance. Any report reflects Roots & Waves' professional observations and is not a clinical, psychological, medical or diagnostic assessment.

3.3 CHANGES TO SCOPE

- (a) If the Client requests a change to the Services, such as an increase in Session frequency or duration, a change of Location or Additional Services (Changes), Roots & Waves will tell the Client in advance of any resulting change to the Fees (Change Fee). Requests to reduce the Services are dealt with under clause 14.1(b).
- (b) Roots & Waves may acting reasonably extend or modify any delivery schedule or deadlines for the Services as may be reasonably required by such Changes.
- (c) Roots & Waves will only be required to perform the Changes if:
 - (i) Roots & Waves agrees in writing to perform the Changes;



- (ii) the Client confirms in writing that they wish for Roots & Waves to proceed with the Changes and the relevant Change Fee; and
 - (iii) the Client agrees to pay the Change Fee.
- (d) This agreement will apply to any Services that are the subject of a Change without this agreement needing to be signed again.

3.4 SECURITY

- (a) Roots & Waves will take appropriate technical and organisational measures to keep the Client's and the Participant's information and data (Client Data) secure, in accordance with Data Protection Legislation. Provided that it has complied with this paragraph, Roots & Waves is not responsible for any unauthorised access to, or loss or alteration of, Client Data caused by matters beyond its reasonable control, including hacking, malware, ransomware or viruses.

3.5 DISCLAIMER

- (a) The Client acknowledges and agrees that:
 - (i) Roots & Waves will provide the Services with reasonable care and skill, but does not guarantee any particular academic, behavioural, developmental or wellbeing outcome;
 - (ii) Roots & Waves does not guarantee any particular decision or outcome from a Local Authority, school, funding body or other third party as a result of the Services; and
 - (iii) it is the Client's responsibility (and not Roots & Waves') to comply with any legal duties relating to the Participant's education, including any duty to ensure that the Participant receives suitable full-time education, school attendance obligations and any requirements of a Local Authority or funding body.
- (b) Roots & Waves is not a school and the Services do not provide or replace a full academic curriculum. The Services are not therapy, counselling, medical treatment, or clinical, psychological or diagnostic services. Progress depends on many factors outside Roots & Waves' control, including the Participant's engagement, attendance, wellbeing and wider circumstances.

4 SPECIFIC SERVICES

4.1 Learning Paths – personalised holistic mentoring and academic tutoring for children and young people under 18

If the Services include Learning Paths – personalised holistic mentoring and academic tutoring for children and young people under 18, the following additional service-specific terms apply:

- (a) Services are provided by Roots & Waves to the Participant, usually on a one-to-one basis, in the Client's home, a community setting, an outdoor or woodland setting or online, as set out in the Schedule or otherwise agreed (Location).
- (b) Sessions are participant-led. Roots & Waves may, acting reasonably and in the Participant's interests, adapt the content, pace, activities, setting within the agreed Location or format of a Session (including moving indoors or online where agreed with the Client) to reflect the Participant's needs, wellbeing and engagement on the day. Such adaptations are not a Change and do not affect the Fees.

4.2 HALF-TERM BOOKINGS AND RESERVED SLOTS

- (a) Services are booked by Half-Term. Roots & Waves will reserve the usual day, time and duration set out in the Schedule for the Participant for each week of the Half-Term (Reserved Slot) and will decline other bookings for that time. Unless this agreement is ended in accordance with 14.1(b) or otherwise in accordance with its terms, the booking and the



Reserved Slot continue into each following Half-Term, and Roots & Waves will invoice the Half-Term Fee for that Half-Term in accordance with the Schedule.

