



## **Supply of Services Agreement - Full Terms and Conditions**

Updated July 2022

(1) The Wave Project

(2)

Dated

## Contents

1. Definitions and interpretation	1
2. Commencement and Duration	3
3. Obligations of the Wave Project	4
4. Obligations of the Referrer	4
5. Financial Arrangements	5
6. Intellectual Property Rights	5
7. Safeguarding	5
8. Confidentiality	6
9. Press Releases and Publicity	6
10. Data Protection	6
11. Limitation of Liability	7
12. Termination	8
13. Effect of Termination	8
14. Insurance	9
15. Assignment and Sub-contracting	9
16. Gratuities	9
17. Dispute Resolution	9
18. Entire Agreement	10
19. Notices	10
20. Severance	11
21. General	11
Schedule 1	12
(Health and Safety Welfare)	12
Schedule 2	13
(Quality Assurance)	13
Schedule 3	14
(Costs and Liabilities)	14
Schedule 4	16
(Party Representatives)	16

**This Agreement** is made on

**Between**

- (1) **The Wave Project** (registered under charity no. 1163421 in England and Wales and SCO46500 in Scotland) whose registered office is at 6 Fore Street, Newquay, Cornwall, England, TR7 1LN ("**the Wave Project**"); and
- (2) \_\_\_\_\_ (the "**Referrer**")

each a "**Party**" and together the "**Parties**".

**Background:**

- (A) The Wave Project is a surf therapy charity and has developed a training programme (the "**Programme**" as defined below).
- (B) The Referrer is a \_\_\_\_\_ and wishes to enrol its Clients (defined below) in the Programme.
- (C) The Referrer and the Wave Project have agreed that the Wave Project will deliver the Programme to Clients of the Referrer on the terms and conditions set out in this Agreement.

**It is agreed** as follows:

**1. Definitions and interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

**"Agreement"** means this agreement together with the Schedules and the Appendices; "**Appendix**" means an appendix attached to this Agreement;

**"Applicable Laws"** means all laws, regulations, orders, rules, guidance, directions, judgments, directives, industry agreements or determinations in force from time to time applicable to a party and relevant to this Agreement;

**"Business Day"** means a day (other than a Saturday, Sunday or a public holiday in England) when the banks in London are open for business;

**"Commencement Date"** means the date set out on page 1 of this Agreement;

**"Confidential Information"** means all information (whether written, oral or in electronic form) concerning the business, affairs, Referrers, clients or suppliers of the Party to which the information belongs or that the other Party obtains or receives as a result of the performance of this Agreement and the Programme.

**"control"** means as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;

**"Referrer Materials"** means all documents, information, items and materials in any form, whether owned by the Referrer or a third party, which are provided by the Referrer to the Wave Project in connection with the Services, including the items provided pursuant to clause 4.1(b).

**"DP Laws"** means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including: (i) EU Regulation 2016/679 ("**GDPR**"); (ii) any laws

or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR (including, in the UK, the Data Protection Act 2018 ("DPA")) and the applied GDPR as defined in the DPA; (iii) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC) (including, in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003); and (iv) any binding guidance or binding codes of practice issued by a governmental or regulatory body or authority in relation to compliance with the foregoing; in each case, as updated, amended or replaced from time to time.; in each case, to the extent in force, and as such are updated, amended or replaced from time to time;

The terms "**Personal Data**", "**Data Subject**", "**Data Controller**", "**Supervisory Authority**" "**special categories**" and "**processing**" shall have the meanings given to them in the GDPR and the DPA;

"**Enhanced Disclosure & Barring Service Check**" means a Disclosure & Barring Service Enhanced Disclosure which for the avoidance of doubt shall include a check of the Children Vetting and Barring Scheme;

"**Fee**" means the fee payable per Client by the Referrer to the Wave Project as specified in Schedule 3;

"**Total Fee**" means the sum calculated by the formula: Fee x Number of Clients ;

"**Force Majeure**" means an event beyond the reasonable control of a party including but not limited to acts, defaults or omissions of training providers, or subcontractors, a strike, lock out or other form of industrial action except in relation to a party's own workforce, outbreak of hostilities, riot, civil disturbance or acts of terrorism; fire, explosion, flood or adverse sea conditions; or theft and malicious damage. No event shall be treated as an event of Force Majeure if it is attributable to a wilful act or omission or any failure to take reasonable precautions by a party or any failure to take reasonable steps to overcome the event;

