



## **SERVICES AGREEMENT**

**This service agreement is between:**

**Autism Swim Ltd**

**ABN 58 635 523 170 (“AS”)**

**and**

**(“The Provider”)**

**That being, the person becoming Autism Swim  
Approved.**

## **Introduction**

- A.** The Provider wishes to acquire Autism Swim Training and Continuing Education about aquatics/surfing and those who are neurodiverse/have specific learning needs
- B.** AS has agreed to provide the Autism Swim Training and Continuing Education about aquatics/surfing and those who are neurodiverse/have specific learning needs

## **Definitions**

**AS Continuing Education** means the engagement in the monthly training required to be completed by Providers who are teaching the AS Program, as well as successful completion of three-monthly quizzes and acknowledgement of the Checklist Items provided each month; all of which is contained on Autism Swim's Learning Management System (LMS);

**Autism Swim Approved** means currently engaged in and meeting the requirements of the Autism Swim Program, as defined below;

**Autism Swim Program (ASP)** means the lessons that are provided to the Participant from the Provider, as guided by Autism Swim's Initial Training and Continuing Education;

**Business Day** means Monday to Friday exclusive of public holidays or bank holidays;

**Certifications** includes all certificates, licences, consents, permits, approvals, codes or standards required to be obtained and complied with by the Provider (or any of the Provider's employees, agents, contractors or instructors) in order for them to teach the ASP, in the jurisdiction in which the Provider (or any of the Provider's employees, agents, contractors or instructors) intends to teach the ASP;

**Checklist Items** includes the service delivery acknowledgements that Providers must manually tick off each month on their LMS contained in Attachment 1;

**Fee** means the total amount stipulated upon purchase, over 12 months. All fees are in AUD\$ and are non-refundable;

**Initial Training Modules** means the online Initial Training Package modules (accessible in your first 12 months of membership);

**Liability** means any expense, cost, liability, loss, damage, claim, demand or proceeding (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent;

**Legislative Requirements** includes all relevant:

- (a) acts, ordinances, regulations, by-laws, orders, awards, proclamations and standards; and
- (b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with, or recognised generally as authorities in respect of, swimming instructing (including the requirements of any council or other authority, agency or body),

including those that apply in the jurisdiction in which the Provider teaches, or intends to teach, the AS Program;

**Obligations**, as set out in clause 9;

**Participants** means the participant receiving aquatic services from the Provider whom the Autism Swim Training and Continuing Education pertains to;

**Period** means the Initial Term and any extension of the Initial Term by a Renewal Term;

**Replacement Provider** means an alternative Autism Swim Approved Provider;

**Provider** means the qualified aquatics professional (including any qualified therapists, qualified surfing teachers and qualified teacher of swimming and water safety (or equivalent teachers) becoming Autism Swim Approved providers, as outlined on page one of this contract;

**Services** means the Initial Training Modules, Continuing Education, and the Twelve-Month Subscription;

**Twelve Month Subscription** means services provided by AS over a twelve-month period, including visuals, newsletters, lesson plans, program templates, advice/consultation, stickers and signage, website feature, and inclusion in marketing channels.

## **1. Provision of services**

1.1 Upon payment as outlined in clause 3.2 below, AS will provide the Provider with the Services.

1.2 The Provider acknowledges that the resources included in the subscription services will be released electronically on a month-to-month basis;

1.3 Upon completion of all of the Initial Training Modules, and subject to the Provider's compliance with its obligations under this Agreement, the Provider will be authorised to teach the ASP. The Provider must continue to meet all AS Continuing Education requirements in order to continue to be certified to teach the ASP including its obligations set out clause 1.4(a);

1.4 At all times, the Provider undertakes that they will:

(a) hold and maintain one of the following qualifications, according to the certification body in the country in which you provide the ASP:

(i) a qualification in Teacher in Swimming and Water Safety/Foundation Surf Coaching/Level 1 Surf Coaching;

(ii) a relevant 4 year therapy degree including Occupational Therapy, Physiotherapy, Exercise Physiotherapy, Speech Pathology, Psychology, BCBA, Behavioural Science or allied health professional; or

(iii) a relevant 4 year degree in the education or social sciences sectors, or equivalent in the country in which you provide the ASP;

(b) retain all relevant paperwork, including original certification documentation, insurance policies, and any other documentation requirements as required by this agreement;

(c) adhere to the requirements of the ASP (outlined in clause 2 below) and all relevant Legislative Requirements and Certifications; and

(d) comply with the Checklist Items.