4.3 ATTENDANCE, LATENESS, MISSED SESSIONS AND BEHAVIOUR

- (a) The Client must ensure that the Participant is ready at the scheduled start time of each Session and must give Roots & Waves as much notice as possible, by email or phone, if the Participant cannot attend.
- (b) If the Participant is late, the Session will still end at its scheduled time and no reduction in the Fees will be made.
- (c) If the Participant has not arrived, or is not available at the Location, within 15 minutes of the scheduled start time and the Client has not given notice, Roots & Waves may treat the Session as missed.
- (d) Subject to a Consumer Client's statutory rights, if a Session is missed because of the Participant's absence, lateness or non-availability, or is cancelled by the Client without ending the ongoing Services under clause 14, the fee for that Session remains payable because the Reserved Slot has been set aside for the Participant and cannot ordinarily be reallocated at short notice. Roots & Waves may use some or all of the reserved time for Participant-specific planning, preparation, record keeping, reporting or case management.
- (e) Roots & Waves expects the Participant to engage safely and will work with the Client to support the Participant, including by making reasonable adjustments where appropriate. Roots & Waves may end a Session early where it reasonably considers that continuing would be unsafe. Where the Session is ended because of circumstances relating to the Participant, the Client or the Session environment that are outside Roots & Waves' reasonable control, and Roots & Waves has taken reasonable steps to adapt or de-escalate the Session where appropriate, the fee for that Session remains payable. If Roots & Waves is itself unable to continue the Session for reasons within its reasonable control, clause 4.4 applies.

4.4 CANCELLATIONS BY ROOTS & WAVES

- (a) Roots & Waves may cancel or reschedule a Session because of illness, severe or unsafe weather conditions where those conditions make travel to or attendance at the relevant premises or Session location unsafe or impracticable, or other circumstances reasonably requiring cancellation, and will give the Client as much notice as reasonably practicable. Roots & Waves will offer a replacement Session (which may be online, where suitable and agreed) within the same or the next Half-Term where reasonably practicable. If a Session cancelled by Roots & Waves is not replaced, Roots & Waves will refund or credit the proportion of the Half-Term Fee attributable to that Session.

4.5 SAFEGUARDING, SAFETY AND EMERGENCIES

- (a) Roots & Waves will follow its safeguarding procedures and may share information with, or make referrals to, the Local Authority, the police or other agencies where it has a safeguarding concern, without first informing the Client where doing so could place the Participant or another person at risk.
- (b) The Client must ensure that the Participant is handed over to, and collected from, Roots & Waves at the agreed handover and collection point and time by the Client or an adult authorised in the Schedule. Roots & Waves' responsibility for supervising the Participant begins at handover and ends at collection.
- (c) If the Participant is collected late, the Client must pay any late collection fee set out in the Schedule. If the Participant is not collected and no authorised adult can be reached within a reasonable time, Roots & Waves may contact the emergency contacts and, if necessary, the Local Authority or the police.



- (d) In an emergency, Roots & Waves may arrange first aid and emergency medical treatment for the Participant, and will contact the Client and the emergency contacts as soon as practicable.
- (e) Roots & Waves will administer medication only where agreed in the Schedule and in accordance with written instructions from a person with parental responsibility for the Participant.
- (f) For home Sessions, a responsible adult must remain at the property throughout the Session unless otherwise agreed in the Schedule.

4.6 OUTDOOR AND COMMUNITY ACTIVITIES, TRAVEL AND TRANSPORT

- (a) Sessions may take place outdoors, in woodland or in public or community settings, which involve inherent risks such as uneven ground, weather, plants, insects and members of the public. Roots & Waves will risk assess activities and take reasonable care, but cannot remove all risk.
- (b) The Client must ensure that the Participant has suitable clothing, footwear and any kit set out in the Schedule or notified by Roots & Waves.
- (c) Roots & Waves may change or end an outdoor or community activity if conditions become unsafe.
- (d) For Academic Tutoring, Sessions will ordinarily take place at the Client's home, online or at another agreed Location, and the Client is responsible for the Participant's travel to and from that Location unless otherwise agreed.
- (e) For Holistic Mentoring, Roots & Waves may collect the Participant from the agreed handover point and transport the Participant during the Session, including between the Participant's home and community, woodland or other agreed activity locations. Where Roots & Waves provides transport, it will use a roadworthy vehicle with appropriate business insurance and any legally required child restraint or safety equipment.
- (f) The Client must provide any information reasonably required by Roots & Waves to transport the Participant safely and must notify Roots & Waves promptly of any relevant change. Any separate transport, parking, admission or other expense payable by the Client will be dealt with in accordance with the Expenses clause.
- (g) Nothing in this clause excludes or limits liability for death or personal injury caused by negligence or any other liability which cannot lawfully be excluded or limited.