"**Group**" means in relation to either party, that party, its subsidiaries, its holding companies and any subsidiaries of any such holding company, "**subsidiary**" and "**holding company**" having the meanings ascribed to those terms in section 1159 of the Companies Act 2006 and "**Group Companies**" shall be construed accordingly;

"**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"**Programme**" means the course(s) of study, training, instruction or education provided by the Wave Project for the Clients as more particularly described in Appendix to Schedule 1;

"**Programme Handbook**" means the programme handbook made available by the Wave Project to the Referrer in connection with the Programme;

"**Programme Materials**" means all documents, information, items and materials in any form, whether owned by the Wave Project or a third party, which are provided to the Referrer by the Wave Project in connection with the Programme;

"**Client**" means a Client on the roll of the Referrer who participates in the Programme and "**Clients**" shall be construed accordingly;

**"Safeguarding Policies"** means each Parties' safeguarding policies attached in clause 7, as amended by notification to the other party from time to time;

**"Schedule"** means any of the schedules attached hereto;

**"Term"** means the duration of this Agreement as defined in clause 2;

**"VAT"** means value added tax chargeable under English law for the time being and any similar additional tax.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- (c) a reference to a statute or statutory provision includes:
  - (i) any subordinate legislation (as defined in section 21(1), Interpretation Act 1978) made under it; and
  - (ii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it whether such statute or statutory provision comes into force before or after the date of this Agreement;
- (d) a reference to:
  - (i) any party includes its successors in title and permitted assigns;
  - (ii) a Party, clause and schedule is to a Party to, a clause of and a schedule to this Agreement;
  - (iii) a **"person"** includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality); and
  - (iv) a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- (e) the words **"includes"** or **"including"** shall be construed as illustrative only and shall not limit the generality of the preceding words;
- (f) if there is any conflict between any clause of this Agreement and the provision of the Schedules and the Appendices the provisions of this Agreement shall prevail. For the purposes of this clause 1.2(f) only, the term **"Agreement"** shall not include the Schedules or the Appendices; and
- (g) the table of contents and headings are inserted for convenience only and shall not affect the interpretation of this Agreement.

## 2 Commencement and Duration

2.1 This Agreement shall commence on the Commencement Date and shall continue unless terminated earlier in accordance with clause 12 (the **"Term"**).

### **3 Obligations of the Wave Project**

#### **3.1 The Wave Project shall:**

- (a) use reasonable endeavours to deliver the Programme to the Clients in accordance with this Agreement in all material respects;
- (b) in performing its obligations under this Agreement, comply with:
  - (i) the Applicable Laws;
  - (ii) changes to the Programme required as a result of changes to the Applicable Laws or the Mandatory Policies which may be agreed between the Parties (acting reasonably);
  - (iii) the health, safety and welfare requirements detailed in Schedule 2; and
  - (iv) any alterations or changes to the Programme suggested by the Referrer that the Wave Project, at its sole discretion, deems reasonable;
- (c) use reasonable endeavours to comply with reasonable instructions given by the Referrer in relation to the Programme, subject to the Referrer giving reasonable notice of such instructions and agreement of any additional incurred costs to the Wave Project to be borne by the Referrer;
- (d) use reasonable endeavours to comply with any reasonable request for assistance by the Referrer in the event of any investigations or audit by a governmental regulatory body or statutory inspection body, provided that these are conducted at the Referrer's expense;
- (e) maintain records of work undertaken in relation to the Programme;
- (f) employ sufficient numbers of appropriately skilled and competent staff to deliver the Programme; and
- (g) ensure that all staff engaged in the delivery of the Programme have undertaken an Enhanced Disclosure & Barring Service Check and shall use reasonable endeavours to provide the Referrer with registration numbers for all staff likely to be engaged in the provision of the Programme.

3.2 The Wave Project shall not be responsible for the performance of its obligations under this Agreement to the extent that it is prevented or delayed by any act or omission of the Referrer, its agents, subcontractors, consultants or employees.

