

## 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 certification as a Swim Angelfish® instructor. 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 Angelfish® e-learning curriculum. ("Swim Angelfish® 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 certification as a Swim Angelfish® instructor, you must:

(a) Complete the e-learning course and receive a score of at least 85% on the related online examination.

(b) Pay Year 1 enrollment fee via automated credit card or bank draft payment via the Swim Angelfish® website; and

(c) Maintain your certification annually by enrolling in the next year of Special Splash Case Studies, Extra Content and Exam.

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 Angelfish® Certified Instructor on our publicly accessible website.

3. **Term; Termination.** This Agreement shall begin on the Effective Date and expire 1 year from the Effective Date ("Term"). At the end of the Term, you will be eligible for recertification under a new Agreement with us if you have met all of your obligations in Paragraph 1. Upon termination for any reason and by either party, you may not refer to yourself as a Swim Angelfish® Certified Instructor.

(a) Termination. You may terminate this Agreement anytime with at 30 days' written notice before the next automated credit card payment. No full or pro-rata refunds shall be provided.

(b) 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.

#### **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.

(b) Limited License. Swim Angelfish grants a limited, nonexclusive license to you to use, display, and reproduce the Swim Angelfish® Marks for the purpose of identifying yourself as a Swim Angelfish® Certified Instructor and in connection with aquatic courses that you teach using the Swim Angelfish® Methodology, provided that you comply with all Swim Angelfish standards for use of the Marks, including the designation of ®. This limited license shall expire with the term of this Agreement and you shall cease the use of Swim Angelfish® Certified Instructor unless you have met all of your obligations in Paragraph 1, and choose to maintain your certification by enrolling in the next year of Special Splash Case Studies, Extra Content and Exam.

**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 parents and/or caretakers of the swimmers with whom you use the Swim Angelfish® Program strategies acknowledge and understand these risks.

**7. Limitation of Liabilities; No Warranties.** 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 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.** To the fullest extent of the law, you agree to defend, 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 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. In addition, you agree to indemnify, reimburse and hold the Swim Angelfish Indemnified Parties harmless from and against all Losses arising out of or related to your use of the Swim Angelfish® Program strategies in your swim lessons.

## **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 4-8 shall survive.

(c) **Choice of Law; No Class Action.** 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.

(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 have an independent contractor relationship. 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.

(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.