5 CLIENT OBLIGATIONS

5.1 PROVIDE INFORMATION AND DISCLOSURE

- (a) The Client must provide Roots & Waves with all documentation, information and assistance reasonably required by Roots & Waves to perform the Services.
- (b) Before the Services start, and promptly whenever circumstances change, the Client must tell Roots & Waves in writing of all information relevant to the Participant's safety, wellbeing and participation, including medical conditions, allergies, medication, special educational needs or disabilities, any education, health and care plan, known triggers, behaviours that may present a risk, safeguarding concerns, court orders or restrictions on contact or collection, and who holds parental responsibility.
- (c) Where the Client is not the Participant's parent or carer (for example, a Local Authority), the Client confirms that it has authority to commission the Services, that those with parental responsibility for the Participant have been consulted, and that it will use reasonable endeavours to share with Roots & Waves relevant information it holds about the Participant.
- (d) The Client must take reasonable care to ensure that information, documentation and other material it provides to Roots & Waves for the purpose of the Services, including information



about the Participant's needs, health and circumstances, is complete, accurate and up-to-date, and must promptly correct or update it when necessary.

- (e) Subject to clause 13 and the Consumer Client's statutory rights, Roots & Waves will not be responsible for loss or damage to the extent that it is directly caused by Roots & Waves reasonably relying on materially incomplete, inaccurate or out-of-date information supplied by the Client.

5.2 ACCESS

To the extent required to perform the Services, the Client agrees to provide Roots & Waves with safe access to the Client's home or other premises where Sessions are to take place, including a suitable space and toilet facilities and, for home Sessions, the presence of a responsible adult (unless otherwise agreed in the Schedule).

5.3 CLIENT MATERIALS

- (a) The Client acknowledges and agrees that Roots & Waves will rely on the accuracy of any plans, specifications and other information the Client provides.

5.4 COMPLIANCE WITH LAWS

The Client agrees that it will not by receiving or requesting the Services:

- (a) breach any applicable laws, rules and regulations (including any applicable data protection laws); or
- (b) infringe the intellectual property rights or other rights of any third party or breach any duty of confidentiality.

5.5 INSURANCE

- (a) Roots & Waves will maintain public liability insurance and professional indemnity insurance appropriate to the Services for the duration of this agreement, and will provide evidence of that insurance on reasonable request.
- (b) The Client is responsible for any insurance it considers appropriate for its own property and, where the Client is not a Consumer, for its own risks and liabilities under this agreement.

6 PAYMENT

6.1 FEES

- (a) The Client must pay the Fees for which the Schedule states that the Client is responsible, in the amounts and in accordance with the Payment Terms set out in the Schedule. Where a Payer/Funder is responsible for some or all of the Fees, clause 6.3 applies.
- (b) Half-Term Fees are paid in advance to secure the Reserved Slot. Subject to a Consumer Client's statutory rights, the fee for an individual Session missed or cancelled by the Client remains payable in accordance with clause 4.3. If the Client ends or reduces the ongoing Services, the Fees payable and any refund are determined under clause 14.1(b). Roots & Waves will not retain more than the amounts properly due for Services supplied, Sessions falling within an applicable Notice Period and any reasonable unrecoverable loss directly caused by the cancellation, and will take reasonable steps to mitigate such loss where required by law.

6.2 INVOICES

Roots & Waves will issue a valid invoice to the Client (or, where applicable, the Payer/Funder) for each Half-Term Fee in advance of the relevant Half-Term, and for any Additional Services and Expenses. Invoices must be paid in accordance with the Payment Terms in the Schedule and the remittance method set out in the invoice.



