Swing Education Services Agreement

This Swing Education Services Agreement (this "Agreement") is entered into on June 27, 2018 (the "Effective Date") by and between Swing Education, Inc. ("Swing Education," "we" or "us") and the School(s) listed on the signature page attached hereto ("School" or "you").

Please read this Agreement carefully before using any of the Services provided by Swing Education, including those made available to you at or through www.swingeducation.com (the "Website"), offered by Swing Education. This Agreement governs your use of the Swing Education Website and all related mobile and web services, including those from third parties that are incorporated or used in conjunction with the Swing Education website and service (collectively, the "Services").

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

(a) **Access to the Services**, which allows authorized users to post requests for substitute teachers and other additional temporary staff (individually a "SwingSub," and collectively, the "SwingSubs") on the Swing Education Website; Track and manage request status; and view additional information about SwingSubs (i.e., a SwingSub profile).

(b) **Access to Pool of Substitute Teachers** (the "SwingSub Pool").

(c) **Access to Our Verification Services**, which includes (i) confirmation of a negative test for Tuberculosis (TB) Test; (ii) whether the SwingSub has obtained a teaching credential or qualifying substitute teaching permit; and (iii) the results of a standard Live Scan Fingerprint Background Check that conforms to the laws and requirements of the state in which you operate (collectively, the "Verification Services"), including ongoing monitoring of any Live Scan check updates concerning the SwingSub that Swing Education receives from relevant state entities (such as in CA, the CADOJ) while the SwingSub is a registered member of the Service.

Note: The SwingSub pool will also include Subs that do not currently hold a permit or credential. School may use the platform to explicitly request substitute teachers that do not hold a qualifying substitute teaching permit or full-time teaching credential. School will be responsible for ensuring accuracy of requests that do not require a substitute with a permit or credential.

(d) **Limitations**. Swing Education provides the Services as a venue for connecting Schools and substitute teachers. 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 Subs. Swing Education does not participate in, and the Services expressly do not include, the relationship or interaction between Schools and Subs, except to provide a platform for Schools to post requests to fill substitute teacher openings and for Subs to review and accept those requests, and to facilitate and collect payments from Schools to Subs for those openings filled through the use of the Services.

(e) **Relationship with SwingSubs**. The SwingSubs are not employees, agents, or associates of Swing Education in any way and we do not exercise any control over their actions or schedules.

2. Acceptance of the Terms of Service and Appendix Terms. In order to use the Website, Swing Education requires users to agree to the Master Terms of Service and Privacy Policy available at www.swingeducation.com/s/Master-Terms-of-Service.pdf (the "Website Terms"). By signing this Agreement, you also agree to the Standard Terms contained in Appendix A below.

3. Payments. Payment for the services of a SwingSub will be made to Swing Education according to the following:

(a) **Applicable Rate**. All rates will be set by the School in its discretion (the "Applicable Rate"). Swing Education does not set daily rates. Any request over 4 hours is assigned the full-day pay rate and anything 4 hours or less is assigned the half-day pay rate.

(b) **Fill Fee**. Swing charges a 35% fee ("Standard Fee"), based on the Applicable Rate, for a successful fill. The total rate invoiced to the School ("Total Rate"), inclusive of Swing Education's fee, will be referenced on the School's requests and in the School's profile. The amount then due ("Fill Fee") will be equal to the Applicable Rate plus Swing Education's Standard Fee, multiplied by the number of days that the SwingSub was engaged by the School.

(c) **Cancellations**. Requests that are filled by a SwingSub, and canceled within 24 hours (and not related to performance reasons) will be invoiced based on the anticipated Amount Due. Current cancel policy options and terms are highlighted in the Terms of Service.

(d) **Invoicing**. Swing Education will invoice the School for the amount due within 14 days of the completion of the SwingSub's engagement. School shall pay all amounts due within thirty (30) days of Swing Education's invoice date.

(e) **Late Payments**. Outstanding balances 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. Swing Education reserves the right to suspend or terminate School's use of the services until any outstanding balance is paid.

4. Recruitment. If you want to hire or contract directly with a SwingSub, you agree to pay Swing Education a $2,500 finder's fee to cover costs associated with finding, screening and onboarding the sub, and anticipated loss of revenue.

5. 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 SWING EDUCATION SERVICES, INCLUDING WITHOUT LIMITATION THE PROVISION OF ANY SERVICES BY ANY SWINGSUB. FURTHERMORE, BEYOND THE VERIFICATION SERVICES WE PROVIDE, SWING EDUCATION MAKES NO WARRANTY, REPRESENTATION OR CONDITION AS TO THE EFFECTIVENESS, COMPETENCE, SKILL, OR BEHAVIOR OF THE SWINGSUBS. YOU HEREBY 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 THE SWINGSUBS WHILE THEY ARE ENGAGED BY YOU, ON YOUR PREMISES, AND/OR PERFORMING THE DUTIES FOR WHICH YOU ENGAGE WITH THEM.

6. Limitation of Liability. Swing Education takes its verification responsibilities seriously, including verifying that subs undergo the Live Scan background check and that Swing Education reviews the information provided by the Live Scan check. 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 the DOJ or FBI.

EACH PARTY 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) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN PERFORMING ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR (B) A MATERIAL BREACH BY A PARTY OF ANY OF ITS REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS 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 AS A RESULT OF YOUR USE OF THE SERVICES IN THE TWELVE MONTH PERIOD PRECEDING THE DATE YOU FIRST ASSERT A CLAIM.

[*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
CEO

Date: _____

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

San Leandro Unified School District

_____
Name: John Thompson, Ed.D.
Title: Assistant Superintendent, Personnel Services

Date: _____

Address:
835 E. 14th Street, Suite 200
San Leandro, CA 94577

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 get 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 have 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. 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 Schools' confidential information will be imputed to Swing Education as a result of a SwingSub's access to such information.

3. 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 should be sent to: Swing Education, Inc., 181 Centre St., #5, Mountain View, CA 94041. 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 Santa Clara County, California, for such purpose.

10. 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.

(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) **Entire Agreement**. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

(e) **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.

(f) **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.

(g) **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.

(h) **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).

(i) **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.