

swimnerd.com Terms of Use Agreement

Last revised on June 1, 2019

Welcome to swimnerd.com, a ranking and recruiting service for swimmers, operated by Water Monsters, L.L.C.. By using the swimnerd.com Website, (the "Website") you agree to be bound by these Terms of Use (this "Agreement"), whether or not you register as a member of swimnerd.com ("Member"). If you wish to become a Member and make use of the swimnerd.com service (the "Service"), please read these Terms of Use. If you object to anything in this Agreement or the swimnerd.com Privacy Policy, do not use the Website or the Service.

1. Acceptance of Terms of Use Agreement.

- a. **Electronic Agreement.** This Agreement is an electronic contract that sets out the legally binding terms of your use of the Website and your membership in the Service. This Agreement may be modified by swimnerd.com from time to time, such modifications to be effective upon posting by swimnerd.com on the Website. This Agreement includes swimnerd.com's Privacy Policy and swimnerd.com's subscription policies and any notices regarding the Website. By accessing the Website or becoming a Member, you accept this Agreement and agree to all of the terms, conditions and notices contained or referenced herein.
- b. **Electronic Form.** By accessing the Website or becoming a Member, you consent to have this Agreement provided to you in electronic form.
- c. **Non-electronic Copy.** You have the right to receive this Agreement in non-electronic form. You may request a non-electronic copy of this Agreement either before or after you electronically sign the Agreement. To receive a non-electronic copy of this Agreement, please Contact Us online or send a letter and self-addressed stamped envelope to: swimnerd.com, 2309 Trelawney Rd, Virginia Beach, VA 23455.
- d. **Withdrawing Your Consent.** You have the right at any time to withdraw your consent to have this Agreement provided to you in electronic form.
 - i. **Effect.** Should you choose to withdraw your consent to have this Agreement provided to you in electronic form, we will discontinue your then-current username and password. This means that you will not have the right to use the Service unless, and until, we issue you a new username and password. We only will issue you a new username and password after we receive a signed copy of a non-electronic version of this Agreement, which we will send to you upon request.
 - ii. **Notice.** To withdraw your consent and/or request a non-electronic copy of this Agreement, please Contact Us online or send a letter and self-addressed stamped envelope to: swimnerd.com, 2309 Trelawney Rd, Virginia Beach, VA 23455.
 - iii. **Effective Timing.** Your withdrawal of consent shall be effective within a reasonable time after we receive your withdrawal notice described above. Your withdrawal

of consent will not affect the legal validity or enforceability of the Agreement provided to, and electronically signed by, you prior to the effective date of your withdrawal.

- e. **Access and Retention.** In order to access and retain this electronic Agreement, you must have access to the World Wide Web, either directly or through devices that access web-based content, and pay any service fees associated with such access. In addition, you must use all equipment necessary to make such connection to the World Wide Web, including a computer and modem or other access device. Please print a copy of this document for your records. To retain an electronic copy of this Agreement, you may save it into any word processing program. Via, the Website, we will notify you of any changes in the hardware or software requirements needed to access and/or retain this Agreement that create a material risk that you will not be able to continue to access and/or retain this electronic Agreement.

2. Eligibility.

You must be at least thirteen (13) years of age to register as a member of swimnerd.com or use the Website. Membership in the Service is void where prohibited. By using the Website, you represent and warrant that you have the right, authority and capacity to enter into this Agreement and to abide by all of the terms and conditions of this Agreement.

3. Membership

You may become a Member of the Service at no cost. For purposes of this Agreement the term "Member" includes any one that signs up.

4. Non-commercial Use by Members.

The Website is for the personal use of individual Members only and may not be used in connection with any commercial endeavors. Organizations, companies, and/or businesses may not become Members and should not use the Service or the Website for any purpose. Illegal and/or unauthorized uses of the Website, including collecting usernames and/or email addresses of members by electronic or other means for the purpose of sending unsolicited email and unauthorized framing of or linking to the Website may be investigated, and appropriate legal action will be taken, including without limitation, civil, criminal, and injunctive redress. Use of the Website is with the permission of swimnerd.com, which may be revoked at any time, for any reason, in swimnerd.com's sole discretion.

5. Account Security.

You are responsible for maintaining the confidentiality of the username and password that you designate during the Registration process, and you are fully responsible for all activities that occur under your username and password. You agree to (a) immediately notify swimnerd.com of any unauthorized use of your username or password or any other breach of security, and (b) ensure that you exit from your account at the end of each session. swimnerd.com will not be liable for any loss or damage arising from your failure to comply with this provision. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. If you share your computer with others, you may wish to consider disabling your auto-sign in feature.