6.3 PAYER/FUNDER AND FUNDING ARRANGEMENTS

- (a) Where the Schedule names a Payer/Funder, Roots & Waves may invoice and accept payment from that Payer/Funder in accordance with the funding arrangement stated in the Schedule.
- (b) The Client must give Roots & Waves accurate details of the funding arrangement that are reasonably available to the Client, including any purchase order or funding reference, invoicing requirements and the amount and period of any approved funding, and must promptly tell Roots & Waves of any material change, delay, reduction or withdrawal of funding of which the Client becomes aware.
- (c) A Payer/Funder that is not the Client is not made a party to this agreement merely by being named in the Schedule. If the Schedule states that the Client is responsible for the Fees, the Client remains liable for those Fees if the Payer/Funder does not pay. If the Schedule states that the Payer/Funder is responsible under a separate commissioning or funding arrangement, the Client is not personally liable for the Payer/Funder's unpaid amount except for any Client Contribution or other amount which the Client has expressly agreed in the Schedule to pay.
- (d) Where funding is paid or released to the Client (for example, as a personal budget or direct payment), the Client is responsible for paying Roots & Waves directly in accordance with the Schedule.
- (e) The Schedule must identify the agreed funding and payment arrangement for the relevant Participant. Where a Local Authority or other commissioner is directly responsible for payment under a separate commissioning or funding arrangement, the Client will not be personally responsible for those Fees unless the Schedule expressly states otherwise. Where funding is released to the Client, including through a direct payment or personal budget, the Client remains responsible for paying Roots & Waves in accordance with this agreement.

6.4 LATE PAYMENT

If the Client does not pay an amount due under this agreement on or before its due date:

- (a) Roots & Waves may, after giving the Client at least 7 days' written notice, suspend provision of the Services until payment is made;
- (b) Roots & Waves may seek to recover the amount due by referring the matter to a collection agency; and
- (c) without limiting any of Roots & Waves' other rights under these terms, the Client must pay interest on each amount outstanding at the rate of 4% per annum above the Bank of England base rate from time to time, from the due date for payment to the date on which payment is received by Roots & Waves, except that where the Client is not a Consumer, Roots & Waves may instead claim statutory interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

6.5 EXPENSES

- (a) Roots & Waves may incur reasonable third-party expenses in connection with the Services where those expenses have been identified in the Schedule or otherwise agreed with the Client in advance, including admission charges, public transport fares, parking, venue charges and activity costs (Expenses).
- (b) Expenses will be itemised and invoiced after they have been incurred, ordinarily at the end of the relevant Half-Term. Each Expenses invoice is payable within 14 days after the date of issue. Roots & Waves will not be required to estimate or invoice Expenses in advance unless otherwise agreed.



6.6 VAT

The Schedule states whether Roots & Waves is registered for VAT. If Roots & Waves is registered for VAT, prices quoted to a Consumer Client include VAT, and prices quoted to any other Client exclude VAT, which that Client must pay in addition subject to receiving a valid VAT invoice.

7 CONSUMER CANCELLATION RIGHTS

- (a) This clause applies only where the Client is a Consumer Client and this agreement is entered into at a distance (for example, by email or online) or away from Roots & Waves' business premises (for example, at the Client's home), within the meaning of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
- (b) The Consumer Client may cancel this agreement without giving any reason within 14 days after the day on which the agreement is formed (Cancellation Period) by telling Roots & Waves clearly, for example by email to the address in the Schedule. A model cancellation form is provided with the Schedule, but the Client does not have to use it.
- (c) Roots & Waves will not begin the Services during the Cancellation Period unless the Consumer Client expressly requests it to do so in writing, including by completing the early start request in the Schedule.
- (d) If the Consumer Client cancels after asking Roots & Waves to begin the Services during the Cancellation Period, the Client must pay a proportionate amount for the Services provided up to the time the Client told Roots & Waves of the cancellation. The right to cancel is lost once the Services have been fully performed.
- (e) Roots & Waves will refund any amount due without undue delay and in any event within 14 days after the day on which it is told of the cancellation, using the same payment method used for payment (or to the Payer/Funder, where it paid) unless agreed otherwise.
- (f) Nothing in this agreement affects a Consumer Client's statutory rights, including under the Consumer Rights Act 2015. Where the Services are not performed with reasonable care and skill, the Consumer Client may be entitled to ask Roots & Waves to repeat the relevant Services or, where that is not possible or not done within a reasonable time and without significant inconvenience, to receive an appropriate price reduction.

