



Swing Education Platform & Services Agreement

This **Platform & Services Agreement** (“Agreement”) is entered into on 11/1/2020 by and between Swing Education, Inc. (“Swing Education,” “we” or “us”) and the School(s) listed on the signature page (“School” or “you”). Swing Education agrees to provide you with access to the Swing Education Platform & Services (“Platform”), which allows the School and School representatives to post and manage Requests for substitute teachers and related professionals (“SwingSubs”) on the Swing Education Website at www.swingeducation.com (“Website”).

The pricing information in this Agreement will apply for all SwingSubs starting August 1, 2020. This Agreement will apply regarding the obligations and relationships between School, Swing Education and each SwingSub (though the SwingSubs are not party to this Agreement) when that SwingSub is enrolled on Swing Education’s payroll. Before such enrollment, the most recent Agreement signed by School and Swing Education will apply to such obligations and relationships, but will apply not to pricing, which will be controlled by this Agreement.

1. Services. Swing Education agrees to provide you with:

- (a) **Access to the Services**, which allows authorized School users to post Requests for SwingSub on the Platform, track and manage those Requests, and view information about the SwingSubs.
- (b) **Access to Our Verification Services - California**
 - i. **Teaching Credentials.** Swing Education verifies whether a SwingSub teaching professional holds a substitute teaching permit or standard professional teaching credential, by having the SwingSub upload or submit such document to the Platform. Swing Education marks such SwingSubs as credentialed (or similar language) on the Platform. Swing Education also tracks the expiration date (if one exists) of such document. If such document expires while the SwingSub is a registered member of the Service, Swing Education will shortly thereafter label the SwingSub teaching professional as non-credentialed (or similar language). Note that School is responsible for ensuring accuracy of SwingSub Requests where a permit or credential is or is not required.
 - ii. **CA DOJ Live Scan Fingerprint Background Check.** Swing Education verifies that a SwingSub working in California is eligible to work as a teacher before the SwingSub is allowed to fill Requests on the Website. Swing Education does this by reviewing the results of the individual’s completed Live Scan check issued by the State of California Department of Justice (DOJ) using California Education Code guidelines. Subsequent changes to the SwingSub’s status are sent from the DOJ to Swing Education. Swing Education prevents a SwingSub from filling Requests on the Website if such changes render the SwingSub ineligible to teach, shortly after receiving notice of such changes.
 - iii. **TB Test.** Swing Education determines whether a SwingSub has obtained required TB tests before allowing a SwingSub to fill Requests on the Website (according to this form, www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/TBCB-CA-School-Staff-Volunteer-TB-Risk-Assessment.pdf).
 - iv. **Child Abuse Reporting - Mandated Reporter.** Swing Education will make all SwingSubs aware of their child and dependent adult abuse reporting obligations. Swing Education will also require all SwingSubs to confirm that they have undergone CA state



Mandated Reporter Training within 6 weeks of completion of their first assignment through the Platform and annually thereafter, by signing a Suspected Child Abuse Reporting Acknowledgement Form. A copy of each signed form will be kept on file with Swing Education.

- (c) **Verification Process.** Swing Education reserves the right to change any of the verification processes described above if such processes become impossible or impractical to carry out as described.
- (d) **Limitations.** Swing Education provides the Services as a venue for connecting Schools and SwingSubs. Swing Education does not provide any education training, equipment, curriculum for teaching classes or students at any School, nor any other education services to either Schools or SwingSub, other than that specified below. Swing Education does not participate in, and the Services expressly do not include, the relationship or interaction between Schools and SwingSubs, except to provide a Website for Schools to post Requests and for SwingSubs to review and accept those Requests.
- (e) **Relationship with SwingSubs.** Swing Education withholds and pays payroll taxes with regard to SwingSub wages but does not exercise any control over their schedules. School issues work Requests for SwingSubs to fill. School works with SwingSubs on-site and in person and thus has direct feedback and information on the actions and performance of SwingSubs. Swing Education makes no warranty or representation as to the effectiveness, competence, skill, background, record, or behavior of the SwingSubs beyond what is covered by the Verification Services above.

2. Acceptance of Appendix Terms and Website Terms of Service. By signing this Agreement, you agree to the terms in any Appendix, including Appendix A: Standard Terms. You also agree to the Website Master Terms of Service and Privacy Policy (the "Website Terms") available on the Swing Education website at www.swingeducation.com/tc.

3. Payments. Payments will be made to Swing Education according to the following:

- (a) **Work Requests & Daily Rates.** School shall fill out work Requests for SwingSubs, specifying the work stop and start times for each work day of the Request. The School works with Swing Education to designate a "Daily Rate" or Rates, via the Website and/or by separate communication with Swing Education, and/or as listed below. The "Half Daily Rate" is 50% of the Daily Rate. The Daily Rate applies to any Day over four (4) and no more than eight (8) hours ("Full Day") and the Half Daily Rate applies to any Day of four (4) hours or less ("Half Day"). A "Short-Term" Request is a Request up to and including 21 days, and a "Long-Term" Request is a Request that exceeds 21 days.
- (b) **Amounts Due.** The "Preliminary Amount Due" is the sum of the "Estimated Daily Amounts" for each Day of the Request, based on the Daily Rate and Half Daily Rate. Swing Education will adjust each Estimated Daily Amount with relevant surcharges for overtime or if the SwingSub is not given legally-required meal or rest breaks, to arrive at "Daily Adjusted Amounts", and a total "Adjusted Amount Due".
- (c) **Cancellation.** Request(s) accepted by a SwingSub, then canceled outside of 24 hrs of the initial work time, are not subject to any fees. If a Request is canceled less than 24 hrs from the initial work time, then the Amount Due will be subject to the Preliminary Amount Due for the first Day of the Request.



- (d) **Invoicing.** Payment for the services of a SwingSub will be made to Swing Education according to the following. Swing Education charges and invoices according to Pay As You Go, as outlined in Exhibit A: Payment Options.
- (e) **Deviations from Request.** While SwingSubs will be instructed to track their actual time worked, School must also inform Swing Education of any Work Deviations (from School's point of view) between the work times in a Request and actual time worked (including Work Deviations from mandated breaks) by 11:59pm on Friday of the same week of the relevant day for such Work Deviations to be reflected on an invoice, via the appropriate interface on the Platform. SwingSubs shall also have the right to submit such Work Deviations, and the actual invoice will be reconciled using all known facts about the actual time worked.
- (f) **Invoice Disputes.** School must identify any invoice item Dispute to Swing Education within 14 days of the invoice by emailing support@swingeducation.com, in order to Dispute such invoice item. All known facts about the actual time worked shall be used in amending such invoice items.

4. Recruitment & Off-Platform Use. If you wish to hire or contract directly with a SwingSub, you agree to pay Swing Education a \$2,500 finder's fee. This recruitment fee does not apply to SwingSubs who previously worked directly for the School. School shall not issue off-Platform requests to SwingSubs, including by communicating directly with a SwingSub. Making such an off-platform request is grounds for Termination with Cause. If School wishes to provide an additional (bonus) wage to a SwingSub not related to a Request, School will make prior arrangements with Swing Education by emailing support@swingeducation.com or via other means as directed by Swing Education. Swing Education will invoice School for such additional (bonus) wage(s). For additional (bonus) wage(s) requested through means other than those outlined above, Swing Education will invoice School for such additional (bonus) wage(s) plus an additional 100% handling fee.

