

USER'S AGREEMENT

This Agreement (the "Agreement") entered into between Swim Angelfish LLC ("Swim Angelfish" or "we" or "us") and the person clicking to accept this Agreement ("you"), is effective on the date of your acceptance, and provides the terms of obtaining and maintaining the Swim Whisperers® certification. Swim Angelfish has developed aquatic-based training programs that are targeted to swimmers of all abilities, including those with special needs such as anxiety, attention and physical difficulties, sensory challenges, and autism. ("Swim Angelfish® Programs").

Swim Angelfish also has developed training methods for therapists and swim professionals who wish to use the Swim Angelfish® Programs to instruct others. In addition, Swim Angelfish® has established guidelines to certify individuals in their methodology who take an e-learning course, pass an online examination to validate the skill and knowledge of an individual who has completed the Swim Whisperers® e-learning curriculum. ("Swim Whisperers® Certification").

By clicking to accept this Agreement, you agree to be bound by the following terms:

1. **Instructor's Requirements.** To obtain and maintain your Swim Whisperers® certification you must:

- (a) Complete the required Year One e-learning course and receive a score of at least 85% on the related online examination within 90 days of enrollment of the Swim Whisperers certification program;
- (b) Pay the required enrollment fee via automated credit card or bank draft payment via the Swim Angelfish® website (enrollment fee is non-refundable);
- (c) Maintain your certification annually by:
 - 1) Enrolling in the next level of Extra Content and Exam and receive a score of at least 85% on the related online examination within 90 days of Renewal (until all levels of instruction have been completed); and
 - 2) Pay the then current annual certification fee (annual fee may vary and is non-refundable); and
- (d) Obtain and maintain, at your own cost and expense, comprehensive general and professional liability coverage of no less than \$1,000,000 per Occurrence and \$3,000,000 Aggregate. You shall submit a fully paid certificate of insurance to Swim Angelfish upon Swim Angelfish's request.

2. **Swim Angelfish® Duties.** Swim Angelfish® shall:

- (a) Provide enrolled instructors access to the online training/course;
- (b) Present opportunities to enroll in additional in-person, online, or continuing education classes for an additional fee; and

- (c) Identify you as a Swim Whisperers® Certified Instructor on our publicly accessible website.

3. Term; Termination.

- (a) Term. This Agreement shall begin on the Effective Date and expire 1 year from the Effective Date ("Initial Term"). This Agreement shall automatically renew at the end of the Initial Term for additional one-year periods ("Renewal" together with the Initial Term are referred to as the "Term") so long as you continue to meet all your obligations in Paragraph 1.
- (b) Termination for Convenience. You may terminate this Agreement anytime with 30 days' written notice.
- (c) Termination for Breach. Either party may terminate this Agreement for material breach, provided that the terminating party has given the breaching party at least 14 days written notice of and the opportunity to cure the breach.
"Material breach" includes any violation of paragraphs 1 or 4.
- (d) Upon termination for any reason and by either party, you will:
 - 1) Lose access to all the online training and materials;
 - 2) Not refer to yourself as a Swim Whisperers® Adaptive Swim Instructor;
 - 3) Refrain from making any claim to being certified by Swim Angelfish®; and
 - 4) No longer be listed as a Swim Whisperers® Certified Instructor on our publicly accessible website.

4. Intellectual Property.

(a) Ownership. You understand that Swim Angelfish is the sole and exclusive owner of the Swim Angelfish® name and marks, including Swim Angelfish® and Swim Whisperers® ("Swim Angelfish® Marks"), the Swim Angelfish® Programs, the Swim Angelfish® website, the content in the e-learning Swim Angelfish® platform, and all materials and information provided by Swim Angelfish®, including those protected by copyright and/or trademark rights, as well as any derivatives of such materials (the "Swim Angelfish® Properties"). You will not copy, modify, distribute or transfer (by any means), display, sublicense, rent, reverse engineer, decompile, or disassemble the Swim Angelfish® Properties, except to the extent that we grant you a limited license under this Agreement. You acknowledge your understanding that this is not a train-the-trainer program and thus, you will not use any of Swim Angelfish® Properties to train or educate others.'

(b) Limited License. Swim Angelfish grants a limited, non-transferable, nonexclusive, revocable license, without warranty, to you to use the Swim Angelfish® Marks for the sole purpose of identifying yourself as a Swim Whisperers® Certified Instructor in connection with swim instruction that you teach using the Swim Whisperers® Methodology, provided that you comply with all Swim Angelfish standards for the use of the Marks that we specify, including the designation of ® and conspicuously including the following statement in all

advertising or promotional materials: [Name of Individual or Entity] is not affiliated with Swim Angelfish, LLC, nor endorsed by Swim Angelfish, LLC or any of its affiliates or members. Swim Angelfish® and Swim Whisperers® are registered trademarks of Swim Angelfish LLC or its members.

(c) You may only use the Swim Angelfish® Marks and while you are certified and in good standing. This limited license shall expire with the Term of this Agreement, and you shall cease the use of the Swim Angelfish® Marks.

(d) You may not use any trademark or name that is a modified version of or substantially similar to the Swim Angelfish® Marks. You may not use the Swim Angelfish® Marks in any business or trade name.

5. **Confidentiality.** Neither party will disclose to any third party or use other than for the purposes of this Agreement any knowledge or information imparted to or obtained by it during or in connection with the fulfillment of this Agreement which is of a secret or confidential nature relating to the business, equipment, processes relating to the equipment, the products, services, processes, or business strategies offered or employed by the other party. This obligation of confidence will cease to apply in relation to information that either party is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by either party of its obligations of confidence under this Agreement.