8 ACCREDITATIONS AND PUBLICITY

The Client may use learning plans, resources and other materials supplied by Roots & Waves in accordance with the licence in clause 11, and must retain any Roots & Waves copyright or attribution notice appearing on those materials.

- (a) Roots & Waves may describe the nature of its Services in general and non-identifying terms for business and marketing purposes.
- (b) Roots & Waves will not publish or use for marketing or publicity any photograph, video, name, work or other information that identifies the Participant or Client unless separate, specific and appropriate prior consent has been obtained. Any such consent may be withdrawn for future use in accordance with applicable law.
- (c) Where the Client is not a Consumer, Roots & Waves may identify the Client as a commissioner of its Services only with the Client's prior written consent.

9 CONFIDENTIALITY

- (a) Except as contemplated by this agreement or the Participant / Service Schedule, neither party may, nor may it permit any of its officers, employees, agents, contractors or related companies to use or to disclose to any person any Confidential Information disclosed to it by the other party without its prior written consent.
- (b) This clause does not apply to:



- (i) information which is generally available to the public (other than as a result of a breach of these terms or another obligation of confidence);
 - (ii) information disclosed by Roots & Waves where it reasonably considers disclosure necessary to protect the Participant or any other person from harm, or in accordance with its safeguarding obligations;
 - (iii) information required to be disclosed by any law or regulation; or
 - (iv) information disclosed by Roots & Waves to its subcontractors, independent contractors, officers, directors, employees, cloud storage providers, agents or professional advisers for the purposes of performing the Services or its obligations under this agreement.
- (c) For the purposes of this clause 9, "Confidential Information" means information of or provided by a party to the other party under or in connection with this agreement or the Participant / Service Schedule that is by its nature confidential information, is designated by the party as confidential, or the other party knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge.

10 DATA PROTECTION

- (a) Words and phrases in this clause have the meanings given to them by applicable data protection and privacy laws, including the UK GDPR and the Data Protection Act 2018 (Data Protection Legislation).
- (b) Roots & Waves will ordinarily act as an independent controller of personal data about the Client and Participant and will process that data as reasonably necessary to provide and administer the Services, manage safety and safeguarding, communicate with the Client and relevant professionals, arrange billing and funding, comply with legal obligations and exercise or defend legal rights, as further described in its privacy notice.
- (c) Roots & Waves may process special category data, including health and SEND information, where it has a lawful basis to do so and where reasonably necessary to deliver the Services safely, make reasonable adjustments, meet safeguarding obligations or comply with law.
- (d) Where lawful and reasonably necessary, Roots & Waves may share relevant personal data with the Payer/Funder, the Participant's school (if any), a Local Authority, other professionals involved with the Participant, professional advisers, insurers, service providers and safeguarding or law-enforcement authorities.
- (e) The Client must take reasonable steps to ensure that it is entitled to provide personal data it shares with Roots & Waves and, where required, has provided relevant individuals with appropriate privacy information. Each party must comply with Data Protection Legislation applicable to it.
- (f) If a particular Local Authority or commissioner arrangement requires Roots & Waves to act as a processor on behalf of the Client, the parties will agree any data processing terms required by Data Protection Legislation before that processing begins.

11 INTELLECTUAL PROPERTY

11.1 CLIENT CONTENT

The Client grants to Roots & Waves and its permitted personnel a non-exclusive, royalty-free licence to use Client Content only to the extent reasonably necessary to provide the Services, administer the engagement, keep appropriate records and comply with legal or safeguarding obligations. This licence continues after termination only to the extent reasonably necessary for those record-keeping or legal purposes.