### **4 Obligations of the Referrer**

#### **4.1 In consideration of the delivery of the Programme to the Clients, the Referrer shall:**

- (a) co-operate with the Wave Project in all matters relating to the delivery of the Programme;
- (b) provide to the Wave Project in a timely manner all documents, information, items and materials in any form (whether owned by the Referrer or third party) reasonably required by the Wave Project in connection with the delivery of the Programme and ensure that they are accurate and complete;

- (c) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Wave Project to deliver the Programme;
- (d) in advance of the Programme, pass to the Clients and/ or their parents/guardians all relevant communications received from the Wave Project relating to, for example, equipment and clothing that the Clients must bring and any other information or advance preparations;
- (e) meet its obligations under Schedule 1 and ensure that the Wave Project has all the necessary information regarding the Clients in order to properly provide the Programme, in accordance with the provisions of Schedule 2;
- (f) pay all invoices raised by the Wave Project in a timely manner in accordance with clause 5; and
- (g) maintain and regularly review appropriate policies including without limitation a Safeguarding Policy;

4.2 The Referrer shall comply with any reasonable request by the Wave Project for assistance in the event of an investigation or audit by any government regulatory body or statutory inspection body provided that the Wave Project shall reimburse the Referrer's reasonable and demonstrable expenses arising from such compliance.

## 5 Financial Arrangements

5.1 In consideration of the delivery of the Programme by the Wave Project, the Referrer shall pay the Wave Project the Total Fee in accordance with Schedule 3, unless that Fee is waived in writing by an authorised representative of the Charity.

5.2 All sums payable to the Wave Project under this Agreement:

- (a) are exclusive of VAT, and the Referrer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 6 Intellectual Property Rights

6.1 The Wave Project shall retain ownership of all Intellectual Property Rights in the Programme and the Materials, excluding the Referrer Materials, and shall grant to the Referrer a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term to use and copy the Materials for the purpose of receiving and using the Programme.

6.2 The Referrer shall not sub-license, assign or otherwise transfer the rights granted in this clause 8.

6.3 The Referrer grants the Wave Project a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any Referrer Materials for the Term, for the purpose of providing the Programme to the Referrer.

## 7 Safeguarding

7.1 Each Party shall comply with its own Safeguarding Policy, unless the Parties agree that either Party's Safeguarding Policy should take precedence for the purposes of this Agreement.

7.2 Where an investigation into a safeguarding issue is carried out, the Referrer shall instigate action under the Referrer's Safeguarding Policy.

## 8 Confidentiality

8.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of five (5) years after termination of this Agreement, disclose to any person any Confidential Information of the other Party or of any member of the Group to which the other Party belongs, except as permitted by clause 8.2.

8.2 Each Party may disclose the other Party's Confidential Information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 8.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 No Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 9 Press Releases and Publicity

The Wave Project will obtain parental consent from Clients before using their photograph in any press releases or publicity, and will make every effort to inform the Referral Partner of any relevant publicity that relates to them.

## 10 Data Protection

10.1 Pursuant to clauses 4.1(c) and 4.1(g) of this Agreement, the Referrer shall obtain the necessary consents required to collect and process Personal Data of the Clients, including any special categories of Personal Data in accordance with all DP Laws.

10.2 The Wave Project has the right to cancel or withdraw the Client from the Programme if the Client or the parent/guardian of the Client (as appropriate) does not grant consent to the use of special categories of Personal Data by the Wave Project, and this makes it impossible for the Wave Project to provide the Programme in accordance with the terms of this Agreement, in respect of that Client (including where the Wave Project requires such special categories of Personal Data in order to make appropriate adjustments to accommodate specific health and safety needs of the Client). In these circumstances, subject to the provisions elsewhere in this Agreement, the Wave Project will decide, at its sole discretion, whether to make a refund of the Fees in respect of such Client.

10.3 For the purposes of this Agreement, it is envisaged that both Parties will be Data Controllers of Personal Data relating to Clients. Both parties will comply with all applicable requirements of the DP Laws relating to such Personal Data. This clause 10 is in addition to, and does not relieve, remove or replace, a Party's obligations under the DP Laws.

10.4 If, subsequent to the Commencement Date, either party is required to process personal data on behalf of the other as a data processor, the Parties shall (prior to any such processing) agree additional contractual provisions to ensure that any such processing is compliant with the DP Laws.



- 10.5 Each Party shall maintain records of all processing operations under its responsibility that contain at least the minimum information required by the DP Laws, and shall make such information available to any Supervisory Authority on request.
- 10.6 In respect of Personal Data received from the Referrer, the Wave Project shall comply with the provisions and obligations imposed on it as a Data Controller by the DP Laws at all times when processing Personal Data, which shall include but not be limited to the obligations:
- (a) to provide information about its processing activities to the Data Subject in accordance with Articles 13 and 14 of the GDPR;
  - (b) to ensure that its processing activities are lawful in accordance with Article 6 of the GDPR; and
  - (c) to respond to requests from a Data Subject to exercise their rights under the DP Laws in relation to Personal Data of that person in respect of which the Wave Project is the Data Controller.
- 10.7 If either Party receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data by the other Party or to either Party's compliance with the DP Laws, it shall as soon as reasonably practicable notify the other Party and it shall provide the other Party with reasonable co-operation and assistance in relation to any such complaint, notice or communication.