5. Term and Termination. Term. This Agreement shall be in effect for one year from the Effective Date, thereafter this Agreement shall automatically renew at the anniversary date of the Effective Date unless provided 30 days prior written notice of the intent to terminate this Agreement by either party.

- (a) **Termination for Cause.** Either party may seek Termination for Cause of this Agreement at any time during its term for a breach of obligations under this Agreement. Upon timely written notice of such breach, the breaching party has 30 days to cure such breach to reasonable satisfaction of both parties. Failure to cure the breach after 30 days will allow the aggrieved party to terminate the Agreement immediately upon receipt of such written notice by the aggrieved party.
- (b) **Termination.** This Agreement may terminate by election of either party in accordance with the above, or shall terminate naturally if School fails to seek Engagement of any SwingSub for a period of more than 9 months.
- (c) **Effect of Termination.** Termination does not extinguish obligations to pay or rights to seek payment for Invoices outstanding under this Agreement. Upon termination, Swing Education shall have 30 days to reconcile all payments due, and return any remaining Account Balance. All or any portion of the Account Balance may be used by Swing Education to (i) cure School's default in payment of invoices and (ii) pay services completed at the School in advance of the Amount Due being collected from the School.

6. Disclaimer of Warranties. The Services are provided "as is" without any warranty and Swing Education expressly disclaims any and all warranties, express, implied or statutory, including warranties of title, noninfringement, merchantability, and fitness for a particular purpose. Except as expressly set forth herein, Swing Education expressly disclaims, and you expressly release Swing Education from, any and



all liability whatsoever for any damages, suits, claims and/or controversies that have arisen or may arise from and/or in any way relate to any acts or omissions of users on or off the Platform, including without limitation the provision of any services by any SwingSub. Furthermore, beyond the Verification set forth above, Swing Education makes no warranty, representation or condition as to the effectiveness, competence, skill, background, record, or behavior of the SwingSubs. You hereby release Swing Education from any and all liability whatsoever for any damages, suits, claims, and/or controversies that have arisen or may arise from and/or in any way relate to any acts or omissions of the SwingSubs while they are engaged by you, on your premises, and/or performing the duties for which you engage with them.

7. Insurance. Swing Education shall, at its own cost and expense, acquire and maintain at all times while Swing Education is providing services to School, sufficient insurance to adequately protect the respective interests of the parties, including:

- (a) Commercial General Liability insurance, including Product Completed Operations, Personal Injury and Advertising Injury insurance of \$1,000,000 per occurrence, \$2,000,000 aggregate
- (b) Umbrella Liability insurance of \$2,000,000 Each Occurrence and in the Aggregate
- (c) Workers' Compensation insurance
- (d) Professional (Errors and Omissions) Liability insurance covering Swing Education's legal liability for damages arising out of Swing Education's performance of the services of \$2,000,000 per claim
- (e) Sexual Abuse & Molestation insurance of \$1,000,000 per occurrence and \$3,000,000 in the aggregate

8. Limitation of Liability. Swing Education takes its verification responsibilities seriously, including all the verification listed in Section 1. However, our verification responsibilities are limited to the Services specifically outlined in this Agreement, and we cannot ensure the accuracy of the results we receive from any third party. Each party to this Agreement shall defend, indemnify and hold harmless the other party, including affiliates and each of their respective officers, directors, shareholders, employees, representatives, agents, successors and assigns from and against all claims of third parties, and all associated losses, to the extent arising out of (a) that party's gross negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a material breach by that party of any of its representations, warranties, or covenants under this Agreement. Except as required by law, neither party will be liable to the other for more than the amount received by Swing Education from you in the twelve month period preceding the date a claim is first asserted.

9. Federal & State Mandated Obligations to SwingSubs Employees/Workers.

- (a) While Swing Education will be the personnel employer of SwingSubs, by the nature of the work involved, School determines the schedules of SwingSubs and directs them as to the manner and means of work on a daily basis. Therefore, School agrees to treat SwingSubs as both workers and employees with respect to all federal and state laws protecting the rights of employees, including but not limited to non-discrimination, harassment, timekeeping, overtime, meal and rest periods, fair employment and housing, and sick time.
- (b) School shall provide a safe, clean work environment that complies with all applicable local, state and federal laws, including but not limited to, all federal OSHA and equivalent state agency requirements, guidelines and standards. School agrees to train, certify, evaluate and orient all SwingSubs in all applicable safety (IIPP), hazardous communication (SDS information, etc.), ergonomic and operational instructions in the same manner as required by policy or by law, and to treat SwingSubs as School employees for such matters. School Requests will include and incorporate any required training time so that SwingSubs will be compensated for such training. School will be responsible for all OSHA and other recordkeeping required by law. School shall indemnify Swing Education and hold us harmless against and from any claims made or brought by a SwingSub or a third party as a result of School's breach of these obligations except in case of a workers' compensation claim finding.



10. Third-Parties and Subsidiaries. School understands that Swing Education may use third-parties, such as its own subsidiaries, as well as administrative organizations (“ASOs”), and professional employer organizations (“PEOs”), to carry out its obligations under this Agreement.

11. Entire Agreement. This Agreement constitutes the sole and entire agreement with respect to the subject matter contained herein, and supersedes all others, both written and oral, except as otherwise explicitly provided above. This Agreement is valid only if signed by School within 60 days of the Effective Date listed above.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

SWING EDUCATION, INC.

Michael Teng

Michael Teng
CEO

Date: ____10/22/2020_____

Email:
mike@swingeducation.com

Address:
700 S. Claremont Street
San Mateo, CA 94402

DAVIS JOINT UNIFIED SCHOOL DISTRICT:

Name: Amari Watkins

Title: Associate Superintendent
of Business Services

Date:

Email: awatkins@djud.net

Address: DJUSD
526 B Street
Davis, CA 95616



Exhibit A: Payment Options

Swing Education charges a Daily Rate or Rates as agreed to with School, according to the below. Swing Education will invoice school on a periodic basis, no less than once a month.

Pay As You Go. Upon execution of this contract, Swing Education will invoice the School for Amounts Due on a regular basis. School shall pay all amounts due under each invoice within 30 days of the invoice date. For a Short-Term Request Swing Education will charge a \$195 Daily Rate for a Request that requires a Teaching Credential (as described in Section 1) and a \$180 Daily Rate for a Request that does not require a Teaching Credential. For a Long-Term Request, Swing Education will charge a \$230 Daily Rate for a Request that requires a Teaching Credential and \$205 Daily Rate for a Request that does not. Swing Education will maintain ongoing records of the above transactions, which will be reported to the school at least quarterly.

Late Payments. Any invoice not paid within 30 days will be considered late. Late payments shall accrue interest at a rate equal to the lesser of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, from due date until paid, plus Swing Education's reasonable cost of collection. If any invoice is not paid within 90 days, Swing Education also reserves the right to immediately suspend or terminate School from the Platform, with notice.



Appendix A: Standard Terms

1. FERPA Compliance. The Family Educational Rights and Privacy Act ("FERPA") requires that U.S. Schools that receive certain federal funds obtain prior written consent from a parent or guardian of a minor student ("Parent") before disclosing any educational records regarding such student ("Educational Records") to third parties. While Swing Education does not anticipate any disclosure of records, if you are a School and FERPA applies to you, you hereby agree to the following:

- (a) You shall designate your selected SwingSub as an "other school official" under FERPA, who has a "legitimate educational interest" in using and accessing such Educational Records, and you hereby represent and warrant that (a) You have obtained all consents necessary in connection with disclosing any Educational Records directly or indirectly to Swing Education, Users, or otherwise in connection with the Services, and (b) Your disclosures described in (a) are not and will not be a violation of FERPA; and
- (b) You shall not disclose to Swing Education any information protected by FERPA, and that you shall indemnify and hold harmless Swing Education for any disclosures, inadvertent or otherwise, from you, your authorized users, administrators, teachers, staff, students, or other persons who have access to such information.

2. Dispute Resolution. *Please read this section carefully. It is part of your contract with Swing Education and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

- (a) **Applicability of Arbitration Agreement.** *All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with this Agreement or the use of any product or service provided by Swing Education, including the Services, that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and Swing Education, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under this Agreement.*
- (b) **Notice Requirement and Informal Dispute Resolution.** Before either party may seek arbitration, the party must first send to the other party a written notice of dispute ("Notice") describing the nature and basis of the claim or dispute, and the requested relief. A Notice to Swing Education must be sent to: Michael Teng, CEO, Swing Education, Inc., 700 S. Claremont Street, San Mateo, CA 94402 and mike@swingeducation.com. After the Notice is received, you and Swing Education may attempt to resolve the claim or dispute informally. If you and Swing Education do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.
- (c) **Arbitration Rules.** Arbitration shall be initiated through the American Arbitration Association ("AAA"), an established alternative dispute resolution provider ("ADR Provider") that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider ("Arbitration Rules")



shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with this Agreement. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearing. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

- (d) **Additional Rules for Non-Appearance Based Arbitration.** If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.
- (e) **Time Limits.** If you or Swing Education pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the Arbitration Rules for the pertinent claim.
- (f) **Authority of Arbitrator.** If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and Swing Education, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the Arbitration Rules, and this Agreement. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Swing Education.
- (g) **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and Swing Education in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND SWING EDUCATION WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.
- (h) **Confidentiality.** All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from



submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

- (i) **Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.
- (j) **Right to Waive.** Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.
- (k) **Survival.** This Arbitration Agreement will survive the termination of your relationship with Swing Education.
- (l) **Small Claims Court.** Notwithstanding the foregoing, either you or Swing Education may bring an individual action in small claims court.
- (m) **Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.
- (n) **Claims Not Subject to Arbitration.** Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.
- (o) **Courts.** In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within San Mateo County, California, for such purpose.

3. General Provisions

- (a) **Attorneys' Fees.** The prevailing party in any suit, action or proceeding, including arbitration, arising out of or relating to this Agreement shall be entitled to receive in addition to all other damages, the costs incurred by such party, including reasonable attorneys' fees and expenses and court costs.
- (b) **Notices.** All notices, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the designated email for Notice of a party. A Notice is effective only upon receipt by the receiving party, either at the below or or as designated on the Signature Page.
 - i. Swing Education Address: Michael Teng, CEO, Swing Education, Inc., 700 S. Claremont Street, San Mateo, CA 94402, mike@swingeducation.com
 - ii. School Address: See Signature Page
- (c) **Severability.** If any term or provision of this Agreement is 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 any other jurisdiction.



- (d) **Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall be construed as a waiver of any failure, breach or default not expressly identified by such written waiver. No failure to exercise, or delay in exercising, or any single or partial exercise of any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof.
- (e) **Assignment.** Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder.
- (f) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- (g) **Governing Law.** This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).
- (h) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- (i) **Non-Discrimination.** Swing Education represents that it will exercise equal opportunity in the registration and assignment of all SwingSubs and acknowledges that it shall not subject any person to unlawful discrimination based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement. Swing Education agrees not to discriminate on any of these bases in its practices and policies.
- (j) **Confidentiality.** Both parties may receive information that is proprietary to or confidential to the other party, or to its affiliated companies and their clients. Both parties agree to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever other than performing under this agreement or as required by law. No knowledge, possession or use of School's confidential information will be imputed to Swing Education as a result of a SwingSub's access to such information.
- (k) **Personnel Employer For Wages.** Swing Education shall be the personnel employer (similar to a professional employer organization) of SwingSubs for purposes of wages/payroll taxes and workers' compensation. Swing Education may also, in its discretion, provide health or other benefits to SwingSubs, even if not required by law.

Website Master Terms of Service
Last Updated: October 29, 2020

Please read this Website Master Terms of Service and Privacy Policy (“Website Terms”) carefully before using this Website, www.swingeducation.com, or any of the Services (collectively the “Platform & Services”) made available through the Website, as offered by Swing Education, Inc. (“Swing Education”). These Terms are legally binding and governs your use of the Platform & Services, including related mobile and web service and services from third parties that are incorporated, used, or made available by the Platform & Services. This document is available on the Swing Website at www.swingeducation.com/tc.

Acceptance

By clicking the “Accept” or similar action or simply by using the Platform & Services in any manner, you and the entity or organization you represent (collectively, “you,” and “your”) agree that you have read and agree to be bound by and a party to the terms and conditions of this Agreement, to the exclusion of all other terms, except for any written Agreement made between a School and Swing Education, in which case the terms of such Agreement will control. Use of the Platform & Services is expressly conditioned upon your assent to all the Terms. If you do not unconditionally agree to all the Terms, please navigate away from this page and you will have no right to use the Services. You also represent and warrant that you are authorized to bind any entity or organization on whose behalf you are entering into this Agreement.

Changes to Terms

Like Swing Education’s business and its services, our Agreement may evolve and change. Swing Education reserves the right to make changes to the Website Terms at our sole discretion and without notice. When such changes are made, Swing Education will make a new copy of these Website Terms available at the above URL. Swing Education will also update the “Last Updated” date at the top of the Website Terms. We will notify you of any material changes and you shall be responsible for reviewing and becoming familiar with any such modifications. Use of the Platform & Services following such notification constitutes your acceptance of the Website Terms as modified.

****COVID-19 Policy & Agreement****

Because of the exigencies of the COVID-19 pandemic, also known as the coronavirus pandemic, Swing Education has developed additional procedures and terms related to this pandemic, enumerated in this Agreement/Section. Swing Education may change this policy and these terms based on ongoing developments, including applicable laws and government guidance, and will provide you reasonable notice of material changes. Note that this Agreement/Section applies in particular to Schools, but is also applicable to other entities as appropriate.

You agree to provide a clean and safe work environment, and to follow federal, state, and local guidance, as well as that of local health departments, the AAP, CDC, WHO, and OSHA to protect the safety and well-being of your students, staff, and of SwingSubs, keeping in mind in particular the COVID-19 pandemic. If, in the sole discretion of Swing Education, your campus(es) is deemed unsafe, you may temporarily be suspended from accessing the Platform & Services until it is deemed safe in the sole discretion of Swing Education.

Swing Education also reserves the right to limit SwingSub requests (including number and type of requests) made on the Platform & Services to distance learning assignments (e.g., teaching remotely). Factors which contribute to such limits include, but are not limited to: (1) state and county public health guidelines; (2) teacher and staff support for in-person instruction, and (3) public COVID metrics such as testing availability, positive cases per capita, test positivity rates and hospital/ICU capacity. This determination is made to prioritize the safety of School staff, students, and families, as well as that of SwingSubs.

You agree to inform Swing Education immediately at www.swingeducation.com/support if there are any confirmed case(s) on your campus(es). Such notification must include: when you learned of the confirmed case(s), any and all safety measure(s) taken in response to said incident (by way of example only, such measures might include conducting contact tracing and ensuring those exposed are quarantined for 14 days and test negative prior to returning to campus), as well as any and all safety measure(s) you anticipate taking in the future. Swing Education reserves the right to suspend your access to the Platform & Services should Swing Education, in its sole discretion, deem such safety measures inadequate. Your Platform & Services access will be reinstated only when such safety measures are deemed adequate.

Swing Education requires SwingSubs to engage in social distancing (maintain distance at least 6 feet apart from individuals who are not members of their household) and go through a COVID-19 screening the morning of every assignment. A current version of that questionnaire is provided, for your reference, at the end of this Agreement/Section.

Should a SwingSub on an assignment at your campus be sent home because they display symptoms of COVID-19, you must notify Swing immediately at www.swingeducation.com/support. Please note that if there is any confirmed case on your campus, it is your responsibility to report this to OSHA in accordance with 29 CFR 1904.31(b)(4).

While Swing Education recognizes that backing out of an assignment upon arriving at a School site is a major inconvenience to you, we must give teachers the discretion to do this if they feel unsafe, particularly in the age of COVID-19. You can direct any communication with respect to cancelation of any other issues to our support team at www.swingeducation.com/support.

Assumption of the Risk and Waiver of Liability Relating to COVID-19. The COVID-19 pandemic, also known as the coronavirus pandemic, is an ongoing global pandemic of coronavirus disease 2019 (“COVID-19”), caused by severe acute respiratory syndrome coronavirus 2 (“SARS-CoV-2”). COVID-19 is extremely contagious and is believed to spread primarily by person-to-person contact, airborne transmission, and contact with surfaces. Investigation and knowledge of COVID-19 and associated illnesses is ongoing. Federal, state, and local governments and health agencies have made and continue to make evolving recommendations and regulations to address COVID-19.

While Swing Education takes reasonable precautions with regard to COVID-19 screening of SwingSubs, due to the uncertain science and epidemiology of COVID-19, Swing Education cannot guarantee that your School staff, students, and others who come into contact with students and your School staff, will not become infected with COVID-19 or other illnesses, no matter what precautions we take.

By continuing to use the Swing Education Platform and Services, you also certify that you have read and understood this COVID-19 policy and will adhere to the requirements herein. Failure to adhere to Agreement/Section and any updates thereto is grounds for suspension from access to the Swing Education Platform & Services.

SwingSub COVID-19 Screening. SwingSubs are required to go through the following questionnaire the morning of any day of an assignment. If they answer YES to any of the questions 1-3, they must inform Swing Education immediately at www.swingeducation.com/support attn: Bubble COVID Screening. This notice must include, as is applicable: the date of exposure, the date on which symptoms began, and/or the date of diagnosis.

1. Do you currently have (or had within the past 3 days) any of these symptoms that you cannot attribute to another condition? YES or NO

- Fever or chills
- Cough or sore throat
- Shortness of breath or difficulty breathing
- Fatigue

- Muscle or body aches
- Headache
- Recent onset of loss of taste or smell
- Congestion
- Nausea or vomiting
- Diarrhea

1. Have you had close contact with anyone with COVID-19 or COVID-19 symptoms in the past 14 days? YES or NO

Contact is defined as being within 6 feet for more than 15 minutes with a person, or having direct contact with infectious fluids from a person with confirmed COVID-19 (for example being coughed or sneezed on).

1. Have you had a positive-COVID test for active virus in the past 14 days? YES or NO

Swing Education may change this SwingSub screening process based on ongoing developments, including applicable laws and government guidance.

Description of Services and Parties

Swing Education’s Platform & Services allow Schools post requests for SwingSubs (teachers and related professionals) that fill teaching assignments for Schools and others. The Platform & Services, enables Schools to view information about SwingSubs and track their requests, and allows SwingSubs to view and accept such requests, for example.

Swing Education also provides Platform & Services for Families to hire SwingSubs (also referred to as “Tutors”) to teach or tutor students in non-school settings, referred to as “Bubbles” or “Learning Pods”.

There are at least four types of Parties that use this Website / Platform & Services, as listed below, and some of these Website Terms are specific to one or more of those Parties. In general, the terms apply to all Parties/users, except for those that explicitly mention a particular type of Party or that by nature cannot apply to all. In the event of any conflict between the terms of a signed agreement between such Parties and Swing Education, the terms of the signed agreement will control.

(1) (2) School Administrators and Schools: School administrators who use the Website to engage in the Platform & Services (for instance, in order to post teaching requests). The general relationship between Swing Education and such School is governed by any such signed agreements. The Website terms herein are meant mainly to address use of the Website and management of related information (for example, an administrator’s Google online account).

Some terms governing the relationship between Schools and Swing Education are listed in this document, but the majority are in the signed agreement between these two parties. In the event of any conflict between the terms of that signed agreement and these Website Terms, the terms of the signed agreement will control.

(3) Families (specifically, parents and guardians of students taught by Swing Education SwingSubs/Tutors in non-school settings (Bubble or Learning Pods).

(4) SwingSubs, who are teachers and related professionals working to provide teaching and tutoring services for Schools and Families.

Please note any individual under 18 (namely, students) may not have an account with Swing Education. As a family parent or guardian in particular (category 3 above), you must hold the account and manage the student experience as such, and not the student directly. If you are aware of any student or any individual under 18 that has created an account, please contact us at www.swingeducation.com/support immediately so that we may delete such account.

School Cancellation. Canceling last minute has a big impact on our teachers. Requests that are filled by a SwingSub, and canceled within 24 hours (and not related to performance reasons) will be invoiced based on the Applicable Rate plus the Standard Fee, unless otherwise specified. Other entities and individuals have other cancellation policies which are noted in your agreements.

School Recruitment. As a school, if you want to hire or contract directly with a SwingSub, you agree to pay Swing a \$2,500 finder's fee to cover costs associated with finding, screening and onboarding the sub, and anticipated loss of revenue, unless otherwise specified. Other entities and individuals have other finder fee arrangements which are noted in your agreements.

Use of the Services and Swing Education Properties

License. The Platform & Services and other assets of Swing Education (collectively, the "Swing Education Properties") are protected by copyright laws and other laws. Subject to the Terms, Swing Education grants you a limited, revocable, royalty free license to reproduce portions of the Swing Education Properties for the sole purpose of using the Services for your personal or internal business purposes. Unless otherwise specified by Swing Education in a separate license, your right to use any Swing Education Properties is subject to the Terms.

Modifications. Swing Education reserves the right to modify or discontinue the Platform & Services with or without notice to you. Swing Education will not be liable to you or any third party should Swing Education exercise our right to modify or discontinue the Platform & Services. If you object to any such changes, your sole recourse will be to discontinue use access to the Platform & Services. Continued access of the Platform & Services following notice of any such changes will indicate your acknowledgement of such changes and satisfaction with the Platform & Services as so modified.

Certain Restrictions. The rights granted to you in the Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially any portion of the Swing Education Properties, including the Website, Platform & Services (b) you shall not frame or utilize framing techniques to enclose any trademark, logo, or other intellectual property (including images, text, page layout or form) of Swing Education; (c) you shall not use any metatags or other "hidden text" using Swing Education's name or trademarks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Swing Education Properties except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to "scrape" or download data from any web pages contained in the Website, Platform & Services (except that Swing Education grants the operators of public search engines revocable permission to use spiders to copy materials from the Platform & Services for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (f) you shall not access the Swing Education Properties in order to build a similar or competitive website, application or service; (g) except as expressly stated herein, no part of the Swing Education Properties may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (h) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in the Swing Education Properties. Any future release, update or other addition to Swing Education Properties shall be subject to the Website Terms. Swing Education, its suppliers and service providers reserve all rights not granted in the Website Terms. Any unauthorized use of the Swing Education Properties terminates the licenses granted by Swing Education pursuant to the Website Terms.

Third-Party Materials. As a part of the Swing Education Properties, you may have access to materials that are hosted by another party. You agree that it is impossible for Swing Education to monitor such materials and that you access these materials at your own risk.

Registration

User Accounts. In order to access most aspects of the Swing Education Properties you may be required to become a Registered User. For purposes of the Website Terms, a “Registered User” is a User who has registered an account on the Platform & Services (“Account”).

Access through Google. Swing Education allows you to use your Google ID to set up an Account. If you access the Services using your Google ID, you may link your Account with your Google account. By doing so, you allow Swing Education to access your email address and your basic Google profile information (e.g., your full name, your profile picture, and any publicly available information you include in your profile), as is permitted under the terms and conditions that govern your use of your Google account. You represent that you are entitled to disclose your Google account login information to Swing Education and/or grant Swing Education access to your Google account (including, but not limited to, for use for the purposes described herein) without breach by you of any of the terms and conditions that govern your use of your Google account and without obligating Swing Education to pay any fees or making Swing Education subject to any usage limitations imposed by Google. PLEASE NOTE THAT YOUR RELATIONSHIP WITH GOOGLE IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH GOOGLE, AND SWING EDUCATION DISCLAIMS ANY LIABILITY FOR PERSONALLY IDENTIFIABLE INFORMATION THAT MAY BE PROVIDED BY GOOGLE IN VIOLATION OF THE PRIVACY SETTINGS THAT YOU HAVE SET IN YOUR GOOGLE ACCOUNT. Swing Education makes no effort to review any Google content, beyond your information, for any purpose, including but not limited to, for accuracy, legality or non-infringement, and Swing Education is not responsible for any Google content. Swing Education may also use another software platform ID to create an account for you, in which case the same terms and conditions apply to that software platform ID, and account.

Registration Data. In registering to use the Services, you agree to (a) provide true, accurate, current and complete information about yourself, as well as any entity you represent, such as a School, as prompted by the Services’ registration form (the “Registration Data”); and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are (1) at least eighteen (18) years old; (2) of legal age to form a binding contract; and (3) not a person barred from using the Swing Education Properties under the laws of the United States, your place of residence or any other applicable jurisdiction. You are responsible for all activities that occur under your Account. You may not share your Account or password with anyone, and you agree to (i) notify Swing Education immediately of any unauthorized use of your password or any other breach of security; and (ii) exit from your Account at the end of each session. If you provide any information that is untrue, inaccurate, not current or incomplete, or Swing Education has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Swing Education has the right to suspend or terminate your Account and refuse any and all current or future use of the Swing Education Properties (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. and represent and warrant that any information you enter is accurate as such. You agree that you shall not have more than one Account at any given time. You agree not to create an Account or use the Swing Education Properties if you have been previously removed, terminated, or banned by Swing Education.

Necessary Equipment and Software. You must provide all equipment and software necessary to connect to the Swing Education Properties. You are solely responsible for any fees, including any Internet connection or mobile fees that you incur when accessing the Swing Education Properties.

Responsibility for Content

Types of Content. You acknowledge that all information, data, text, software, music, sound, photographs, graphics, video, messages, tags and/or other materials accessible through the Swing Education Properties (“Content”), including the Website, Platform & Services, is the sole responsibility of the party from whom such Content originated. This means that you, and not Swing Education, are entirely responsible for all Content that you upload, post, e-mail, transmit or otherwise make available (“Make Available”) through the Swing Education Properties (“Your Content”), and that you and other Users of the Swing Education Properties, and not Swing Education, are similarly responsible for all Content they Make Available through the Swing Education Properties (“User Content”).

No Obligation to Pre-Screen Content. You acknowledge that Swing Education has no obligation to pre-screen Content (including, but not limited to, User Content), although Swing Education reserves the right in its sole discretion to pre-screen, refuse or remove any Content. By entering into the Terms, you hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning the transmission of Your Content, including without limitation text communications. In the event that Swing Education pre-screens, refuses or removes any Content, you acknowledge that Swing Education will do so for Swing Education's benefit, not yours. Without limiting the foregoing, Swing Education shall have the right to remove any Content that violates the Terms or is otherwise objectionable.

Ownership

Swing Education Properties. Except with respect to your Content and User Content, you agree that Swing Education and its suppliers own all rights, title and interest in the Swing Education Properties. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Swing Education Properties or the Services.

Trademarks. Swing Education's stylized name and other related graphics, logos, service marks and trade names used on or in connection with the Swing Education Properties or in connection with the Services are the trademarks of Swing Education and may not be used without permission in connection with any third-party products or services. Other trademarks, service marks and trade names that may appear on or in the Swing Education Properties are the property of their respective owners.

Other Content. Except with respect to your Content, you agree that you have no right or title in or to any Content that appears on or in the Swing Education Properties.

Your Content. Swing Education does not claim ownership of Your Content. However, when you as a User Make Available your Content on or in the Swing Education Properties, you represent that you own and/or have a royalty-free, perpetual, irrevocable, worldwide, non-exclusive right (including any moral rights) and license to use, license, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, derive revenue or other remuneration from, and communicate to the public, perform and display Your Content (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or later developed, for the full term of any worldwide intellectual property right that may exist in your Content. You represent and warrant that your content does not infringe on any third-party rights.

License to Your Content. Subject to any applicable account settings that you select, you grant Swing Education a fully paid, royalty-free, perpetual, irrevocable, worldwide, royalty-free, non-exclusive and fully sub-licensable right (including any moral rights) and license to use, license, distribute, reproduce, modify, adapt, publicly perform, and publicly display, Your Content (in whole or in part) for the purposes of operating the Swing Education Properties and providing the Services to you and to our other Users. Please remember that other Users may search for, see, use, modify and reproduce any of your Content that you submit to any "public" area of the Swing Education Properties. You warrant that the holder of any worldwide intellectual property right, including moral rights, in your Content, has completely and effectively waived all such rights and validly and irrevocably granted to you the right to grant the license stated above. You agree that you, not Swing Education, are responsible for all of your Content that you Make Available on or in the Swing Education Properties.

Feedback on Swing Education. You agree that submission of any ideas, suggestions, documents, and/or proposals to Swing Education through its suggestion, feedback, wiki, forum or similar pages ("Feedback") is at your own risk and that Swing Education has no obligations (including without limitation, obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Swing Education a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sub-licensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and

otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sub-license the foregoing rights, in connection with the operation and maintenance of the Swing Education Properties. You agree that Swing Education can share, republish, and make public such Feedback as appropriate.

User Conduct

Subject Matter. You agree not to use the Platform & Services to Make Available any Content (a) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (b) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another's privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual or is otherwise objectionable; (c) that is harmful to minors in any way; or (d) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party.

General Conduct. You agree that you will not, under any circumstances (except to the extent expressly authorized by the Website Terms): (a) upload, transmit, or distribute to or through the Platform & Services any computer viruses, worms, or any software intended to damage or alter a computer system or data; (b) send through the Platform & Services unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (c) use the Platform & Services to harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (d) interfere with, disrupt, or create an undue burden on servers or networks connected to the Platform & Services, or violate the regulations, policies or procedures of such networks; (e) attempt to gain unauthorized access to the Platform & Services (or to other computer systems or networks connected to or used together with the Platform & Services), whether through password mining or any other means; (f) harass or interfere with any other user's use and enjoyment of the Platform & Services; or (g) use software or automated agents or scripts to produce multiple accounts on the Platform & Services, or to generate automated searches, requests, or queries to (or to strip, scrape, or mine data from) the Platform & Services (provided, however, that Swing Education conditionally grants to the operators of public search engines revocable permission to use spiders to copy materials from the Platform & Services for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials, subject to the parameters set forth in our robots.txt file).

Interactions with Other Users

User Responsibility. You are solely responsible for your interactions with other Users of the Services and any other parties with whom you interact through use of the Platform & Services; provided, however, that Swing Education reserves the right, but has no obligation, to intercede in such disputes. You agree that Swing Education will not be responsible for any liability incurred as the result of such interactions. You understand and agree that Swing Education has no control over and is not responsible for the acts or omissions of any Users on or off the Platform & Services. You also understand and agree that Swing Education makes no representation or warranty regarding the quality of any services provided by any User.

Content Provided by Other Users. The Swing Education Properties may contain User Content provided by other Users. Swing Education is not responsible for and does not control User Content. Swing Education has no obligation to review or monitor, and does not approve, endorse or make any representations or warranties with respect to User Content. You use all User Content and interact with other Users at your own risk. You also agree to make best efforts to report to Swing Education any User Content or User Conduct that by another party that not allowed according to the above User Content and User Conduct sections.

Third-Party Services

Third-Party Websites & Ads. The Swing Education Properties may contain links to third-party websites (“Third-Party Websites”) and advertisements for third parties (collectively, “Third-Party Websites & Ads”). When you click on a link to a Third-Party Website or Ad, Swing Education will not warn you that you have left the Swing Education Properties and are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Websites are not under the control of Swing Education. Swing Education is not responsible for any Third-Party Websites & Ads. Swing Education provides these Third-Party Websites & Ads only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Websites & Ads, or their products or services, as Swing Education has no agency with such Third Parties. You use all links in Third-Party Websites & Ads at your own risk. When you leave our Website, Platform & Services, our Terms and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Websites, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

Mobile Text Message Terms

The following terms apply to everyone who signs up to receive one or more SMS, MMS or similar messages. As of the date of these Website Terms, only SwingSubs are asked to participate in such Messages Services.

When you sign up for the Message Services, you are expressly consenting to receive text messages on behalf of Swing Education, in the following manner, among others:

- To confirm the phone number to receive notifications.
- To notify applicable SwingSubs when a new request is issued by a School.
- To confirm and update SwingSubs, on their status with respect to a request, just as being to the waitlist, confirmed, or deselected, and to confirm and update Schools similarly.
- While you may opt out of such messaging, it is highly recommended that you use this system. You may opt out by texting the word **STOP** to **79464**. You will then receive one more message confirming that you will no longer receive messages from.

Swing Education does not charge a fee for the Message Services; however, depending on your messaging plan, your mobile carrier may charge you for each message Swing Education sends you or that you send us. It is your responsibility to know how your carrier will charge you for message costs. Swing Education assumes no responsibility for charges incurred by your using the Message Services. The Message Services may not be available in all areas at all times. This means Swing Education may not be able to successfully transmit SMS/MMS messages to you, and Swing Education has no liability for any such transmission delay or message failure. The Text Services may not work in the event of product, software, coverage, or other changes made by your wireless carrier or changes you make to your mobile device. You must provide your own wireless device, subscribe to a wireless service on a participating mobile carrier, and be able to receive text messages using that wireless device and your carrier’s service.

Disclaimers

Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SWING EDUCATION MAKES NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SWING EDUCATION PROPERTIES OR THE SERVICES WILL MEET YOUR REQUIREMENTS; (2) YOUR USE OF THE SWING EDUCATION PROPERTIES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (3) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SWING EDUCATION PROPERTIES OR THE SERVICES WILL BE ACCURATE OR RELIABLE; OR (4) ANY ERRORS IN THE SWING EDUCATION PROPERTIES WILL BE CORRECTED. ANY CONTENT DOWNLOADED FROM OR OTHERWISE ACCESSED THROUGH THE SWING EDUCATION PROPERTIES IS ACCESSED AT YOUR OWN RISK, AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY OR PERSON, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEM AND ANY DEVICE YOU USE TO ACCESS THE SWING EDUCATION PROPERTIES, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN,

OBTAINED FROM SWING EDUCATION OR THROUGH THE SWING EDUCATION PROPERTIES OR SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. THE SWING EDUCATION DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES ABOUT PROTECTION OF YOUR DATA NOR GUARANTEE DATA AVAILABILITY OR, INTEGRITY WHATSOEVER. YOU BEAR THE SOLE RESPONSIBILITY AND LIABILITY FOR MAINTAINING BACKUP OR ARCHIVE COPIES OF YOUR DATA AND/OR SUBMISSIONS TO THE WEBSITE AND SERVICES. SWING EDUCATION DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES ABOUT PROTECTION OF YOUR DATA OR ACCOUNT FROM MALICIOUS THIRD PARTY INTERFERENCE (“HACKING”).

No Liability for Conduct of Third Parties. YOU ACKNOWLEDGE AND AGREE THAT THE SWING EDUCATION IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE SWING EDUCATION PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU.

No Liability for Conduct of Other Users. YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF SWING EDUCATION.

Limitation of Liability

Disclaimer of Certain Damages. YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL SWING EDUCATION BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH SWING EDUCATION OR THE SERVICES OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE OR EMOTIONAL DISTRESS, WHETHER OR NOT SWING EDUCATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SWING EDUCATION PROPERTIES, ON ANY THEORY OF LIABILITY, RESULTING FROM THE USE OF THE WEBSITE AND SERVICES, INCLUDING, BUT NOT LIMITED TO: (A) THE USE OR INABILITY TO USE THE SWING EDUCATION PROPERTIES OR THE SERVICES; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH THE SWING EDUCATION PROPERTIES; (C) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; OR (D) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SWING EDUCATION PROPERTIES.

User Content. THE SWING EDUCATION PARTIES ASSUME NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT (INCLUDING, BUT NOT LIMITED TO, YOUR CONTENT AND USER CONTENT), USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

Basis of the Bargain. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SWING EDUCATION AND YOU.

Term and Termination

Term and Termination. These Website Terms are effective on the earliest of (1) the effective date of any signed agreement with Swing Education (“Signed Effective Date”) that references these Website Terms; (2) the date on which you create an account; or (3) the date you receive any meaningful business service from Swing Education (“Website Terms Effective Date”). The Website Terms remain in full force and effect for one year from the Website Terms Effective Date. Thereafter the Website Terms shall automatically renew on the anniversary date of the Effective Date. Either party may terminate without cause with 30 days notice by means discussed herein or in a signed agreement.

Termination of Services by Swing Education. If you have materially breached any provision of the Website Terms, or if Swing Education is required to do so by law (e.g., where the provision of the

Platform & Services is, or becomes, unlawful), Swing Education has the right to, immediately and without notice, suspend or terminate use of the Website and any Services provided to you. You agree that all terminations for cause shall be made in Swing Education's sole discretion, not subject to appeal, and that Swing Education shall not be liable to you or any third party for any termination of your Account.

Termination of Services by You. If you wish to terminate the Platform & Services provided by Swing Education, you must provide notice to Swing Education. Your notice must be sent by contacting us at www.swingeducation.com/support attn: account termination. Swing Education will assume that you wish to have your Website account suspended rather than completely deleted. If you later request that your account be unsuspended, then the terms of the terms of this Agreement will again be apply. If instead, you wish to have your Website account deleted, so that your account information is deleted (to the degree that is reasonably practical), you should explicitly request account deletion via www.swingeducation.com/support. If you then wish to create a new account, your will need to provide all required information again, and the terms of this Agreement will again apply.

Effect of Termination. Termination includes removal of access to the underlying Website, Platform & Services, and barring of further use of such. Termination of all such access also includes lack of access or deletion of your password and all related information, files and content associated with or inside your Account (or any part thereof). Upon termination of any service, your right to have any of the Platform & Services will automatically terminate immediately. You understand that any termination of services may involve permanent lack of access to your Content associated therewith from our databases. Swing Education will not have any liability whatsoever to you for any suspension or termination, including lack of such access or deletion of your Content. All provisions of the Website Terms that by their nature should survive, shall survive termination of services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

Your Data and Privacy Laws: We Do Not Sell or Share Your Information

Swing Education is committed to protecting your privacy. We have prepared this privacy section to describe to you our practices regarding the data we collect from users.

Note that Swing Education does not sell your data, is not in the business of collecting data, and does not share your data with any third-party except as absolutely necessary to facilitate your transactions, or as otherwise required by law. The Platform & Services, including some of our third-party providers, store Cookies on your computer browser in order to facilitate our services to you. You may request access to, or deletion of, your data by making a request in writing, to the email address:

www.swingeducation.com/support. Swing Education will then comply with your request, to the degree reasonably practical, within 30 days. See also Term & Termination above, which also provides a means for you to suspend your account, as opposed to deleting your account and all its associated data.

Swing Education makes every effort to comply with various laws concerning data privacy, such as The California Consumer Privacy Act, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1121, sometimes even when not explicitly required.

Types of Data We Collect. "Personal Data" means data that allows someone to identify or contact you, including, for example, your name, address, telephone number, e-mail address, as well as any other non-public information about you that is associated with or linked to any of the foregoing data.

"Anonymous Data" means data that is not associated with or linked to your Personal Data; Anonymous Data does not, by itself, permit the identification of individual persons. We collect Personal Data and Anonymous Data, as described below.

Note about Children. We explicitly forbid accounts for anyone under 18 and do not intentionally gather Personal Data from visitors who are under the age of 18. If a child under 18 submits Personal Data we will attempt to delete the information as soon as possible. If you believe that we might have any Personal Data from a child under 13, please contact us.

A Note to Users Outside of the United States. If you are a non-U.S. user of the Site, by visiting the Site and providing us with data, you acknowledge and agree that your Personal Data may be processed for the purposes identified in the Privacy Policy. In addition, your Personal Data may be processed in the country in which it was collected and in other countries, including the United States, where laws regarding processing of Personal Data may be less stringent than the laws in your country. By providing your data, you consent to such transfer to the extent allowable by law. We do not anticipate working with any entities or individuals residing in the European Union, but if you are such an entity or individual, please contact us so that we may make sure your information is treated in accordance with the General Data Protection Regulation, although we have no reason to believe that your data is not treated in compliance with this regulation.

Information You Deliberately Provide To Us. We may collect Personal Data from you, such as your first and last name, e-mail and mailing addresses, professional title, and company name when you create an account to log in. If you use our Platform & Services on your mobile device, we may collect your phone number and the unique device id number. Certain services may require our collection of your phone number. We may associate that phone number to your mobile device identification information. If you provide us feedback or contact us via e-mail, we will collect your name and e-mail address, as well as any other content included in the e-mail, in order to send you a reply. When you post content (text, images, photographs, messages, comments or any other kind of content that is not your e-mail address), the information contained in your posting will be stored in our servers and other users will be able to see it, along with your profile photo and any other information that you choose to make public on your public profile page (“Profile”). The information that you provide in your Profile will be visible to others.

Profile. Certain portions of the information you provide to us may also be displayed in your Profile. Some of the Personal Data you explicitly provide to us when you register or update your Profile is displayed on your Profile. By default, your Profile is public to other users of the Platform & Services. Content you post is also meant for public consumption with respect to other users.

For SwingSubs, we may display some of your Profile content and further distribute it to a wider audience through third party sites and services in order to increase your opportunities. We will explicitly ask for your permission to do this before doing so. We will make reasonable efforts to have your data treated in a similar manner to how Swing Education treats it in terms of security privacy, but cannot explicitly control the policies or actions of such third parties or directly change or delete such information.

General Use of Personal Data. In general, Personal Data you submit to us is used either to respond to requests that you make, or to aid us in serving you better. We use your Personal Data in the following ways:

- facilitate the creation of and secure your Account on our network;
- identify you as a user in our system;
- provide improved administration of our Site and Services;
- provide the Services you request;
- improve the quality of experience when you interact with our Site and Services;
- send you a welcome e-mail or text to verify ownership of the e-mail address or phone number provided when your Account was created;
- send you notifications via e-mail or text about request details and new requests from Schools;
- send you administrative e-mail notifications, such as security, or support and maintenance advisories;
- respond to your inquiries related to employment opportunities or other requests;
- make telephone calls to you, from time to time to solicit your feedback; and
- send newsletters, surveys, offers, and other promotional materials related to our Services and for other marketing purposes of Company.

Creation of Anonymous Data. We may create Anonymous Data records from Personal Data by excluding information (such as your name) that makes the data personally identifiable to you. We use

this Anonymous Data to analyze request and usage patterns so that we may enhance our content and improve website navigation. We reserve the right to use Anonymous Data for any purpose and disclose Anonymous Data to third parties in our sole discretion.

Information Collected via Technology.

Information Collected by Our Servers. To make our Site and Services more useful to you, our servers (which may be hosted by a third party service provider) collect information from you, including your browser type, operating system, Internet Protocol (“IP”) address (a number that is automatically assigned to your computer when you use the Internet, which may vary from session to session), domain name, and/or a date/time stamp for your visit.

Log Files. As is true of most websites, we gather certain information automatically and store it in log files. This information includes IP addresses, browser type, Internet service provider (“ISP”), referring/exit pages, operating system, date/time stamp, and clickstream data. We use this information to analyze trends, administer the Site, track users’ movements around the Site, gather demographic information about our user base as a whole, and better tailor our Services to our users’ needs. For example, some of the information may be collected so that when you visit the Site or the Services again, it will recognize you and the information could then be used to serve advertisements and other information appropriate to your interests. Except as noted in this Privacy Section, we do not link this automatically-collected data to Personal Data.

Cookies. Like many online services, we use cookies to collect information. “Cookies” are small pieces of information that a website sends to your computer’s hard drive while you are viewing the website. We may use both session Cookies (which expire once you close your web browser) and persistent Cookies (which stay on your computer until you delete them) to provide you with a more personal and interactive experience on our Site. This type of information is collected to make the Site more useful to you and to tailor the experience with us to meet your special interests and needs.

Managing Cookies. If you decide at any time that you no longer wish to accept Cookies from our Services for any of the purposes described above, then you can instruct your browser, by changing its settings, to stop accepting Cookies or to prompt you before accepting a Cookie from the websites you visit. Consult your browser’s technical information. If you do not accept Cookies, however, you may not be able to use all portions of the Platform & Services or all functionality.

Google Analytics. We use Google Analytics to help analyze how users use the Site. Google Analytics uses Cookies to collect information such as how often users visit the Site, what pages they visit, and what other sites they used prior to coming to the Site. We use the information we get from Google Analytics only to improve our Site and Services. Google Analytics collects only the IP address assigned to you on the date you visit the Site, rather than your name or other personally identifying information. We do not combine the information generated through the use of Google Analytics with your Personal Data. Although Google Analytics plants a persistent Cookie on your web browser to identify you as a unique user the next time you visit the Site, the Cookie cannot be used by anyone but Google. Google’s ability to use and share information collected by Google Analytics about your visits to the Site is restricted by the Google Analytics Terms of Use and the Google Privacy Policy.

Information Collected from You About Others. If you decide to invite a third party to create an Account, we will collect your and the third party’s names and e-mail addresses in order to send an e-mail and follow up with the third party. We rely upon you to obtain whatever consents from the third party that may be required by law to allow us to access and upload the third party’s names and e-mail addresses as required above. You or the third party may contact us at contact@swingeducation.com to request the removal of this information from our database.

Information Collected from Third Party Companies. We may receive Personal and/or Anonymous Data about you from other sources, such as verification information and results from background checks from LiveScan or other third parties. We may add this information to the information we have already collected from you via our Site in order to improve the Services we provide.

Information That We Do Share. We may disclose aggregated information about our users and information that does not identify any individual without restriction. In addition, we may disclose personal information that we collect or you provide:

- to fulfill the purpose for which you provide it, for any other purpose disclosed by us when you provide the information, or with your consent;
- to other users of the Site for the purposes of displaying information in your Profile and your feedback regarding Schools and Subs;
- to third parties designated by you;
- with our subsidiaries and affiliates;
- with contractors, service providers and other third parties we use to support our business;
- with respect to Subs' applications and the results of Subs' background checks, to the School(s) for which such application or background check was requested;
- to a buyer or other successor of Swing Education in the event of a merger, divestiture, restructuring, reorganization, dissolution or other sale or transfer of some or all of our assets, whether as a going concern or as part of bankruptcy, liquidation or similar proceeding, in which personal information held by us about users is among the assets transferred; and
- to comply with any court order, law or legal process, including responding to any government or regulatory request; to enforce our rights arising from any contracts entered into between you and us; and/or if we believe disclosure is necessary or appropriate to protect the rights, property, or safety of Swing Education, our customers or others.

Third Party Websites. We may link to third party websites. When you click on a link to any other website or location, you will leave our website and go to another website, and another entity may collect Personal Data or Anonymous Data from you. We have no control over, do not review, and cannot be responsible for, these outside websites or their content. Please be aware that the terms of this Privacy Policy do not apply to these outside websites or content, or to any collection of your Personal Data after you click on links to such outside websites. We encourage you to read the privacy policies of every website you visit. The links to third party websites or locations are for your convenience and do not signify our endorsement of such third parties or their products, content or websites.

How We Respond to Do Not Track Signals. We do not currently respond to "do not track" signals or other mechanisms that might enable consumers to opt out of tracking on our Site.

Remedies

Violations. If Swing Education becomes aware of any possible violations by you of the Terms, as well as any illegal activity, Swing Education reserves the right to investigate such violations. If, as a result of the investigation, Swing Education believes that criminal activity has occurred, Swing Education reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities. Swing Education is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on or in the Swing Education Properties, including your Content, in Swing Education's possession in connection with your use of the Swing Education Properties, to (a) comply with applicable laws, legal process or governmental request; (b) enforce the Terms, (c) respond to any claims that your Content violates the rights of third parties, (d) respond to your requests for customer service, or (e) protect the rights, property or personal safety of Swing Education, its Users or the public, and all enforcement or other government officials, as Swing Education in its sole discretion believes to be necessary or appropriate.

Breach. In the event that Swing Education determines, in its sole discretion, that you have breached any portion of the Terms, or have otherwise demonstrated conduct inappropriate for the Swing Education Properties, Swing Education reserves the right to:

- Warn you via e-mail (to any e-mail address you have provided to Swing Education) that you have violated the Website Terms;
- Delete any of your Content provided by you or your agent(s) to Swing Education Properties;

- Discontinue your registration(s) with the any of the Swing Education Properties, including any Services;
- Discontinue your access to any Services and/or discontinue providing Services;
- Notify and/or send Content to and/or fully cooperate with the proper law enforcement authorities for further action; and/or
- Pursue any other action that Swing Education deems to be appropriate.

No Subsequent Registration. If your registration(s) with or ability to access the Swing Education Properties is discontinued by Swing Education due to your violation of any portion of the Terms or for conduct that Swing Education otherwise deems inappropriate, then you agree that you shall not attempt to re-register with or access the Swing Education Properties through use of a different member name or otherwise. In the event that you violate the immediately preceding sentence, Swing Education reserves the right, in its sole discretion, to immediately take any or all of the actions set forth herein without any notice or warning to you.

Governing Law and Dispute Resolution. This Website Terms and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different state. All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with this Agreement or the use of any product or service provided by Swing Education, including the Services, that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis, conducted in San Mateo County, California. In any circumstances where the foregoing permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within San Mateo County, California.