The Client:



- (a) the Client must take reasonable care to ensure that it is entitled to provide Client Content to Roots & Waves for the purposes contemplated by this agreement; and
- (b) where the Client is not a Consumer, the Client will indemnify Roots & Waves against losses, claims and reasonable costs arising from a third-party intellectual property claim caused by Client Content supplied by the Client, except to the extent caused by Roots & Waves' use of that Client Content outside the scope of this agreement.

11.2 ROOTS & WAVES IP

- (a) The Client does not acquire ownership of Roots & Waves IP. Roots & Waves retains all Intellectual Property Rights in its teaching resources, learning plans and templates, worksheets, methods, frameworks, processes, know-how and other materials owned, developed or adapted by Roots & Waves in connection with the Services.
- (b) Roots & Waves grants the Client a non-exclusive, royalty-free, non-transferable licence to use Roots & Waves IP supplied as part of the Services for the Participant's personal, non-commercial educational use and, where the Client is not a Consumer Client, for the Client's internal case-management and statutory purposes relating to the Participant. The Client must not commercially reproduce, distribute, sell or exploit Roots & Waves IP without prior written permission.
- (c) Work created by the Participant during Sessions, such as artwork or written work, belongs to the Participant. Any Roots & Waves IP incorporated in or supplied with that work remains owned by Roots & Waves and may be used only under the licence above.

11.3 DEFINITIONS

For the purposes of this clause 11:

- (a) "Client Content" means documents, information or materials supplied by or on behalf of the Client to Roots & Waves under or in connection with this agreement, together with any Intellectual Property Rights in them.
- (b) "Roots & Waves IP" means all teaching resources, learning plans and templates, worksheets, methods, frameworks, processes, know-how, reports, resources and other materials owned, licensed, developed or adapted by Roots & Waves, excluding Client Content and work created solely by the Participant.
- (c) "Intellectual Property Rights" means copyright, trade marks, design rights, patents, database rights, rights in confidential information, know-how and other intellectual or industrial property rights, whether registered or unregistered, together with rights to apply for and renew such rights.

12 SUBCONTRACTING

The Client acknowledges and agrees that Roots & Waves may subcontract any part of the Services with the prior consent of the Client, such consent not to be unreasonably withheld. Any person performing Services on Roots & Waves' behalf must be suitably qualified and experienced and hold an enhanced DBS certificate with a children's barred list check. Roots & Waves will remain responsible for the performance of subcontracted Services.

13 LIMITATION OF LIABILITY

- (a) Nothing in this agreement limits or excludes liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, or any other liability that cannot lawfully be limited or excluded. Nothing in this clause affects a Consumer Client's statutory rights, including the requirement that the Services are performed with reasonable care and skill.
- (b) Subject to the first paragraph of this clause, where the Client is not a Consumer, neither Roots & Waves nor any of its employees, contractors, officers or agents (Personnel) will be liable to the Client for:



- (i) any indirect, special or consequential loss or damage, or any loss of business, contracts, revenue, profits, anticipated savings, goodwill or reputation, arising in connection with the Services or this agreement; or
 - (ii) any business interruption or other business loss which was not reasonably foreseeable when the agreement was entered into.
- (c) For a Consumer Client, nothing in this clause limits any liability, remedy or minimum recovery to the extent that such limitation is prohibited by section 57 of the Consumer Rights Act 2015 or any other mandatory consumer law. For a Client that is not a Consumer, any exclusion or limitation is subject to the Unfair Contract Terms Act 1977 and any other applicable law.
- (d) Subject to the paragraphs above and to the maximum extent permitted by law, the total aggregate liability of Roots & Waves arising out of or in connection with this agreement is limited to the total Fees paid or payable for the Half-Term in which the event giving rise to the claim occurred (or, if it did not occur during a Half-Term, the most recent Half-Term).