## 11 **Limitation of Liability**

11.1 Nothing in this Agreement shall limit or exclude the Wave Project's liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) any other liability which cannot be limited or excluded by applicable law.

11.2 Subject to clause 11.1, the Wave Project shall not be liable to the Referrer whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of or damage to goodwill;
- (d) any indirect or consequential loss; or
- (e) any loss suffered by the Referrer to the extent that such loss arose out of or in connection with any act or omission on the part of the Referrer.

11.3 Subject to clause 11.1, the Wave Project's total liability under or arising out of this Agreement shall be limited to the Total Fee.

11.4 Nothing in this Agreement limits the Referrer's liability to pay the Fee under this Agreement.

## 12 Termination

12.1 Without prejudice to any right or remedy a Party may have against the other for breach of this Agreement, either Party may, with immediate effect by notice in writing to the other Party, terminate this Agreement on or at any time after the happening of any of the following events:

- (a) the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (c) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other Party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other Party or a receiver is appointed over all or any of the assets of the other Party;
- (i) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(c) to clause 12.1(i)(inclusive); or
- (k) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.2 Without affecting any other right or remedy available to it, the Wave Project may terminate this Agreement with immediate effect by giving written notice to the Referrer if the Referrer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment.

## 13 Effect of Termination

13.1 On termination or expiry of this Agreement in accordance with clause 12:

- (a) any ongoing Programme shall automatically cease;
- (b) the Referrer shall cease to provide information about the Programme to any Clients ;
- (c) the Referrer shall immediately pay to the Wave Project all of the Wave Project's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Wave Project may submit an invoice, which shall be payable immediately on receipt; and
- (d) clauses 1, 6, 8, 11, 13, 17, 18, 19, 20 and 21 will continue in force.

13.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

#### 14 Insurance

14.1 The Wave Project shall effect and maintain with reputable insurers such policy or policies of insurance as may be necessary to cover the Wave Project's obligations and liabilities under this Agreement.

14.2 The Wave Project shall supply to the Referrer any relevant policy certificate from its insurers and the Wave Project shall use reasonable endeavours to supply to the Referrer on reasonable notice copies of documents relating to the insurance policies arranged in compliance with clause 14.1.

14.3 The Wave Project shall inform the Referrer if the Wave Project ceases to be insured.

#### 15 Assignment and Sub-contracting

15.1 The Referrer shall not assign, transfer mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

15.2 The Wave Project may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that the Wave Project gives prior written notice of such dealing to the Referrer.

#### 16 Gratuities

The Wave Project shall not, whether itself, or by any person employed by it to provide the Programme, solicit or accept any gratuity or any other reward, tip or any other form of money taking, collection or charge for any part of the Programme other than charges properly approved by the Referrer in accordance with the provisions of this Agreement.

#### 17 Dispute Resolution

17.1 Any dispute between the Parties with respect to the interpretation of any provision of the Agreement and with respect to the obligations imposed by it on the other Party, as appropriate, shall be resolved as provided for in this clause 17.

17.2 Neither Party shall commence formal dispute resolution proceedings (to include litigation), until the earlier of:

- (a) the Parties' designated representatives (as referred to in clause 17.3(a)) jointly concluding that resolution of the dispute through continued negotiation of the matter does not appear likely; and

- (b) thirty (30) Business Days after a Party's written request under clause 17.3(a) was submitted to the other party and that other party has failed to appoint a designated representative.

17.3 Prior to the initiation of any formal dispute resolution proceedings (to include litigation), the Parties shall first attempt to resolve their dispute informally, as follows:

- (a) upon the written request of either Party to the other, each Party shall appoint a designated representative for the purpose of endeavouring to resolve such dispute;
- (b) the designated representatives shall meet as often as either Party reasonably deems necessary in order to gather and provide to the other all information with respect to the matter in issue which that Party believes to be appropriate in connection with its resolution. The designated representatives shall discuss the problem and negotiate with each other in good faith in an effort to resolve the dispute informally;
- (c) during the course of negotiations, all reasonable requests made by either party to the other for non-privileged information, reasonably related to the Agreement, shall be honoured in order that each of the parties may be fully advised of the other's position; and
- (d) the method of endeavouring to resolve the dispute shall be left to the discretion of the designated representatives.

