

**WILDLIFE WATER SCHOOL, LLC**

**RELEASE OF LIABILITY, ASSUMPTION OF RISK, AND RELEASE OF PHOTO AND VIDEO**

As an individual (referred to as "I", "me" or "Swimmer"), I desire to participate in Wildlife Water School swim lessons (the "Activity") organized by Wildlife Water School, LLC, a Pennsylvania Limited Liability Company ("Wildlife Water School") and its representatives including instructors, both employed and independent, as well as, water school locations at Wilmerding Community Center, Greensburg YMCA, and Penn Highlands Mon Valley-The Center for Health and Fitness, Blue Canoe RV Resort, 180 Gamma Drive, and 164 Fort Couch Road.

In consideration of my voluntary participation in the Activity, the intangible value that I will gain by participating in the Activity and in recognition of Wildlife Water School's reliance hereon, I agree to all the terms and conditions set forth in this instrument (this "Release").

This Release is binding at each instance whereby I register, pay, participate, and/or attend any and every Wildlife Water School Activity.

I AM FULLY AWARE AND I FULLY UNDERSTAND THAT THE ACTIVITY IS A POTENTIALLY DANGEROUS ACTIVITY AND INVOLVES THE RISK OF SERIOUS INJURY, DISABILITY, DEATH, AND/OR PROPERTY DAMAGE. I ACKNOWLEDGE THAT ANY INJURIES THAT I SUSTAIN MAY RESULT FROM OR BE COMPOUNDED BY THE ACTIONS, OMISSIONS, OR NEGLIGENCE OF WILDLIFE WATER SCHOOL, INCLUDING NEGLIGENT EMERGENCY RESPONSE OR RESCUE OPERATIONS OF WILDLIFE WATER SCHOOL. NOTWITHSTANDING THE RISK, I ACKNOWLEDGE THAT I AM VOLUNTARILY PARTICIPATING IN THE ACTIVITY WITH KNOWLEDGE OF THE DANGER INVOLVED AND HEREBY AGREE TO ACCEPT AND ASSUME ANY AND ALL RISKS OF INJURY, DISABILITY, DEATH, AND/OR PROPERTY DAMAGE ARISING FROM MY PARTICIPATION IN THE ACTIVITY, WHETHER CAUSED BY THE ORDINARY NEGLIGENCE OF WILDLIFE WATER SCHOOL OR OTHERWISE.

I hereby expressly waive and release any and all claims, now known or hereafter known, against Wildlife Water School, and its Members, employees, instructors, agents, affiliates, successors, and assigns, as well as, water school locations at Wilmerding Community Center, Belle Vernon Hampton Inn, Greensburg YMCA, and Penn Highlands Mon Valley-The Center for Health and Fitness, Blue Canoe RV Resort, 180 Gamma Drive, and 164 Fort Couch Road. (collectively, "Releasees"), on account of injury, disability, death, or property damage arising out of or attributable to my participation in the Activity, whether arising out of the ordinary negligence of Wildlife Water School or any Releasees or otherwise. I covenant not to make or bring any such claim against Wildlife Water School or any other Releasee, and forever release and discharge Wildlife Water School and all other Releasees from liability under such claims. This Release does not extend to claims for gross negligence, willful misconduct, or any other liabilities that the Commonwealth of Pennsylvania law does not permit to be released by agreement.

I shall defend, indemnify, and hold harmless Wildlife Water School and all other Releasees against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorney fees, fees, the costs of enforcing any right to indemnification under this Release, and the cost of pursuing any insurance providers, incurred by or awarded against Wildlife Water School or any other Releasees, arising out or resulting from any claim of a third party related to my participation in the Activity, including any claim related to my own negligence or the ordinary negligence of Wildlife Water School. I hereby consent to receive medical treatment deemed necessary if I am injured or require medical attention during my participation in the Activity. I understand and agree that I am solely responsible for all costs related to such medical treatment and any related medical transportation and/or evacuation. I hereby release, forever discharge, and hold harmless Wildlife Water School from any claim based on such treatment or other medical services.