14 TERMINATION

14.1 TERMINATION RIGHTS

- (a) Roots & Waves may end this agreement for any reason by giving the Client at least four weeks' written notice, and will refund any Fees paid for Sessions scheduled after the termination date.
- (b) The Client may end the Services, or reduce the frequency or duration of Sessions, for any reason by giving Roots & Waves at least four weeks' written notice (Notice Period). The termination or reduction takes effect at the end of the Notice Period or any later date stated in the notice. Sessions scheduled during the Notice Period remain payable. If the Client is a Consumer Client and has prepaid Fees for Sessions scheduled after the Notice Period, Roots & Waves will refund the balance after deducting any reasonable unrecoverable loss directly caused by the cancellation, taking reasonable steps to mitigate that loss where required by law. If the Client is not a Consumer, the Half-Term Fee for the Half-Term in which notice is given remains payable in full unless otherwise agreed in writing. Where the Notice Period extends into the following Half-Term, the Client must pay for Sessions in that Half-Term that fall within the Notice Period. Any reduction in Services for later Half-Terms will be reflected in an updated Schedule.
- (c) Either party (Non-Defaulting Party) may terminate this agreement immediately by written notice to the other party (Defaulting Party) if the Defaulting Party:
 - (i) is in material breach of this agreement and either:
 - (A) fails to remedy such breach within 14 days of receiving notice from the Non-Defaulting Party requiring it to remedy such breach; or
 - (B) that breach is not capable of remedy; or
 - (ii) becomes subject to any form of insolvency or bankruptcy administration.

The date of termination will be the date that notice is given.

- (a) Roots & Waves may suspend the Services, or terminate this agreement immediately by written notice to the Client, if:
 - (i) it reasonably considers that it can no longer safely meet the Participant's needs, or that continuing the Services would present a significant risk to the Participant, Roots & Waves or others;
 - (ii) the Participant, the Client or any member of the Participant's household behaves towards Roots & Waves in a way that is abusive, threatening, discriminatory or presents a risk of harm;



- (iii) the Client has failed to disclose, or has provided materially inaccurate, information relevant to the Participant's safety or wellbeing; or
 - (iv) any Fees remain unpaid 14 days after Roots & Waves has given the Client written notice of non-payment.
- (b) Before suspending or terminating the Services under the paragraph above, Roots & Waves will, where reasonable and safe to do so, discuss its concerns with the Client and consider reasonable adjustments. Sessions missed during a suspension for non-payment remain payable. Sessions missed during any other suspension that are not replaced will be refunded or credited unless the suspension was caused by circumstances for which the Client is responsible and Roots & Waves is entitled to retain an amount reflecting its reasonable loss.
- (c) If Roots & Waves terminates this agreement under the paragraph above for a reason that does not involve any breach by the Client, it will refund Fees paid for Sessions scheduled after the termination date. If it terminates because of the Client's breach, Roots & Waves may retain only so much of the prepaid Fees as reflects Services already supplied, Sessions properly payable under this agreement and its reasonable unrecoverable loss caused by the breach, and will refund any balance.

14.2 ACCRUED RIGHTS AND LIABILITIES

The expiration or termination of this agreement will not prejudice any accrued rights or liabilities of either party, nor excuse either party from a breach of this agreement occurring prior to expiration or termination of this agreement.

14.3 CONSEQUENCES OF EXPIRATION OR TERMINATION

Upon expiration or termination of this agreement:

- (a) the Client must pay all amounts owed for Services already provided as at the date of termination;
- (b) Fees payable, retained or refundable on termination are determined in accordance with clause 14.1 and the Consumer Client's statutory rights. Roots & Waves will not retain prepaid Fees beyond the amounts properly due under this agreement and any reasonable unrecoverable loss it is lawfully entitled to recover;
- (c) each party must return all property of the other party to that other party;
- (d) the Client may continue to use any Roots & Waves IP already supplied to it only to the extent permitted by the licence in clause 11.2;
- (e) each party must immediately return to each other party, or (if requested by that party) destroy, any documents in its possession or control containing Confidential Information of the other party.

14.4 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement will survive and be enforceable after such termination or expiry, including clauses relating to accrued rights, payment, confidentiality, data protection, intellectual property and limitation of liability.

15 COMPLAINTS

- (a) If the Client is unhappy with any aspect of the Services, the Client should raise it with Roots & Waves as soon as possible by email to the address in the Schedule. Roots & Waves will deal with the complaint in accordance with its Complaints Policy and will provide the Client with information about that process on request.