## **2. The AS Program**

2.1 The ASP must be administered by one Autism Swim Approved provider to no more than three participants in ratio (1:3).

2.2 AS recommends one provider to one participant ratio (1:1).

2.3 All Providers who have completed the Initial Training Modules are required to undertake AS Continuing Education and the complete the Checklist Items.

2.4 The Provider will comply with the 3-monthly assessment and reporting requirements of Autism Swim;

2.5 If a Replacement Provider is provided for lessons whereby Program Head is away or ill, they too must be Autism Swim Approved and have a Services Agreement in place between the Replacement Provider and Autism Swim.

2.6 The Provider will use reasonable efforts to ensure all Participants are provided with equipment and aids which are specific to their needs and/or are recommended by AS;

2.7 For ecological adaptations that are deemed necessary (by AS or the Provider), the Provider will endeavor to meet these requirements as much as possible. This may include accessibility adaptations, sensory friendly adaptations or other reasonable requirements as stipulated by AS;

2.8 By manually checking off the Checklist Items each month, the Provider is acknowledging that the service delivery item being ticked off is operational. The Provider acknowledges that they can be audited at any stage by AS upon 10 day's notice, and if so, must provide evidence of the Checklist Item/s having been implemented. Failure to provide complete Checklist Items to AS may result in certification as a Provider being revoked.

## **3. Fees and payment terms**

3.1 The Fee comprises the stipulated option in the fee schedule of AS' website check-out process or the invoice amount invoiced by AS;

3.2 The Provider will pay AS the Fee in accordance with whether upfront fee or monthly fee has been chosen in the fee schedule;

3.3 If monthly membership fee has been chosen in the fee schedule, the Provider will pay the monthly subscription amount within 14 days of receiving monthly invoice or via the recurring subscription payment service offered (preferred). If payment is not received within 14 days of receiving monthly invoice, AS will notify the Provider that the invoice is outstanding and if the invoice remains unpaid 5 days later, additional administration fees will be applied. If payment is not received within 7 days of the reminder being issued, AS reserves the right to use of a debt collection agency to collect any outstanding payments.

3.4 If upfront payment has been chosen in the fee schedule, The Provider will pay the upfront fee via PayPal, Stripe or other options provided in the check-out process on the website, or on the invoice if invoicing arrangement has been stipulated.

Upon receipt of payment, The Provider will be provided access to the ASP for the Initial Term.

#### **4. Term and renewal**

##### 4.1 Term of the agreement

This agreement begins on the date payment is made and continues for the twelve-month period commencing on the date of this Agreement (Initial Term), unless terminated earlier in accordance with this agreement.

##### 4.2 Renewal of the agreement

(a) At least 30 days before the Initial Term is due to end, the Provider will notify AS that it does not want to extend the agreement for a further 12 month period (each being a "**Renewal Term**") on these terms and conditions and then-current pricing available on Autism Swim's website.

(b) At least 30 days before the Renewal Term is due to end, the Provider will notify AS that it does not want to extend the agreement for a further Renewal Term on

these terms and conditions and then-current pricing available on Autism Swim's website.

3.7 For the avoidance of doubt, if the Provider terminates their membership at any time during the Period, the Provider remains liable for fees for the remainder of the Initial Term or Renewal Term (as applicable).