6. Content on swimnerd.com.

- a. **Proprietary Rights.** swimnerd.com owns and retains all proprietary rights in the Website and the Service. The Website contains the copyrighted material, trademarks, and other proprietary information of swimnerd.com, and its licensors. Except for that information which is in the public domain or for which you have been given written permission, you may not copy, modify, publish, transmit, distribute, perform, display, or sell any such proprietary information.

- b. **Reliance on Content, Advice, Etc.** Opinions, advice, statements, offers, or other information or content made available through the Service, but not directly by swimnerd.com, are those of their respective authors, and should not necessarily be relied upon. Such authors are solely responsible for such content. swimnerd.com does not: (i) guarantee the accuracy, completeness, or usefulness of any information on the Service, or (ii) adopt, endorse or accept responsibility for the accuracy or reliability of any opinion, advice, or statement made by any party that appears on the Website. Under no circumstances will swimnerd.com or its affiliates be responsible for any loss or damage resulting from your reliance on information or other content posted on the Website or transmitted to or by any Members.

7. Content Posted by You on swimnerd.com.

- a. You are solely responsible for the Content that you publish or display (hereinafter, "post") on the Service, or transmit to other Members. You will not post on the Service, or transmit to other Members, any defamatory, inaccurate, abusive, obscene, profane, offensive, sexually oriented, threatening, harassing, racially offensive, or illegal material, or any material that infringes or violates another party's rights (including, but not limited to, intellectual property rights, and rights of privacy and publicity). You will not provide inaccurate, misleading or false information to the Company or to any other Member. If information provided to swimnerd.com, or another Member, subsequently becomes inaccurate, misleading or false, you will promptly notify swimnerd.com of such change.

- b. You understand and agree that swimnerd.com may review and delete any content, messages, double-blind emails, photos or profiles (collectively, "Content"), in each case in whole or in part, that in the sole judgment of swimnerd.com violate this Agreement or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of Members.

- c. By posting Content to any public area of swimnerd.com, you automatically grant, and you represent and warrant that you have the right to grant, to swimnerd.com, its affiliates, licensees and successors, an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, reproduce, adapt, modify and distribute such information and content and to prepare derivative works of, or incorporate into other works, such information and content, and to grant and authorize sublicenses of the foregoing. You further represent and warrant that public posting and use of your content by swimnerd.com will not infringe or violate the rights of any third party.

- d.** The following is a partial list of the kind of Content that is illegal or prohibited on the Website. swimnerd.com reserves the right to investigate and take appropriate legal action in its sole discretion against anyone who violates this provision, including without limitation, removing the offending communication from the Service and terminating the membership of such violators. It includes, but is not limited to, Content that:
- is patently offensive to the online community, such as Content that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
 - harasses or advocates harassment of another person;
 - involves the transmission of "junk mail", "chain letters," or unsolicited mass mailing or "spamming";
 - promotes information that is false, misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
 - promotes an illegal or unauthorized copy of another person's copyrighted work, such as providing pirated computer programs or links to them, providing information to circumvent manufacture-installed copy-protect devices, or providing pirated images, audio or video, or links to pirated images, audio or video files;
 - contains restricted or password only access pages, or hidden pages or images (those not linked to or from another accessible page);
 - provides material that exploits people under the age of 18 in a sexual or violent manner, or solicits personal information from anyone under the age of 15;
 - provides instructional information about illegal activities such as making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
 - solicits passwords or personal identifying information for commercial or unlawful purposes from other users; and
 - engages in commercial activities and/or sales without our prior written consent such as contests, sweepstakes, barter, advertising, and pyramid schemes.
- e.** Your use of the Service, including but not limited to the Content you post on the Service, must be in accordance with any and all applicable laws and regulations.
- f.** You may not engage in advertising to, or solicitation of, other Members. This includes but is not limited to solicitation or advertising to buy or sell any products or services through the Service or to attend parties or other social functions or networking for commercial purposes. You may not transmit any chain letters or junk email to other Members. Although swimnerd.com cannot monitor the conduct of its Members off the Website, it is also a violation of these rules to use any information obtained from the Service in order to harass, abuse, or harm another person, or in order to contact, advertise to, solicit, or sell to any Member without their prior explicit consent. In order to protect our Members from such advertising or solicitation, we reserve the right to restrict the number of emails which a Member may send to other Members in any 24-hour period to a number which we deem appropriate in our sole discretion.
- g.** You have not and will not access unrightful information (you have not and will not access other user's passwords, usernames, etc.) By registering for a college coach's account, you must be a NCAA Division I, II, or III or other college athletic association