- (b) Safeguarding concerns, including concerns about the welfare of a Participant or an allegation relating to a person working with children, will be handled under Roots & Waves' safeguarding procedures and may be referred to the appropriate external authority.
- (c) Roots & Waves and the Client should use reasonable efforts to resolve any other dispute in good faith before commencing proceedings, where it is reasonable to do so.
- (d) Nothing in this clause prevents a Consumer Client from exercising any statutory right, bringing court proceedings or using any available alternative dispute resolution scheme, and nothing prevents either party seeking urgent relief where necessary.

16 NOTICES

- (a) A notice or other communication to a party under this agreement must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (Email Address). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent; or
 - (ii) when replied to by the other party,

whichever is earlier.

17 FORCE MAJEURE

- (a) If a party (Affected Party) becomes unable, wholly or in part, to carry out an obligation under this agreement (other than an obligation to pay money) due to a Force Majeure Event, the Affected Party must give to the other party prompt written notice of:
 - (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.
- (b) Subject to the Affected Party giving notice as required above, the relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (c) The Affected Party must use its reasonable endeavours to overcome or remove the Force Majeure Event as quickly as possible.
- (d) Where a Force Majeure Event prevents Roots & Waves from delivering Sessions, Roots & Waves will offer replacement Sessions (including online Sessions) where reasonably practicable, and will refund or credit any Fees paid for Sessions not delivered or replaced. If a Force Majeure Event continues for more than four weeks, either party may end this agreement by written notice.
- (e) For the purposes of this agreement, a 'Force Majeure Event' means any:
 - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of the control of the Affected Party;
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or



- (iv) decision of a government or public health authority, or severe weather making it unsafe to deliver Sessions where no reasonable alternative arrangement is available,

in each case beyond the reasonable control of the Affected Party, to the extent it affects the Affected Party's ability to perform its obligations.

18 GENERAL

18.1 GOVERNING LAW

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

18.2 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Where the Client is a Consumer, this clause does not deprive the Client of the protection of the mandatory consumer laws of the part of the United Kingdom in which they live, and a Consumer Client resident in Scotland or Northern Ireland may also bring proceedings in their local courts.

18.3 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior consent of each other party (such consent not to be unreasonably withheld).

18.4 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

18.5 THIRD PARTY RIGHTS

This agreement does not give rise to any rights under the *Contracts (Rights of Third Parties) Act 1999* to enforce any term of this agreement.

18.6 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

18.7 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

18.8 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

18.9 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

**18.10 WAIVER**

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

18.11 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, arrangement, understanding or agreement relating to its subject matter. However, where the Client is a Consumer Client, nothing in this clause excludes or limits any statement or information that forms part of the contract under section 50 of the Consumer Rights Act 2015, any pre-contract information which is binding under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, or any liability for fraud or fraudulent misrepresentation.

18.12 INTERPRETATION

- (a) (singular and plural) words in the singular includes the plural (and vice versa);
- (b) (gender) words indicating a gender includes the corresponding words of any other gender;
- (c) (defined terms) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) (person) a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) (party) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) (this agreement) a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) (headings) headings and words in bold type are for convenience only and do not affect interpretation;
- (h) (includes) the word "includes" and similar words in any form is not a word of limitation; and
- (i) (adverse interpretation) no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.

19 ENVIRONMENTAL COMMITMENT AND REFORESTATION**Environmental Pledge**

Roots & Waves is committed to environmental sustainability and supporting global reforestation. In partnership with Tree-Nation, Roots & Waves pledges to plant one (1) tree for each of the following qualifying triggers:

- (a) Every new client agreement signed;
- (b) Every full term completed with a Client; and
- (c) Every adult Forest Bathing session delivered by Roots & Waves.

Nature of Commitment: The Client acknowledges that this pledge is a voluntary environmental initiative provided by Roots & Waves. Tree planting obligations are fulfilled via Roots & Waves' dedicated community forest hosted on Tree-Nation: <https://tree-nation.com/profile/roots-and-waves>