## 18 Entire Agreement

18.1 This Agreement sets out the entire agreement and understanding between the Parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Agreement.

18.2 Each Party acknowledges that it has entered into this Agreement in reliance only on the representations, warranties, promises and terms contained or expressly referred to in this Agreement and, save as expressly set out in this Agreement, neither Party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

## 19 Notices

19.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) subject to clause 19.3, sent by email, to the email address provided by each Party to the other for the purpose of serving notice.

19.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next Business Day delivery service, on the second Business Day after posting;
- (c) subject to clause 19.3, if sent by email on the next Business Day after transmission.

19.3 Any notice terminating this Agreement, including a notice exercising the rights in clause 12, is not valid if it is served by e-mail.

## 20 **Severance**

20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

20.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 21 **General**

21.1 The failure or delay of a Party to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.

21.2 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any party the agent of another party, or authorise any Party to make or enter into any commitments for or on behalf of any other party.

21.3 No person who is not a Party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

21.4 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties by its respective authorised representatives.

21.5 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

21.6 Neither Party shall be deemed to be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to an event of Force Majeure.

21.7 This Agreement shall be governed by and construed in accordance with English law, the English courts shall have exclusive jurisdiction to settle any disputes which may arise between the Parties out of or in connection with this Agreement.

## **Schedule 1**

(Health and Safety Welfare)

### **1 Consent**

- 1.1 The Referrer shall liaise with parents/guardians when deciding whether a Client should be offered the opportunity to attend the Programme.
- 1.2 The Charity shall provide to the parents/guardian the Client consent form for attendance on a Programme and all necessary information regarding the Programme in order for the parent/guardian to make an informed decision as to whether or not to consent to the Client attending the Programme.
- 1.3 The Charity shall ensure that the parent/guardian is aware of:
  - (a) the details of the Programme;
  - (b) the supervision arrangements for the Clients
  - (c) any travel arrangements for the Clients , both before and after attendance on the Programme; and
  - (d) details of both the Referrer and the Wave Project's contacts for the purposes of the Programme.

### **2 Supervision**

- 2.1 The Referrer and the Wave Project shall take into consideration the individual needs and likely behaviour of the Clients concerned when making any decision regarding the necessary supervision. The Referrer and the Wave Project shall not allow any Client to be unsupervised by an appropriate adult during Referrer hours without the written consent of the parents/guardian of the Client. It shall be the responsibility of the Wave Project to notify the Referrer immediately if it becomes aware that a Client has left without permission.
- 2.2 Each Party shall ensure that any representative of that Party supervising the Clients shall have obtained a satisfactory [Disclosure & Barring Service] checks.
- 2.3 The Referrer and the Wave Project shall jointly monitor the supervision arrangements and shall amend such arrangements if it becomes necessary to do so.

## Schedule 2

### (Quality Assurance)

#### 1 Selection Criteria

- 1.1 The Wave Project shall ensure that any selection criteria is non-discriminatory and applies directly to the aims and requirements of the Programme which is available in the Programme Handbook made available to the Referrer.
- 1.2 If The Wave Project reasonably determines that a Client's suitability does not meet the aims and requirements of the Programme, the Wave Project shall at its sole discretion have the right to refuse the enrolment of a Client or, in using reasonable endeavours, re-allocate the Client to a different Programme.
- 1.3 The Referrer shall ensure that the parents/guardians and the Clients are aware of the selection process and, where appropriate, shall procure and keep under review the consent of such parents/guardians, that they consent to any relevant information being shared with the Wave Project for the purposes of the selection process.
- 1.4 The Client and parents/guardians shall be notified of the Client's acceptance on the Programme by the Referrer prior to the start of the Programme.

#### 2 Induction

- 2.1 The Referrer shall ensure that each Client attending the Programme receives information regarding the content of the Programme and advice on how a Client can obtain assistance if he or she has any difficulties or concerns whilst on the Programme.
- 2.2 The Wave Project shall ensure that each Client receives an induction on the first day of the Programme. The induction shall give the Client details of the Programme and what is expected from them, health, safety and welfare arrangements, supervision arrangements and the disciplinary policy. The Client should be given contact details of a member of the Wave Project's staff who can assist should the Client have any difficulties or concerns.