#### **4. Intellectual Property**

4.1 The Provider acknowledges and agrees that all training material provided to the Provider by AS, including, but not limited to, program templates, and resources with AS logo, remain the intellectual property of AS. This material must not be shared.

The reproduction or use of such material must be authorised in writing by AS prior to any such use.

4.2 AS grants the Provider a license to use its intellectual property for the purpose of the ASP during the Period.

#### **5. Provider details and confidentiality**

5.1 The Provider will nominate and provide the requested details to AS in order to be listed on Autism Swim's marketplace (this is compulsory). These details may include full provider name, contact details, summary of services, full address where ASP services are being undertaken and other certifications as requested by AS from time-to-time. AS' will treat this information in accordance with its privacy policy which can be viewed [here](#);

5.2 The Provider acknowledges and accepts that their performance will be assessed on an ongoing basis by AS. Providers must be deemed competent by AS at all times throughout Period. At AS' discretion, the Provider may need to be placed on increased supervision, and/or removed from the program.

#### **6. Termination**

6.1 AS may terminate this agreement at any time at its discretion on 21 days written notice.

6.2 If the Provider breaches or fails to comply with any of their Obligations, AS can terminate this Agreement from the date that they became aware of the breach.

6.3 If the Provider believes there has been a breach of this agreement by AS, the Provider will document the said breach, in writing, as soon as the Provider becomes aware of the alleged breach and send such notice to AS within 5 Business Days.

6.4 Following receipt of the notice in clause 6.2 above, AS has ten (10) Business Days to remedy the alleged breach.

If the Provider is dissatisfied with the purported remedy, the Dispute Resolution steps outlined in clause 13 of this Agreement will be undertaken in good faith, by the parties.

6.4 If termination is requested by the Provider within the first 12 months through no reported breach of contract on AS' terms, the contracted amount (clause 1.2) remains due and payable.

## **7. Insurance and Indemnity**

7.1 The Provider shall purchase and maintain throughout the term of this Agreement:

- a) General liability insurance of AUD\$20 million per claim and in the aggregate;
- b) Workers Compensation and public liability insurance required by law;
- c) Professional indemnity insurance of no less than AUD\$10million per claim and in the aggregate; and
- d) Any additional insurances that are required as a qualified aquatics professional in the relevant location where the ASP is being carried out.

The Provider will produce the relevant insurance document to AS, if requested.

7.2 Despite any provision in this Agreement to the contrary, to the maximum extent permitted by law, the Provider indemnifies and will hold harmless AS against any Liability suffered or incurred by, or awarded against, AS arising directly or indirectly from:

- a) any breach by the Provider (including but not limited to negligence, wilful misconduct or fraud) of any provision of this Agreement; or



- b) any act or omission of the Provider relating to this Agreement or arising as a consequence of the performance or non-performance of the Provider's (or any of its employees', agents', contractors' or instructors') obligations under this Agreement.

7.3 Despite any provision of this Agreement to the contrary, to the maximum extent permitted by law:

- (a) AS' maximum aggregate Liability under or in connection with this Agreement is limited to, and will not exceed, the value of the Fee paid by the Provider to AS under this Agreement as at the date on which the relevant Liability arose; and
- (b) AS will not be liable to the Provider for any consequential or indirect loss, loss of profit (including anticipated profit), loss of benefit (including anticipated benefit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

7.4 Despite any provision to the contrary, to the maximum extent permitted by law, the Provider acknowledges and agrees that:

- a) to the extent permitted by law, this Agreement excludes all terms, conditions and warranties implied by statute, in fact or on any other basis, except to the extent such terms, conditions and warranties are fully expressed in this Agreement; and
- b) the ASP may not be suitable for all Providers, and the Provider is fully responsible for determining their suitability and applicability of the ASP to individual participants. It is the Provider's obligation to develop comprehensive understanding of his/her participant's condition/s and needs.

7.5 This clause 7 will survive the termination or expiry of this Agreement.

## 8. Nature of relationship

8.1 The parties acknowledge and agree that the services performed through the undertaking of this Agreement by AS are training, resources, quizzes and consultancy services and the provision of such services means that the Provider becomes 'Autism Swim Approved'.

8.2 This relationship does not constitute a partnership, joint venture, agency, employer/employee or otherwise.

8.3 AS provides training, educational content/resources and consultancy only, and this educational content is to be applied by the Provider. AS in no way accepts responsibility for the Provider or their actions.

## 9. Your Obligations

At all material times that the Provider is acting in connection with their Autism Swim Certification MUST:

- a) openly, accurately and honestly respond to all reasonable questions and requests for information put to the Provider by AS;
- b) not knowingly provide false or intentionally misleading information;
- c) obtain a national police check (or the equivalent in their relevant jurisdiction), recording no disclosable court outcomes and/or pending charges;
- d) Disclose to AS any court outcomes and/or pending charges that arise throughout the course of their AS certification;
- e) Disclose to AS any change to Working with Children's Check registration status (or equivalent in the Provider's jurisdiction);
- f) fully cooperate with AS and do everything that AS reasonably requests in a timely manner;
- g) pay for AS services in accordance with the Agreement;
- h) act reasonably and take reasonable care to protect their own interests;
- i) keep contact with AS and provide AS with their current contact details;
- j) be courteous, respectful and not act in an abusive manner towards any persons in connection with the provision of AS services; and
- k) comply with the Checklist Item requirements. (Collectively '**Obligations**')

## **10. Location of services**

The AS Training and Continuing Education will take place online.

All associated aquatic sessions (The ASP) undertaken by the Provider for enrolled participant's, will take place at The Provider's place of employment, as per this agreement.

## **11. Providers**

11.1 AS is not liable for the actions of the Provider or its agents.

11.2 AS recommends that all Providers have a minimum of twelve month's aquatics/surfing teaching experience prior to the Initial Training Modules.

11.3 All Providers must be proficient in English.

11.4 The Provider acknowledges that:

(a) the Services provided by AS will not result in the Providers being qualified to teach those with disability in the water and such competency must be obtained by the Provider before the Provider is authorised to teach the ASP as set out in clause 1.4(a); and

(b) AS' role is to only provide specific knowledge and resources for the Providers to adapt their sessions/lessons to the differing needs of their participants.

## **12. Governing Legislation**

12.1 This Agreement is governed by the laws of New South Wales (NSW), Australia, and all parties submit to the jurisdiction of the courts of NSW.

12.2 At all times, The Client will comply with all relevant Legislative Requirements, and will obtain, maintain and comply with all relevant Certifications, with particular regard to the following:

- *Work Health and Safety Act 2011*
- *Children and Young Persons (Care and Protection) Act 1998 (NSW)*

- *Child Protection (Offenders Registration) Act 2000*
- *The Ombudsman Act 1974*
- *Family Law Act 1975 (Cth)*
- *The Commission for Children and Young People Act 2012*
- *The Disability Act 2006*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *The Disabilities Regulations 2007*

And any equivalent legislation or certifications in the jurisdiction in which the Provider teaches, or intends to teach, the ASP.

### **13. Photos of Participants**

13.1 All photography is to be in accordance with the latest AS photography policy (see Attachment 2).

13.2 AS welcomes the Provider to provide AS with photos and videos of Participants to use for training purposes and marketing materials. The Provider warrants that it has permission from the Participants or parents and guardians (where applicable) to use the photos and videos in AS' training and marketing materials (including social media).

13.3 Any photographs of Participants require the Provider to obtain prior parental or legal guardian approval in the form of the Photography Policy in Attachment 2. The Provider will provide copies of the executed Photography Policies upon request.

### **14. Dispute Resolution**

14.1 If a dispute arises out of or relates to this agreement ("**Dispute**") that is not mutually resolved within one (1) calendar month through senior management representatives from each party, then the parties agree to settle the Dispute in good faith by mediation administered by the Australian Commercial Disputes Centre ("**ACDC**") before having recourse to arbitration or litigation.

14.2 If a complaint is made against The Provider by any person, the process is as follows:

- a) The Provider will notify Autism Swim immediately, via email. If the complaint

is made to Autism Swim against the Provider, the Provider will be made aware of the complaint via email.

- b) A phone call will be scheduled within 2 business days of receiving the email, between AS staff member and Provider. Conversation will determine suitability of Provider (who complaint was made against) continuing in the ASP and what, if any, supports are needed to continue or discontinue.
- c) If it is determined at the discretion of AS that the Provider will be continuing on in the ASP, they will be required to a complete knowledge-based assessment within 5 days of the complaint being raised.
- d) If a score of 90% or more is reached, staff member will be placed on increased supervision from AS staff (including increased reporting requirements, as determined), the details of which will be determined by AS.
- e) If a score below 90% is obtained, AS may decide at its sole discretion that the staff member may be excluded from the ASP for up to 18months; in which instance the ASP certification commences at the beginning (i.e. 1<sup>st</sup> year training). The outstanding costs of current contract are required to be paid by The Client and the Continuing Education can still be received by the staff member, however they will not be classified as Autism Swim Approved.

## **Attachment 1: Checklist Items - Requirements of AS Certified Swim Instructor/Aquatic Therapists**

### **First Year Certification & Initial set-up:**

- Demonstrate registration with relevant professional body
- Demonstrate relevant and adequate insurances are in place
- Profile listed on Autism Swim's website
- Use of Risk Assessments (which comply with Autism Swim recommendations)
- Certification documents/collateral are on display in primary location of service delivery
- Demonstrate adequate enrolment process including identification of risks, communication preferences, behavioural support needs, and goals of each swimmer
- Assessment, goal setting and progress is measured according to the individual swimmer's strengths and support needs (rather than pre-determined levels)
- All lessons/sessions include elements of water safety and water therapy
- Regular progress reports are provided to parents/care-givers
- Use of positive, Autism Swim Approved Language (as documented [here](#))
- Use of Visual Aids in lessons/sessions (e.g. visual schedule)
- 3:1 is the maximum ratio of participant to provider, with 1:1 being preferred initially

### **Second Year Certification:**

As above, and;

- Use of Behaviour Support Plans
- Use of break-out area for participants who need it
- Sensory needs are accommodated for

### **Third Year Certification and Beyond:**

Years 1 and 2 above, and;

- Use of Autism Swim therapeutic resources in lessons/sessions

## Attachment 2: Photography Policy

By providing Autism Swim with photos of participants, the Provider agrees to obtain the following consent from the parent/Legal Guardian of the Participant:

*I agree to and provide permission for the photographic, video, audio or any other form of electronic recording of my child for the purposes of training, marketing, publicity and/or merchandising for my child's Autism Swim Approved Service and Autism Swim Ltd (ACN: 614 083 975).*

*I authorise the use or reproduction of any image/recording referred to above without acknowledgement and without being entitled to remuneration or compensation. The image/recording may appear in print, electronic, or video media, and may be available to a global audience through the Internet. I authorise Autism Swim to alter or modify photographs as needed for the purposes stated above. I acknowledge that ownership of any image/recording will be retained by the respective company and I understand that I do not have any interest in the copyright to the photograph(s). I understand and agree that if I wish to withdraw this authorisation, it will be my responsibility to inform the company in writing by emailing [hello@autismswim.com.au](mailto:hello@autismswim.com.au)*

*I acknowledge and agree to the following privacy statement:*

*Privacy Statement – Personal information is collected from you for the purpose of obtaining consent to publish photographs, audio or video footage to be used in printed or electronic publications for Autism Swim. Personal information is managed in accordance with the Privacy Act 1988 (Cth) and is not shared with any other parties.*

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Participant's name

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Date

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Parent/Legal guardian's name

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Signature