Further, I grant Wildlife Water School permission to take my photograph and video. I authorize Wildlife Water School and its assigns and transferees to use and to copyright my likeness in print and/or electronically in a photograph, video, or other digital media ("Photos") in all of its publications, illustrations, testimonials, and advertising, including web-based publications. The use of the Photos extends without limitation to all languages, formats, and media that have now or will hereafter be discovered. I understand and agree that all Photos will become the property of Wildlife Water School and will not be returned. I irrevocably authorize Wildlife Water School to edit, alter, copy, exhibit, publish, or distribute these Photos for any lawful purpose. In addition, I waive any right to inspect or approve the publication wherein my likeness appears. I understand that no payment, royalty, fee, or other compensation shall become payable to me by use of the Photos. I hereby hold harmless, release, and forever discharge Wildlife Water School from all claims, demands, and causes of action which I, my heirs, representatives, executors, administrators, or any other persons acting on my behalf or on behalf of my estate have or may have by reason of this authorization.

This Release constitutes the sole and entire agreement of Wildlife Water School and me with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. If any term or provision of this Release is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Release or invalidate or render unenforceable such term or provision in any other jurisdiction. This Release is binding on and shall inure to the benefit of Wildlife Water School and me and their respective successors and assigns. All matters arising out of or relating to this Release shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction). Any claim or cause of action arising under this Release may be brought only in the federal and state courts located in Allegheny County, Pennsylvania and I hereby consent to the exclusive jurisdiction of such courts.

I acknowledge that my electronic submission constitutes my agreement and intent to be bound by this Release. Pursuant to any applicable statutes, regulations, rules, ordinances, or other laws, including, without limitation, the Electronic Signatures in Global and National Commerce Act, P.L. 106-229 (E-Sign Act), the Pennsylvania Electronic Transactions Act, or other similar statutes, I HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, AND OTHER RECORDS AND ELECTRONIC DELIVERY OF NOTICES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED WITH WILDLIFE WATER SCHOOL. Further, I hereby waive any rights or requirements under any statutes, regulations, rules, ordinances, or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by other than electronic means. BY AGREEING AND PARTICIPATING, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS RELEASE AND THAT I AM VOLUNTARILY GIVING UP SUBSTANTIAL LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE WILDLIFE WATER SCHOOL.

As the Swimmer, I hereby consent to the terms and conditions of this Release. Parent or legal guardian may sign on behalf of Swimmer.

Swimmer Signature(parent sign here too if swimmer is under 18): \_\_\_\_\_

Date: \_\_\_\_\_

Swimmer Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

As the parent or legal guardian of a participating minor and/or a special needs individual, I have the legal right to consent to and I hereby do consent to the terms and conditions of this Release.

Parent/Guardian Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Parent/Guardian Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

# **WILDLIFE WATER SCHOOLWILDLIFE WATER SCHOOL, LLC**

## **TERMS AND CONDITIONS OF SERVICE**

### **1. Wildlife Water School, LLC Terms and Conditions Control the Agreement.**

- a. These terms and conditions are incorporated into and made a part of the agreement for any coaching, teaching, training, and instructing, mentoring, lessons and any other related services (the "Services") which may include, without limitation, a , proposal, or any lesson (collectively the "Agreement") as provided by Wildlife Water School, LLC, its subsidiaries, and any of its affiliates (collectively, "Wildlife Water School").
  - b. The Agreement expressly limits Client's acceptance to these terms and conditions. Client may reject the Agreement by not scheduling, purchasing, or receiving any Services. The Agreement does not constitute an acceptance by Wildlife Water School of any offer or counteroffer of Client, and Wildlife Water School hereby rejects any additional, different, or inconsistent terms, conditions or limitations contained in or incorporated by reference in any forms, pre-existing policies, purchase orders, or other documents of Client that already have been or hereafter may be presented to Wildlife Water School with respect to the Agreement.
  - c. If Client has submitted or will submit additional and/or different terms and conditions to Wildlife Water School, or submit a counteroffer to Wildlife Water School, Wildlife Water School's subsequent performance will not be construed as either acceptance of Client's additional and/or different terms and conditions or Client's counteroffer, nor will Wildlife Water School's subsequent performance be viewed as willingness to accept any provisions of the Uniform Commercial Code, as adopted by any State or Commonwealth, that is contrary or in addition to any of the terms and conditions hereof.
    - i. Any change to the agreed-to Agreement will be described in a written Change Order prepared by Wildlife Water School which describes with reasonable specificity the proposed changes in service to be performed. No Amendment shall be effective unless jointly agreed to in writing by Wildlife Water School and Client. After signing, the Change Order becomes incorporated into the Agreement and subject to these terms and conditions. Change Orders can be required for reasons including but not limited to: Conditions Beyond Wildlife Water School's or Client's Control: for example, illness or injury of the student or parent. Other conditions are determined on Wildlife Water School's discretion.
    - ii. Changes Desired by Client, for example upgrading to a new lesson plan.
  - d. Changes Desired by Client, for example a change to the location of lessons agreed upon.
  - e. Wildlife Water School is an independent contractor and is not an employee or agent of the Client. This Agreement shall not be deemed or construed to create a partnership, a joint venture, an employer/employee relationship, or a principal/agent relationship between the parties hereto.
  - f. Due to the unpredictable nature of the Services and the constant potential for Change Orders, nothing in this Agreement shall obligate Wildlife Water School to abide by any firm start or end dates to any lesson plan.
- 2. Term.** This Agreement is effective as of the date of purchase of Services (the "Effective Date") unless it expires or is earlier terminated by either party in accordance with the

terms of this Agreement (the period from the Effective Date to expiration or earlier termination, the "Term").

3. **Prices.** Unless otherwise agreed to by Wildlife Water School in writing, Wildlife Water School's prices for the Services will be the price as stated at the time of purchase, on the Wildlife Water School website, or in the Agreement (the "Fee"). If such display or document fails to contain a listed Fee, then Wildlife Water School's standard prices for such Services as of the date hereof shall be used in calculating the amount owed by Client; provided, however, that Wildlife Water School may change the price for the Services in accordance with any change to its standard pricing for such Services prior to the date of performance of services.

**4. Specifications.**

- a. Any departure from the agreed-upon Services will require a Change Order as described in Section (1)(c) and will entail additional charges.
- b. Unless Wildlife Water School has expressly agreed otherwise in writing, it is Client's responsibility to ensure that the Services provided are the ones that Client has requested in all regards. WILDLIFE WATER SCHOOL HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES THAT SERVICES CONFORM TO ANY SPECIFICATIONS, UNREASONABLE EXPECTATIONS, OR EXAMPLES RELIED UPON BY CLIENT.
- c. In the event of a typographical error relating to price or other contractual term described by Wildlife Water School in the Agreement, Wildlife Water School reserves the right to refuse to perform for the price in error and/or honor such erroneously stated contract terms.

5. **Photography.** Client agrees to Client agrees to a Release of Liability, Assumption of Risk, and Release of Photo and Video (Release of Photo and Video Agreement) granting Wildlife Water School permission to take photographs during coaching, sessions, lessons, and during performance of any other relevant services and authorizes Wildlife Water School and its assigns and transferees to use and to copyright Client's likeness and that of Client's property in print and/or electronically in a photograph, video, or other digital media ("Photos") in any and all of its publications, illustrations, and advertising, including social media and other web-based publications. Client understands and agrees that all Photos will become the property of Wildlife Water School and may not be returned. Client irrevocably authorizes Wildlife Water School to edit, alter, copy, exhibit, publish, or distribute these Photos for any lawful purpose for which Client waives any right to inspect or approve the publication wherein Client's likeness appears. Client understands that no payment, royalty, fee, or other compensation shall become payable to Client by use of the Photos. Client affirms the consent of parent or guardian if necessary and Client's will be provided with a Release for activity and photos to acknowledge.

**6. Payment.**

- a. All payments for Services must be made in United States currency unless specified in writing by Wildlife Water School. Payments for Services by any method of payment provided that Wildlife Water School may refuse, in its sole discretion, payment by any means.
- b. Wildlife Water School shall have the right to offset any and all amounts due and owing from Wildlife Water School to Client under this Agreement, including, without limitation, any chargebacks, or rebates, against any amounts due and owing from Client to Wildlife Water School under this Agreement.

- c. Payment of the Fee is due and payable regardless of whether Client completes the lesson(s), program(s), or session(s), or other Services contained in the Agreement.
- d. The Fee shall be paid in immediately available funds. The full Fee amount is due per session or per lesson.
- e. All payments for each lesson plan are due in advance of the performance of Services. Any payment not received in advance of the performance of Services will result in automatic cancellation of the lesson. Wildlife Water School is not obligated at any time to reschedule lessons cancelled for late payments or payments not received.
- f. Past due amounts are each subject to a \$5 late fee and service charges up to of one and a half percent (1 ½%) per month or the maximum percentage rate permitted by law, whichever is higher
- g. All payments for packages are nonrefundable.
- h. Remedy: If Client cancels, or if Wildlife Water School cancels due to inclement weather, Client may redeem credits to lessons, but is not entitled to a cash refund upon sole discretion of Wildlife Water School. Client will be entitled to a partial cash refund for extraneous circumstances at the sole discretion of Wildlife Water School.

**7. Binding Commitment.** When registering for any lessons offered by Wildlife Water School, Client is entering into a binding commitment for the duration of agreed Term. This commitment requires Client to abide by these Terms and Conditions as well as the terms specific to the selected and applicable package.

**8. Taxes and Third-Party Fees.**

- a. The purchase price of the Services does not include taxes. The Client is responsible for payment of any taxes, and any present or future sales or any similar tax or other governmental charge applicable to the Agreement and pursuant to or in connection with the sale, purchase, or performance of the Services.
- b. The Client is responsible for any applicable third-party fee, including, without limitation, credit card fees, telephone toll charges, mobile carrier fees, Internet Service Provider charges, and data plan charges.

**9. Termination.**

- a. Wildlife Water School may terminate the Agreement at any time upon written notice if Client fails to pay any amount when due thereunder: (i) and such failure continues for ten (10) days after Client's receipt of written notice of nonpayment; or (b) such failure occurs two (2) or more times in any three (3) month period.
- b. The Agreement shall terminate upon the mutual agreement of Wildlife Water School and the Client.
- c. Client has the right to terminate this Agreement after signing but will forfeit the deposit to cover expenses in design and planning, overhead, and lost opportunity cost.
- d. Wildlife Water School may terminate the Agreement without cause at any time, as determined at its sole discretion, and shall issue a pro rata refund of any unused Fees paid.

**10. Survival.** The rights and obligations of Wildlife Water School and Client as set forth in the Agreement shall survive its termination or expiration, including but not limited to, nondisclosure of Confidential Information and compliance with intellectual property rights.

**11. Cancellation.**

- a. Wildlife Water School may cancel in whole or in part any order for Services, for any cause determined by Wildlife Water School, under the Agreement at any time.
- b. Client may cancel its order for scheduled session(s), lesson(s), or other individually scheduled Services with Wildlife Water School according to the Lesson Plan selected by Client. Client agrees that is the responsibility of the Client to review the different cancellation policies for the Lesson Plans. Client is not entitled to a refund for missed lessons.
- c. Cancellations made in violation of the above twenty-four (24) hour advance notice requirement shall result in the forfeiture of the scheduled session, appointment, or other Service, and Client shall be fully bound and obligated to pay the agreed-upon contract price for such Service.
- d. If Wildlife Water School decides to extend the one-time pass for cancellations made in violation of the twenty-four (24) hour cancellation policy to cover and apply to additional improper cancellations, such extensions shall not restrict, and shall not be construed to reduce in any capacity, the ability of Wildlife Water School to strictly enforce its cancellation policy in the event of future improper cancellations.