#### 3 Monitoring

- 3.1 The monitoring and evaluation procedure conducted jointly and separately by the Referrer and the Wave Project shall include the following protocol:
  - (a) The Wave Project will undertake pre and post course wellbeing questionnaires for each participating Client;
  - (b) the Clients will complete a questionnaire at the end of the Programme giving information about what they liked / didn't like about the course;
  - (c) the Referrer will make available any relevant monitoring data to The Wave Project, including but not limited to attendance, sanctions, merits, awards and comments from teachers; and Referrer, if required;
  - (d) The Wave Project will use this combined data to produce a group mean score for the Programme as a whole.
- 3.2 In the event that the monitoring and evaluation procedure identifies any problems in the provision of the Programme or any of the arrangements put into place for the Clients, the Referrer and the Wave Project shall as soon as reasonably practicable put into place arrangements to resolve the problems and shall monitor the new arrangements to ensure that the problems are resolved.
- 3.3 The Referrer and the Wave Project shall ensure that all monitoring and evaluation is recorded in writing and available to the other Party upon request.

### Schedule 3

#### (Costs and Liabilities)

#### 1 Reservations

- 1.1 The Referrer and the Wave Project shall ensure that the Programme details are provided to the Referrer in sufficient time to allow an informed decision to be made by the Referrer, parents/guardian and the Client regarding the suitability of the Programme for the Client.
- 1.2 The Referrer shall provide details of the Programme and any selection process to the parents/guardians and Clients .
- 1.3 In accordance with Schedule , paragraph 1.1, the Referrer and the Wave Project shall undertake any selection process and at the end of the process the Wave Project shall confirm that the places on the Programme are available.

#### 2 Fee

- 2.1 The Fee is £150 per Client, per 6 week Surf Therapy Course.
- 2.2 The Referrer's booking of the Programme shall be deemed confirmed at the point at which it pays to the Wave Project a deposit of 20% of the Total Fee. Until such time as the deposit is paid, the Wave Project reserves its right to allocate the relevant timeslots elsewhere.
- 2.3 The remainder of the Total Fee shall be divided into equal monthly instalments which shall each be invoiced monthly in advance and the Referrer shall pay within 30 days of receipt of such invoice.
- 2.4 Where the Referrer disputes an invoice, it shall notify the Wave Project within 10 days of receipt and both Parties shall use their best endeavours to resolve the dispute. For the avoidance of doubt, no dispute as to payment shall negate the Referrer's obligations to pay the Total Fee in accordance with this Schedule.

#### 3 Cancellations/Withdrawals

##### 3.1 Before commencement of the Programme:

- (a) should the Referrer cancel the Programme in full in writing at least one month in advance of the commencement of the Programme, the Wave Project shall refund the deposit in full;
- (b) should the Referrer cancel the Programme less than one month in advance of the commencement of the Programme, no refund of the deposit shall be due; and
- (c) in the event that the Referrer or Client and parents/guardian cancels a confirmed place on the Programme , the Referrer, in consultation with the Wave Project, shall endeavour to put forward another Client for that place. Any replacements will be subject to approval by the Wave Project and the Wave Project is entitled to reject any replacements at its discretion. Should no replacement Client be agreed upon, the Wave Project shall have the discretion to charge in full for the Programme as though the cancelled Client was in attendance.

##### 3.2 After commencement of the Programme:

- (a) In the event that a Client is withdrawn from the Programme after commencement of the Programme for any reason the Referrer, in consultation with the Wave Project, shall



endeavour to put forward another Client for that place where this is appropriate. Any replacements will be subject to approval by the Wave Project and the Wave Project is entitled to reject any replacements at its discretion. No refunds are available at this stage.

**4 Re-allocation or refusal of acceptance**

If before or after commencement of the Programme, the Wave Project exercises its right in Schedule paragraph 1.2 to:

- (a) refuse enrolment of a Client; or
- (b) re-allocate the Client, and the Referrer refuses to accept the re-allocation or make the necessary practical arrangements to implement the re-allocation,

**no refunds will be available.**

**Schedule 4**

(Party Representatives)

**Referrer Representative:**

Name:

Address:

Email:

Telephone:

Fax:

Contact name for invoice:

Contact email for invoice:

PO number (if applicable):

**The Wave Project Representative:**

Name:

Address:

Email:

Telephone:

Fax: