

# **Terms of Use**

## **Swank Early Skills Development's Developmental Fitness Classes**

Please read the Terms of Use for the Program carefully and in their entirety before purchasing and participating in **Developmental Fitness Classes** (hereinafter referred to as the "Program"). The Program and its content are owned by **Swank Early Skills Development, LLC**.

### **1. Definitions:**

**"Company", "We", "I", "Our", or "Us"** means Alec Carriedo, Instructor, Cynthia Swank, Business Owner, Any Other Employee involved in the delivery of Developmental Fitness Classes, all employees of Swank Early Skills Development, LLC.

**"Participation", "Participating", "Using", or "Use"** means attending set classes and engaging in the Program.

"Program" means Developmental Fitness Classes.

**"You" "User" or "Your"** means the purchaser and person using the Program.

### **2. Consent:**

By participating in the Program, you implicitly and voluntarily agree to act in accordance with, and abide by, these Terms of Use.

### **3. DISCLAIMER:**

Although the majority of the Company's business activities fall under Intensive Behavioral Health Services, this program does not fall under this area of the Company's business. This Program is for fun, fitness, and socialization of children and their families with other children of the same age group and their families. By participating in the Program, you understand that the Company's designated Instructor is a certified Adaptive Group Fitness Instructor, and any other employees of the Company are uncertified assistants to the certified Instructor. We are not medical doctors, physical therapists, or occupational therapists. Specific physical disorders, diagnosed disorders, or history of injury needs to be addressed by a medical doctor, physical therapist, or occupational therapist, and by participating in the program you commit to seeking out these professionals if your child experiences any discomfort during the Program.

This Program is for informational and entertainment purposes only. The information and education provided in this Program is not intended or implied to supplement or replace the professional medical treatment, advice, and/or diagnosis of a medical doctor, physical therapist, or occupational therapist. You should review any and all changes to your child's exercise regimen and overall physical activity level with their primary medical professional.

### **4. Assumption of the Risk:**

**YOU MUST ENSURE YOUR CHILD IS PHYSICALLY CLEARED BY THEIR PHYSICIAN TO PARTICIPATE IN THE PROGRAM BEFORE PARTICIPATING.** If your child has any injuries or limitations, please have them cleared by your physician before attempting to participate in the Program.

By participating in the Program, you are assuming the risk of your child participating in it and agree to only participate if medically cleared to do so. We are not responsible or liable for your child's participation in the Program.

**5. Intellectual Property Ownership:**

The Program and its content, including, but not limited to Adapted Physical Activity are intellectual property owned by Swank Early Skills Development, LLC. Any violations of this term, and all terms contained herein, will be legally pursued to the fullest extent permitted by law.

**6. No Sharing:**

You cannot distribute, copy, forward, and/or share the Program or its content, such as written homework exercise routines, with anyone else. Any violations of these Terms of Use will be legally pursued to the fullest extent permitted by law.

**7. No Claims Made Regarding Results:**

Any and all current or past-client testimonials, statements, or examples used by us are simply that: examples. They are not guarantees that you will also experience or receive the same results. Each person and their circumstances are unique and nothing shall be interpreted as a guarantee that you will experience the same results as another client of ours.

**8. DISCLAIMER - No Warranties, Guarantees, or Representations Are Being Made:**

We do not offer any representations, guarantees, or warranties, of any variety, regarding the Program in any way. The Program is offered **"AS IS"** and without representations, guarantees, or warranties of any kind, including but not limited to, implied warranties of merchantability and fitness for a particular purpose, neither express nor implied, to the extent permitted by law. We are not liable for damages of any kind related to your use of the Program.

**9. Your Release of Us, Indemnification, Hold Harmless:**

To the fullest extent permitted by law, Swank Early Skills Development, LLC expressly disclaims liability for any direct, indirect, and/or consequential damages suffered by you related to your purchase or use of, or participation in, the Program, its materials, our website, or any other information obtained by you from us. By enrolling in the Program, you hereby agree to this limitation of liability and release Swank Early Skills Development, LLC from any and all claims.

By participating in and/or purchasing the Program, you agree to release, forgive, forever discharge, defend, indemnify, and hold harmless Swank Early Skills Development, LLC our subsidiaries, employees, agents, contractors, subcontractors, shareholders, directors, officers, coaches, assignees, licensees, and affiliates from any and all claims, suits, actions, charges, demands, liabilities, damages, judgments, and/or costs, related to, or arising out of, your purchase of or participation in the Program and/or your breach of any obligation, warranty, covenant, or representation set forth in these Terms of Use.

By enrolling in the Program, you agree to release us from any and all claims, and further agree to at all times defend, indemnify, and hold harmless Swank Early Skills Development, LLC as stated in this section herein.

**10. Our Refund Policy:**

We will do everything within our ability (and within reason) to ensure your satisfaction. If you are unsatisfied with the program after having attended the first two classes of the session, you may request a refund by putting it in writing and emailing it to [aswank@swankesd.com](mailto:aswank@swankesd.com) by no later

than 5pm Friday of the second week of the session. Please include a reason for the request for refund. If SEDS is not able to rectify the situation, you may receive a partial refund of up to \$150. If you have any questions or concerns, or if there is anything we can do to make your experience a more pleasant one, please email Cynthia Swank at [cswank@swankesd.com](mailto:cswank@swankesd.com).

#### **11. ARBITRATION CLAUSE:**

If you have any complaint or should any issue arise in the use of the Program, please contact us directly first by emailing Cynthia Swank at [cswank@swankesd.com](mailto:cswank@swankesd.com). However, if we are unable to amicably resolve your dispute in that manner, you agree that you and Swank Early Skills Development, LLC shall submit your dispute to binding arbitration with the [American Arbitration Association](#), before an arbitrator that is mutually agreed upon, in accordance with the American Arbitration Association's ("AAA") [rules](#).

By agreeing to this term, you hereby agree and understand that you're waiving your right to a jury trial in court, which would otherwise be available to you if not for this Arbitration Clause. Should any arbitration hearing need to be held, it shall be held within five miles of Lancaster, PA.

If the arbitrator issues an award and a judgment is made, the judgment will be binding and will be entered in court in the State of Pennsylvania. The only award that can be issued to you is a refund of any payment made to Swank Early Skills Development, LLC for the applicable Program. You are not permitted to seek additional damages, including consequential or punitive damages.

#### **12. Limitation of Liability:**

Cynthia Swank and Swank Early Skills Development, LLC are not responsible or liable in any way for any and all damages you receive directly or indirectly from your participation in the Program. We do not assume liability for damages, injuries, harm, death, misuse of (or failure to properly use) the Program or its content, due to any act, or failure to act, by you. IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES.

### **13. PAYMENT, PURCHASE, AND PAYMENT PLAN TERMS**

#### **a. General Payment Terms:**

When you pay for the Program by credit card, you authorize and give permission to Swank Early Skills Development, to charge your credit or debit card for the amount owed for payment of the Program. When you purchase the Program, your information (i.e. credit card and contact info) may be collected by the third-party merchant by the Company's current payment processing provider which is currently Square and Intuit Quickbooks but may change at any time, who may have privacy policies or security practices that are different than ours. Swank Early Skills Development, is not responsible for the merchant's independent policies or practices.

#### **14. Severability**

The provisions of these Terms of Use shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of any other provision hereof. If any Section, subsection, sentence, or clause of these Terms of Use shall be adjudged illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall have no effect on the Terms of Use as a whole or on any Section, subsection, sentence, or clause hereof not expressly so adjudged.

#### **15. Entire Agreement**

These Terms of Use contain the entire agreement between you and the Company. There are no other promises or conditions in any other agreement (oral or written) between you and the Company.

#### **16. Choice of Law + Venue**

These Terms of Use shall be governed by the laws of the state of Pennsylvania. Any action brought by any party arising out of or from these Terms shall be brought within the Pennsylvania, County of Lancaster.

By purchasing and/or participating in the Program, you implicitly signify your agreement to all of the terms in these Terms of Use.

If you have any questions about the Terms of Use, please contact Cynthia Swank at [cswank@swankesd.com](mailto:cswank@swankesd.com). Thank you.