6. **Instructor's Representations and Warranties.** You represent and warrant that you:

(a) Are trained as a swim instructor by a reputable body such as the Red Cross, Starfish Aquatics, your own company, other international bodies;

(b) Understand that using the Swim Angelfish® Program involves risks that may be known or unknown, which could result in physical or emotional injury, paralysis, or death. Such risks include, but are not limited to, accidental drowning, muscular strains and sprains, joint and other soft tissue injuries, broken bones, and cardiovascular complications such as heart attack and exhaustion; and

(c) Further understand that including the Swim Angelfish® Program strategies to help swimmers all abilities including those with special needs become more open and able to learn how to swim involves the same risks as those listed above. It is your sole responsibility to ensure that the swimmers, parents, and/or caretakers of the swimmers with whom you use the Swim Angelfish® Program strategies acknowledge and understand these risks and obtain written assumption of risk and waivers of liability from any such swimmer, parent, and/or caretaker, who uses or participates in any instruction that uses the Swim Angelfish® Program strategies.

7. **Limitation of Liabilities; No Warranties.**

(a) NOTWITHSTANDING ANY PROVISIONS IN THIS AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL SWIM ANGELFISH BE LIABLE TO INSTRUCTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, SUCH AS LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS EVEN IF INFORMED OF THE POSSIBILITY THEREOF. SWIM ANGELFISH'S TOTAL AGGREGATE LIABILITY FOR CLAIMS ARISING HEREUNDER SHALL BE LIMITED TO DIRECT DAMAGES CAUSED BY SWIM ANGELFISH IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY YOU TO SWIM ANGELFISH DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM.

(b) SWIM ANGELFISH MAKES NO WARRANTIES, EXPRESS, IMPLIED OR APPARENT, REGARDING THE SWIM ANGELFISH® PROGRAMS, NO WARRANTY OF MERCHANTABILITY AND NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY WITH RESPECT TO THE QUALITY, ACCURACY, OR FREEDOM FROM ERROR OF OPERATION, USE AND FUNCTION OF THE SWIM ANGELFISH WEBSITE, E-LEARNING PLATFORM AND/OR ANY TRAINING MATERIALS.

8. Indemnification. You agree to indemnify, reimburse, and hold Swim Angelfish, and its members, shareholders, directors, officers, employees, agents, representatives, successors, and assigns (each a "Swim Angelfish Indemnified Party") harmless from and against all Losses arising out of or related to your use of the Swim Angelfish® Program strategies in your swim lessons. In addition, to the fullest extent of the law, you agree to defend, indemnify, reimburse and hold the Swim Angelfish Indemnified Parties, harmless from and against any and all costs, damages, expenses, and losses (including reasonable attorneys' fees) (collectively, "Losses"), resulting from, arising out of, or in any way connected with third-party claims due to:

(a) the unauthorized use or disclosure by you of any Confidential Information of a Swim Angelfish Indemnified Party, or

(b) the negligent, intentionally wrongful, or illegal acts or omissions of you or any of your agents, employees, or subcontractors.,

9. General Provisions.

(a) **Entire Agreement; Severability.** This Agreement constitutes the entire agreement between the parties regarding its subject matter, and supersedes all prior agreements, proposals, negotiations, representations, or communications. If any provision of this Agreement is found invalid or unenforceable, it will be enforced to the extent permissible, with the remainder of this Agreement remaining in full force and effect.

(b) **Survival.** Regardless of the expiration or earlier termination of this Agreement Paragraphs 4-9 shall survive.

(c) **Choice of Law; No Class Action; Jury Trial Waiver.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Connecticut, without the application of its choice of law provisions. The state and federal courts of Fairfield County, Connecticut shall have exclusive jurisdiction over any dispute arising from this Agreement. NEITHER YOU NOR WE SHALL SEEK TO LITIGATE AGAINST THE OTHER PARTY TO THIS AGREEMENT OR THAT PARTY'S AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, AGENTS OR REPRESENTATIVES, EITHER AS A REPRESENTATIVE OF, OR ON BEHALF OF, ANY OTHER PERSON, CLASS OR ENTITY, ANY CLAIM, DISPUTE OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES, OR THE PERFORMANCE OF EITHER PARTY UNDER THIS AGREEMENT. NO ACTION BETWEEN THE PARTIES OR RELATING TO THIS AGREEMENT SHALL ADD AS A PARTY (BY CONSOLIDATION, JOINDER OR OTHER MEANS) ANY PERSON OR ENTITY OTHER THAN US AND YOU AND THOSE IN CONTRACTUAL PRIVITY WITH EITHER OF US, UNLESS WE BOTH CONSENT IN WRITING. WE AND YOU EACH HAVE THE ABSOLUTE RIGHT TO REFUSE SUCH CONSENT. Further, in any such legal action, the parties waive their rights to a jury trial and agree to have such action tried solely before a judge.

(d) **Notices.** All notices and communications required or permitted under this Agreement shall be sent in writing to the addresses set forth above. The effective date of any notice is the date on which it is received.

(e) **Relationship of the Parties.** The parties to this contract are independent. Nothing in this Agreement, or the course of conduct of the parties, is intended (nor may it be construed) to constitute either party as an agent, legal representative, subsidiary, joint venturer, franchisee, partner, employee, or servant of the other party for any purpose whatsoever. Neither party has the authority to, and will not, act as an agent for or on behalf of the other party or represent or bind the other party in any manner.

(f) **Modifications; Assignment.** Modifications and amendments to this Agreement shall be enforceable only if they are in writing and are signed by both parties. This Agreement will be binding upon the parties' respective heirs, executors, administrators, successors, and permitted assigns. This Agreement may be assigned by Swim Angelfish to any affiliated or unaffiliated person. This Agreement may not be assigned or transferred by you.

(g) **Name and Comments.** You give us permission to use your name and any feedback made in all forms and media for advertising, trade, and any other lawful purposes.