head coach, assistant coach and/or official collegiate recruiter. By registering as an athlete, you must in fact be a high school athlete or college student who is looking to transfer to another university as a NCAA athlete. By registering untruthfully as an athlete or college coach, you can and will be held liable for your actions and the consequences. This is considered unrightful access to information and swimnerd.com reserves the right to pursue further action. You have not and will not access those files reserved solely for swimnerd.com administrators and swimnerd.com, Inc. You have not and will not solicit other swimnerd.com users and/or members. Soliciting registered users of swimnerd.com, either coaches or athletes, is strictly prohibited. Legal action will be taken against any and all persons or companies soliciting registered users of swimnerd.com. You have not and will not use any of swimnerd.com's material (logos, graphics, art works, text, articles, database, internet coding, etc) without written permission from swimnerd.com. You may not modify, copy, distribute, transmit, display, reproduce, publish, license, create derivative works from, transfer or sell any information or services obtained from swimnerd.com without the express permission of swimnerd.com. swimnerd.com is not responsible for the actions of those users (both coaches and athletes) who do not abide by NCAA regulations. swimnerd.com is in no way affiliated with the NCAA. All users are responsible for their own actions. All users are responsible for knowing the NCAA's rules, regulations, and laws. All users are responsible for abiding by the NCAA's rules, regulations and laws. swimnerd.com is not responsible for coaches and/or athletes who violate NCAA or specific sport governing body rules and regulations. Violators are subject to account termination. swimnerd.com does not promote any violations of NCAA or specific sport governing body rules or regulations. swimnerd.com has the right to terminate membership and usage of any users who swimnerd.com feels have violated swimnerd.com's Terms of Use. Only actual collegiate athletic coaches are permitted to register for swimnerd.com college coach accounts. Members — both coaches and athletes — agree to only post accurate, truthful information in their swimnerd.com accounts. swimnerd.com is not responsible for any misrepresentation by either an athlete, his or her family, or a coach or school. By registering with swimnerd.com or using swimnerd.com's service as a either coach or an athlete you agree to swimnerd.com's Terms of Use.

- h.** All information you include in your Member profile must be accurate, current and complete.

8. Prohibited Activities.

swimnerd.com reserves the right to investigate and terminate your membership if you have misused the Service, or behaved in a way which could be regarded as inappropriate or whose conduct is unlawful or illegal. The following is a partial list of the type of actions that you may not engage in with respect to the Service:

- You will not impersonate any person or entity.
- You will not "stalk" or otherwise harass any person.
- You will not express or imply that any statements you make are endorsed by swimnerd.com without our specific prior written consent.
- You will not use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Service or its contents.

- You will not post, distribute or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior consent of the owner of such proprietary rights.
- You will not remove any copyright, trademark or other proprietary rights notices contained in the Service.
- You will not interfere with or disrupt the Services or the site or the servers or networks connected to the Services or the site.
- You will not post, email or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
- You will not forge headers or otherwise manipulate identifiers in order to disguise the origin of any information transmitted through the Service.
- You will not “frame” or “mirror” any part of the Service or the Website, without swimnerd.com's prior written authorization. You also shall not use meta tags or code or other devices containing any reference to swimnerd.com or the Service or the site in order to direct any person to any other web site for any purpose.
- You will not modify, adapt, sublicense, translate, sell, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Service or the Website or any software used on or for the Service or cause others to do so.

9. Customer Service.

swimnerd.com provides assistance and guidance through its representatives. When communicating with our representatives, you may not to be abusive, obscene, profane, offensive, sexist, threatening, harassing, racially offensive, or otherwise behave inappropriately. Telephone calls between you and our representatives may be recorded for quality assurance purposes. If we feel that your behavior towards any of our representatives or other employees is at any time threatening or offensive, we reserve the right to immediately terminate your membership.

10. Modifications to Service.

swimnerd.com reserves the right at any time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that swimnerd.com shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

11. Blocking of IP Addresses.

In order to protect the integrity of the Service, swimnerd.com reserves the right at any time in its sole discretion to block Members from certain IP addresses from accessing the Website.

12. Copyright Policy.

You may not post, distribute, or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior written consent of the owner of such proprietary rights. Without limiting the foregoing, if you believe that your work has been copied and posted on the Service in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; a description of the copyrighted work that you claim has been infringed; a description of where the material that you claim is infringing is located on the Website; your address, telephone number, and email address; a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. swimnerd.com's

Copyright Agent for notice of claims of copyright infringement can be reached as follows: info@swimnerd.com or swimnerd.com 2309 Trelawney Rd, Virginia Beach, VA 23455.

13. Member Disputes.

You are solely responsible for your interactions with other swimnerd.com Members. swimnerd.com reserves the right, but has no obligation, to monitor disputes between you and other Members.

14. Privacy and Communications.

Use of the Website and/or the Service is also governed by our Privacy Policy. When you become a Member, you agree and consent to receive email messages from us. These emails may be transactional or relationship communications relating to the Service, such as administrative notices and service announcements or changes, or emails containing commercial offers, promotions or special offers from us. Please see the [swimnerd.com Privacy Policy](#) for more information regarding these communications.

15. Disclaimers.

- swimnerd.com is not responsible for any incorrect or inaccurate Content posted on the Website or in connection with the Service, whether caused by users of the Website, Members or by any of the equipment or programming associated with or utilized in the Service. swimnerd.com is not responsible for the conduct, whether online or offline, of any user of the Website or Member of the Service. swimnerd.com assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, user or Member communications. swimnerd.com is not responsible for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of email or players on account of technical problems or traffic congestion on the Internet or at any Website or combination thereof, including injury or damage to users and/or Members or to any other person's computer related to or resulting from participating or downloading materials in connection with the Web and/or in connection with the Service. Under no circumstances will swimnerd.com or any of its affiliates, advertisers, promoters or distribution partners be responsible for any loss or damage, including personal injury or death, resulting from anyone's use of the Website or the Service, any Content posted on the Website or transmitted to Members, or any interactions between users of the Website, whether online or offline. The Website and the Service are provided "AS-IS" and swimnerd.com expressly disclaims any warranty of fitness for a particular purpose or non-infringement. swimnerd.com cannot guarantee and does not promise any specific results from use of the Website and/or the Service.
- a. In addition to the preceding paragraph and other provisions of this Agreement, any advice that may be posted on the Website is for informational and entertainment purposes only and is not intended to replace or substitute for any professional financial, medical, legal, or other advice. swimnerd.com makes no representations or warranties and expressly disclaims any and all liability concerning any treatment, action by, or effect on any person following the information offered or provided within or through the Website. If you have specific concerns or a situation arises in which you

require professional or medical advice, you should consult with an appropriately trained and qualified specialist.

16. Links.

The Service may provide, or third parties may provide, links to other World Wide Web sites or resources. Because swimnerd.com has no control over such sites and resources, you acknowledge and agree that swimnerd.com is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products or other materials on or available from such sites or resources. You further acknowledge and agree that swimnerd.com shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of, or reliance upon, any such Content, goods or services available on or through any such site or resource.

17. Linked Accounts

swimnerd.com permits you to associate a swimnerd.com username and password with your Facebook or Twitter account. When you establish a linked account, you can sign into Facebook or Twitter and automatically sign into swimnerd.com at the same time. swimnerd.com is not responsible for the operation or functionality of Facebook or Twitter. Facebook is a registered trademark of Facebook Inc. and Twitter is a registered trademark of Twitter Inc.

18. Limitation on Liability.

Except in jurisdictions where such provisions are restricted, in no event will swimnerd.com be liable to you or any third person for any indirect, consequential, exemplary, incidental, special or punitive damages, including also lost profits arising from your use of the Web site or the Service, even if swimnerd.com has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained herein, swimnerd.com's liability to you for any cause whatsoever, and regardless of the form of the action, will at all times be limited to the amount paid, if any, by you to swimnerd.com for the Service during the term of membership.

19. Indemnity by You.

You agree to indemnify and hold swimnerd.com, its subsidiaries, affiliates, officers, agents, and other partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorney's fees, made by any third party due to or arising out of your use of the Service in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above.

20. No Third Party Beneficiaries.

You agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement.

Please Contact Us with any questions regarding this agreement. Swimnerd and swimnerd.com is a registered trademark.