

**Website Master Terms of Service**  
**Last Updated: September 1, 2020**

Please read this Website Master Terms of Service and Privacy Policy (“Website Terms”) carefully before using this Website, [www.swingeducation.com](http://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](http://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](http://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](http://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](http://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 SwingSus, 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.

You therefore Assume the Risk and agree to a Waiver of Liability Relating to COVID-19, acknowledge the highly contagious nature of COVID-19, and voluntarily assume the risk that students and others may be exposed to or infected by COVID-19 by attending and availing themselves of the resources of your School(s), and that such exposure or infection may result in personal injury, illness, permanent disability, and death of parents and their children, and others with which they come into close contact. You understand that the risk of becoming exposed to or infected by COVID-19 may result from the actions or omissions of a SwingSub or others who come into contact or proximity with your School. You voluntarily agree to assume all of the foregoing risks and accept sole responsibility for any injury to your School staff, student(s), parents and/or their child(ren), including, but not limited to, personal injury, illness, disability, permanent disability, damage, loss, claim, liability, or expense, of any kind that may be incurred in (the “Claims”). You hereby waive, release, covenant not to sue, discharge, and hold harmless Swing Education, its employees, agents, and representatives, of and from the Claims.

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](http://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](http://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](http://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](http://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](http://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.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1121](https://leginfo.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](mailto: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.