## **12. DISCLAIMER OF WARRANTIES.**

- a. Wildlife Water School shall use commercially reasonable efforts to ensure the suitability and conformance of the Services.
- b. WILDLIFE WATER SCHOOL WARRANTS THAT THE SERVICES WILL BE PERFORMED IN A PROFESSIONAL MANNER.
- c. WILDLIFE WATER SCHOOL HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT LAW OR IN EQUITY, WITH RESPECT TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR COMPLIANCE WITH LAWS OR GOVERNMENT RULES OR REGULATIONS, ANY WARRANTY AGAINST REDHIBITORY DEFECTS, ANY WARRANTY OF TITLE, AND ANY WARRANTY AGAINST INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS, OR COPYRIGHTS.. WILDLIFE WATER SCHOOL EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **13. Limitation of Remedies.**

- a. Client's sole remedy for all damages, which Client may select to pursue upon notice to Wildlife Water School at Wildlife Water School's discretion, but that must remain subject to the limiting language of Sections 14 and 15, shall be credit redeemable for future Services rendered by Wildlife Water School equal to the full Fee listed in the Agreement.
- b. If Client or Wildlife Water School has a claim or issue relating to the Services of the Agreement, such claim or issue will be disclosed by written notice to the other party within thirty (30) days of either the date of the occurrence of such claim or issue, or the date that such claim or issue becomes known, whichever is later. If any claim or issue is not disclosed to the other party within the timeframe stated above, then such claim or issue shall be deemed unenforceable and all rights to a remedy shall be totally forfeited.

- c. These remedies only will only be available to the Client for one year after the Service is provided to the Client, and Wildlife Water School' obligations under this Section will be void unless Client provides Wildlife Water School with notice of the defect in the Service within 30 days of discovery of the defective service.

**14. Limitation of Liability.**

- a. NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT WILL:
  - i. WILDLIFE WATER SCHOOL BE LIABLE TO CLIENT FOR ANY CIRCUMSTANTIAL, CONSEQUENTIAL, CONTINGENT, EXEMPLARY, INCIDENTAL, INDIRECT, LIQUIDATED, MATERIAL, PUNITIVE, SPECIAL, SPECULATIVE OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES OR COURT COSTS ARISING IN ANY MANNER PURSUANT TO OR IN CONNECTION WITH THE AGREEMENT OR THE SERVICES (EVEN IF WILDLIFE WATER SCHOOL IS MADE AWARE OF THE POTENTIAL FOR SUCH DAMAGES), OR
  - ii. WILDLIFE WATER SCHOOL'S TOTAL LIABILITY RELATED TO ANY SERVICE EXCEED THE PURCHASE PRICE OF SUCH SERVICE.
- b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WILDLIFE WATER SCHOOL DISCLAIMS ALL LIABILITY RELATED TO AND EMERGING FROM PERSONAL INJURY TO THE CLIENT, WHETHER IN THE FORM OF STRESS, EMOTIONAL DISTRESS, ANXIETY, OR ANY OTHER TYPE OF INJURY, AND WHETHER INCURRED DIRECTLY OR INDIRECTLY FROM THE SERVICES OFFERED IN THE AGREEMENT.
- c. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WILDLIFE WATER SCHOOL DISCLAIMS ALL LIABILITY RELATED TO AND EMERGING FROM ANY NEGLIGENCE OR WRONGDOING OF ANY OFFICER, AGENT, EMPLOYEE OR OTHER AFFILIATE OF WILDLIFE WATER SCHOOL.

**15. Indemnification.** Client will indemnify, defend and hold harmless Wildlife Water School, its members, officers, directors, employees, agents and representatives from and against all losses, damages, liabilities, costs, and expenses including, without limitation, property damage, loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased or replacement power or temporary equipment, personal or bodily injury, or death ("Losses"), that may arise pursuant to or in connection with the Agreement or the Services, regardless of whether such Losses are suffered directly by Client or arise pursuant to or in connection with a third-party suit, claim, counterclaim, demand, judgment or other action (each a "Claim") and regardless of whether or not Wildlife Water School or any third-party is proportionately negligent with respect to such Losses and/or Claim, provided that Client need not indemnify Wildlife Water School for Wildlife Water School's obligation, if any, to Client under the remedies described herein. For the avoidance of doubt and without limitation, this indemnification obligation requires Client to pay any judgments against Wildlife Water School or any other indemnified party resulting from any Claim, any court costs of Wildlife Water School or any other indemnified party in connection with any Claim, and any reasonable attorneys' fees and disbursements incurred by Wildlife Water School or any other indemnified party in Wildlife Water School's defense of any Claim. Wildlife Water School will have the sole and exclusive right to conduct the defense of any Claim at Client's sole and exclusive cost and expense. Client's indemnification obligation does not depend on the truth or accuracy of any allegations made against Wildlife Water School, Client or any third party.

**16. Effectiveness of Release.** Client agrees to a Release (Release of Liability and Assumption of Risk) in order to obtain the performance of Services by Wildlife Water



School. Client agrees that the Release will become effective upon the date of agreement and purchase and participation in activity. Nothing contained in the Release will be deemed or construed to amend, supplement, or modify the Agreement or otherwise affect the rights and obligations of any party thereto, all of which remain in full force and effect.

**17. Client's Obligations.**

- a. The Client must provide Wildlife Water School with accurate and complete information, documentation, and materials necessary and applicable for Wildlife Water School to complete the Services, including, age, special needs, parent/guarding contact information, and any other relevant information. Compliance with any such rule, codes or regulations shall be the responsibility of the Client, unless otherwise agreed. It is Client's responsibility to update Emergency Contact information as needed.
- b. If the services are to be performed at Client's residence, Client is responsible for maintaining a safe and sanitary environment for the lessons. Client is also responsible for informing Wildlife Water School of any risks on the property.
- c. Client will ensure that the home pool is properly maintained to minimize the risk of accidents or injuries during lessons.
- d. Client agrees that Wildlife Water School is not obligated to render services where conditions are unsafe to do so.
- e. Client is responsible for emergency preparedness, such as handling accidents, injuries, and medical incidents that may occur during lessons.

**18. Wildlife Water School's Obligations.** Wildlife Water School will produce services of good quality that are reliable, professional, knowledgeable, and safe.

- a. Wildlife Water School will provide swimming lessons with water safety training.
- b. Wildlife Water School will communicate lesson plans, expectations, goals, and safety guidelines to the Client.
- c. Wildlife Water School is responsible for monitoring weather conditions for services rendered at an outdoor pool. Weather conditions that could be a cause for cancellation of the services include, without limitation, lightning, thunderstorms, extreme heat, or cold temperatures, as they may pose safety risks during lessons.

**19. Assignment.** Neither party may assign or transfer these rights, duties, and obligations set forth in this agreement without the prior written consent of the non-assigning party.

**20. Intellectual Property.**

- a. All intellectual property rights, including copyrights, patents, patent disclosures, and inventions (whether patentable or not), trademarks, service marks, trade secrets, proprietary methods, techniques, and information, methods, know-how, and other confidential information, trade dress, trade names, logos, company names, and domain names, together with all of the goodwill associated therewith, derivative works, and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product, and other materials that are provided to Client under this Agreement in the course of performing the Services (collectively, the "Owned Intellectual Property") shall be owned by Wildlife Water School.
- b. Wildlife Water School hereby grants Client a license to use all Intellectual Property Rights in the Owned Intellectual Property free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Client to make reasonable use of the Owned Intellectual Property and the Services.

**21. Laws.** Client hereby warrants and represents that it will comply with any and all Laws with respect to the purchase, use, and operation of any and all Services. For purposes

hereof, "Laws" means any national, federal, state, municipal, local (or other political subdivision) or administrative laws, constitutions, statutes, codes, ordinances, rules, regulations, requirements, standards, policies, or guidance having the force of law, treaties, judgments or orders of any kind or nature whatsoever, including, without limitation, any judgment or principle of common law.

**22. Interpretation of the Agreement.**

- a. None of Wildlife Water School's or Client's employees or representatives have any authority to orally modify or alter in any way the terms and conditions of the Agreement. The terms, conditions, and limitations set forth in the Agreement can be modified, altered, or added to only by a subsequent written instrument signed by an authorized representative of Wildlife Water School and Client. Regardless of how many times Client purchases, or has purchased, Services from Wildlife Water School by whatever means, each time Client accepts the Agreement, Client and Wildlife Water School enter into a separate agreement that will be interpreted without reference to any other agreement between Client and Wildlife Water School, or what Client may claim to be a course of dealing or course of performance that has arisen between Client and Wildlife Water School. No inconsistent usage of trade or industry custom, if any, prior to, contemporaneous with or subsequent to the making of the Agreement will waive, vary, serve to explain, or serve to interpret any of the terms, conditions, and limitations of the Agreement.
- b. The Agreement is the sole and exclusive agreement with respect to the matters discussed herein and the provision of Services hereunder, (except for any contemporaneous writing agreed to in writing both by Wildlife Water School and Client expressly modifying the terms and conditions hereof, which is hereby incorporated herein by reference and made a part hereof) and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations or conditions, whether oral or written, whether express or implied, with respect to such matters.
- c. Failure by Wildlife Water School to enforce any of the terms, conditions and limitations of the Agreement will not constitute a waiver of those terms, conditions and limitations or a waiver of any other terms, conditions or limitations of the Agreement, and the failure of Wildlife Water School to exercise any right (whether provided by the Agreement, law, equity, or otherwise) arising from Client's default under the Agreement will not constitute a waiver of that right or any other rights.

**23. Confidentiality.**

- a. From time to time during the Term of this Agreement, either Wildlife Water School or Client (as the "Disclosing Party") may disclose or make available to the other party (as the "Receiving Party"), non-public, proprietary, and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within 5 days thereafter, is summarized in writing and confirmed as confidential, specifically including the Owned Intellectual Property ("Confidential Information") and including without limitation all confidential or proprietary information and all trade secrets of or relating to the Disclosing Party, including intellectual property in the form of copyrights, and trademarks and applications therefor, , ideas, , works, , improvements, information, documents, , practices, processes, methods, developments, , , techniques, data, programs, other know-how or material, owned, developed or possessed by the Disclosing Party, whether in tangible or intangible form, information in respect of the

Disclosing Party's operations, processes, products, inventions, business practices, finances, principals, vendors, suppliers, customers, clients, potential customers or clients, marketing methods, costs, prices, contractual relationships, regulatory status, prospects, employees, and other service providers; provided, however, that Confidential Information does not include any information that:

- i. is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section.
  - ii. is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;
  - iii. was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or
  - iv. was or is independently developed by Receiving Party without using any Confidential Information.
- b. In taking possession of or otherwise acquiring Confidential Information in the manner described above, the Receiving Party shall:
- i. protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would use to protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care.
  - ii. not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and
  - iii. not disclose any such Confidential Information to any person or entity, except to the Receiving Party's group who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement.
- c. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section, Receiving Party shall mean the Receiving Party's affiliates, employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, sublicensees, subcontractors, attorneys, accountants, and financial advisors.

#### **24. Force Majeure.**

- a. Wildlife Water School shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (including, without limitation, the failure to perform any services) when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Wildlife Water School including, without limitation, the Client's delay in providing necessary information or approvals to Wildlife Water School, failure of the Client to timely make payments or decisions, difficulty obtaining required building permits or other government approvals necessary for the Services, failure in performance that Wildlife Water School could not have reasonably foreseen or provided against, loss of key employees due to injury or other reasons Wildlife Water School could not have foreseen or provided against, difficulty due to economic or other conditions in hiring replacement for lost personnel adequately skilled to perform to Wildlife Water School's standards, acts of God, flood, fire,

earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), severe personal illness, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or telecommunication breakdown or power outage (each a "Force Majeure Event").

- b. If any Force Majeure Event prevents Wildlife Water School from performance of any of its obligations under the Agreement, Wildlife Water School will have the right to
  - i. change, terminate or cancel the Agreement, or
  - ii. omit during the period of the Force Majeure Event all or any portion of the Services due to be performed during that period. If Wildlife Water School is unable to supply the total demands for any Services to be performed under the Agreement due to a Force Majeure Event, Wildlife Water School will have the right to allocate its available Services among its customers in whatever manner Wildlife Water School deems to be fair and equitable. In no event will Wildlife Water School be obligated to purchase services or materials from other than its regular sources of supply in order to enable it to supply Services to Client under the Agreement. No change, cancellation or proration by Wildlife Water School will be deemed to be a breach of any clause, provision, term, condition, or covenant of the Agreement.

**25. Electronic Consent.** Client acknowledges that Client's electronic submissions constitute Client's agreement and intent to be bound by the Agreement. Pursuant to any applicable statutes, regulations, rules, ordinances or other laws, including, without limitation, the Electronic Signatures in Global and National Commerce Act, P.L. 106-229 (the "E-Sign Act"), the Pennsylvania Electronic Transactions Act, or other similar statutes, CLIENT HEREBY AGREES TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, APPLICATIONS AND OTHER RECORDS AND ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED WITH WILDLIFE WATER SCHOOL. Further, Client hereby waives any rights or requirements under any statutes, regulations, rules, ordinances, or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by other than electronic means. Client may obtain a copy of the Agreement and these Terms and Conditions of Service by printing them now at no additional cost to Client or by contacting Wildlife Water School.

**26. Non-Disparagement.** Wildlife Water School and Client agree that neither shall directly or indirectly, make or cause to be made any disparaging, denigrating, derogatory or negative, misleading or false statement orally or in writing to any person, including clients or prospective clients, competitors and advisors to the Client, its Affiliates or members of the investment community or press, about (i) the other party, its Affiliates or their respective officers, directors, stockholders, managers, members, partners, employees or agents; or (ii) the business strategy or plans, policies, practices or operations of the other party or any of its Affiliates. Client agrees that Wildlife Water School may make mention that Wildlife Water School provides the Services to Client on Wildlife Water School's website, in brochures, and other promotional materials.

**27. Choice of Law.** The Agreement and all related displays or documents and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the Commonwealth of

Pennsylvania, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.

- 28. Mediation.** Wildlife Water School and Client will attempt to resolve any dispute in connection with this Agreement on an amicable basis through prompt, good faith discussions and non-binding mediation.
- 29. Arbitration.** Any dispute that cannot be resolved by Wildlife Water School and Client will be determined by final and binding arbitration in Pittsburgh, Pennsylvania, before a sole arbitrator who will award attorneys' fees and other costs to the substantially prevailing party. JAMS will administer the arbitration. The arbitration award will be in writing and will specify the factual and legal bases for the award. Judgment on the award may be entered in any court having jurisdiction. Notwithstanding anything in this Agreement to the contrary, if either Wildlife Water School or Client initiates arbitration before mediation, that party will be responsible for the other party's attorneys' fees and costs of arbitration.
- 30. Choice of Forum.** In the case that mediation and arbitration prove insufficient for resolving a dispute, Wildlife Water School and Client irrevocably and unconditionally agree that neither party will commence any action, litigation, or proceeding of any kind whatsoever against the other party in any way arising from or relating to the Agreement, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the US District Court for the Western District of Pennsylvania or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Pennsylvania sitting in Allegheny County, and any appellate court thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the US District Court for the Western District of Pennsylvania or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Pennsylvania sitting in Allegheny County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- 31. WAIVER OF JURY TRIAL.** EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- 32. Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in full. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to affect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 33. Binding Authority.** Any director, officer, employee, representative, or agent of Client signing or otherwise entering into this Agreement hereby represents and warrants that he or she is duly authorized to execute and enter into this Agreement on behalf of Client.

**34. Cancellations.** Any cancellations less than 20 days before your first date of the session results in a \$50 fee per child. Any cancellations per lesson without prior notice is \$10 per session.

**35. Instructors -** In accordance with our policy, apart from the affiliations, you may not engage or request lessons from instructors who have previously worked or currently work with Wildlife Water School, Wildlife Watch, Wildlife Safari, or any affiliated Wildlife organizations.

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As the parent or legal guardian of a participating minor and/or a special needs individual, I have the legal right to consent to and I hereby do consent to the terms and conditions of this Agreement.

Client (swimmer) Printed Name: \_\_\_\_\_

Parent/Guardian Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Parent/Guardian Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_