

Terms of Use

These terms of use (the "Terms") are a legal contract between you and Gradum Baseball, LLC, Gradum, LLC, GradumGswing Franchising, LLC and the entity who granted a facility contractual authority to independently own and operate such Gradum Gswing facility, and any owner of any other Gradum Gswing facility you may visit (the "Company", "Parties", "Gradum", "our", "us", and "we") and are applicable to the services available on or through the Company's website located at the url: www.gradumgswing.com, as well as the Company's mobile applications (collectively, the "Site", where applicable). By accessing any area of the Site, you agree to be legally bound to and to abide by the Terms. If you do not agree with any of the Terms, do not access or otherwise use the Site. *Note: These terms contain a dispute resolution and arbitration provision, including class action waiver that affects your rights under the Terms and with respect to disputes you may have with the Company. You may opt out of the binding individual arbitration and class action waiver as provided below.*

Medical Disclaimer

The information and materials posted on or accessible through the Site are for informational purposes only and are not intended to be a substitute for professional medical advice, diagnosis, or treatment. The Company does not recommend or endorse any specific products, procedure, opinions, or other information that may be mentioned on the Site. Reliance on any information provided by the Company, its affiliated companies, contributors to, or other users of the Site is solely at your own risk. You should consult your physician or other health care practitioner before starting any exercise program. Never disregard professional medical advice or delay in seeking it because of something you have read on the Site.

Changes

The Company may update the Terms at any time and provide notification to you by updating the Company's website with the last modified date or requiring you to agree to the updated Terms on the Company's mobile application. By using the Site after the Company has updated the Terms, you are agreeing to all of the updated Terms; if you do not agree with any of the updated Terms, you must stop using the Site.

Using the Site

In order to access certain areas of the Site, you must register with the Company for an account and submit your name, email address, preferred password, and other information requested on an account registration page. The Company shall have the right to approve or reject your account in the Company's sole discretion.

By using this Site, you represent, acknowledge and agree that you are at least 18 years of age or the age of legal majority in your country of jurisdiction, or if you are under 18 years of age or the age of legal majority in your country but are at least 13 years old (a "Minor"), that you are using the Site with the consent of your parent or legal guardian who has agreed to the Terms. If you are a parent or legal guardian agreeing to the Terms for the benefit of a Minor, you are fully responsible for the Minor's use of the Site, including

all legal liability he or she may incur. If you are not at least 13 years old, you may not use the Site.

The Company provides you a limited, personal, non-exclusive and non-transferable license to use the Site and Materials only as expressly permitted by these Terms.

Passwords

You are responsible for maintaining the confidentiality of your account password to login to the Site (the "Password") and for all activities that occur using your Password. You agree not to share your Password, let others access or use your Password or do anything else that might jeopardize the security of your Password. You agree to notify the Company promptly if your Password is lost, stolen, if you are aware of any unauthorized use of your Password or if you know of any other breach of security in relation to the Site.

All the information that you provide when registering for an account and otherwise through the Site or mobile applications must be accurate, complete and up to date. You may change, correct or remove any information from your account by logging into your account directly and making the desired changes.

Mobile Applications

The following terms apply to a mobile application the Company provides to you that is designed for use on an Apple iOS-powered mobile device (an "iOS App"):

- You acknowledge that these Terms are between you and the Company only, and not with Apple, Inc. ("Apple").
- Your use of the iOS App must comply with Apple's then-current App Store Terms of Service.
- The Company, and not Apple, is solely responsible for the iOS App and the Services and content available thereon. You acknowledge that Apple has no obligation to provide maintenance and support services with respect to our iOS App. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to the iOS App.
- You agree that the Company, and not Apple, is responsible for addressing any claims by you or any third-party relating to the iOS App or your possession and/or use of the OS App, including, but not limited to: (i) product liability claims; (ii) any claim that the iOS App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation, and all such claims are governed solely by these Terms and any law applicable to us as provider of the iOS App.
- You agree that the Company, and not Apple, shall be responsible, to the extent required by these Terms, for the investigation, defense, settlement and discharge of any third-party intellectual property infringement claim related to the iOS App or your possession and use of the iOS App.
- You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a

“terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

- You agree to comply with all applicable third-party terms of agreement when using the iOS App (e.g., you must not be in violation of your wireless data service terms of agreement when using the iOS App).
- You agree that Apple and Apple’s subsidiaries are third-party beneficiaries to these Terms as they relate to your license of the iOS App. Upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as they relate to your license of the iOS App as a third-party beneficiary thereof. The following terms apply with respect to a mobile application the Company provides to you that is designed for use on an Android-powered mobile device (an “Android App”):
 - You acknowledge that these Terms are between you and the Company only, and not with Google, Inc. (“Google”).
 - Your use of the Android App must comply with Google’s then-current Android Market Terms of Service.
 - Google is only a provider of the Android Market where you obtained the Android App. The Company, and not Google, is solely responsible for the Android App and the Services and content available thereon. Google has no obligation or liability to you with respect to the Android App or these Terms.
 - You acknowledge and agree that Google is a third-party beneficiary to the Terms as they relate to the Android App.

In addition, if you use mobile applications to access the Site, those applications may automatically download and install updates from time to time, and you agree to receive such updates (and permit us to deliver these updates) on your mobile device as part of your use of the Site.

Geo-Location Terms

The Site include may make use of certain functionality and services provided by third parties that allow the Company to provide maps, geocoding, places and other content. If the mobile application you install includes geolocation services from Google, Inc. (“Google”), use of such geolocation Services is subject to Google’s then current [Terms of Use](#) for Google Maps/Google Earth and by using such services, you are agreeing to be bound by Google’s Terms of Use.

Purchases

You may be permitted to use the Company’s mobile application to order class sessions. In order to do so, you acknowledge and agree that you must supply certain information relevant to your transaction to our third-party payment processor, MINDBODY, including, without limitation, your credit or debit card number, the expiration date of your credit or debit card, the name on your credit or debit card, and/or your billing address (the “Payment Information”). By providing the Payment Information, you expressly authorize

us and/or our third party payment processor to charge the applicable fees to the payment method provided by you, as well as any applicable taxes and other charges incurred thereto. You agree that we (or our third-party payment processors) may charge any unpaid amounts to your provided payment method and/or send you a bill for such unpaid fees.

Privacy Policy

Please review our Privacy Policy (the "Privacy Policy"), which explains how we use information that you submit to the Company.

Links to Third-Party Sites

We may provide links from the Site to third-party websites ("Third-Party Sites"), including, but not limited to, links owned by third parties who manage the sales of Company-branded merchandise and class bookings for the Company (i.e., MINDBODY) and our franchisees. If you use these links, you will leave the Site. The Company provides these links to you as a convenience, and we do not verify, make any representations, or take responsibility for the Third-Party Sites, including the truthfulness, accuracy, quality, or completeness of the content, services, links displayed, or other activities conducted on or through the Third-Party Sites. Therefore, unless specifically stated on the Site, we do not endorse or make any representations about Third-Party Sites or any information, material, or results that may be obtained through the use of Third-Party Sites. In addition, certain areas of the Site may allow you to interact or conduct transactions with Third-Party Sites. If so, you may be able to configure the privacy settings of your account on a Third-Party Site to permit your activities to be shared with your contacts on that Third-Party Site. If you decide to access any of the Third-Party Sites linked on the Site, you do this entirely at your own risk, and you must follow the privacy policies and the terms and conditions for those Third-Party Sites.

Similarly, the Site includes web pages from which you may obtain information about Gradum Gswing operated by independent franchisees ("Franchisee Sites"). Unless specifically stated on the Site, we do not endorse or make any representations about any services that may be offered at franchisee-owned locations. YOU AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAWS THE COMPANY WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY GOODS, SERVICES, INFORMATION, RESOURCES, OR CONTENT AVAILABLE ON OR THROUGH ANY THIRD-PARTY SITE OR FRANCHISEE SITE, FOR ANY THIRD-PARTY DEALINGS OR COMMUNICATIONS (INCLUDING BUT NOT LIMITED TO ANY DEALINGS WITH OUR FRANCHISEES), OR FOR ANY HARM RELATED TO ANY GOODS, SERVICES, INFORMATION, RESOURCES, OR CONTENT AVAILABLE ON OR THROUGH ANY THIRD-PARTY SITE OR FRANCHISEE SITE, OR FOR ANY DAMAGES OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH YOUR USE OR RELIANCE ON THE CONTENT OR BUSINESS PRACTICES OF ANY THIRD PARTY.

Trademarks and Content

All information and content provided via the Site, such as trademarks, service marks, trade names, trade dress, text, graphics, logos, images and icons, as well as the arrangement thereof, software, application updates, and other material ("collectively, the

Materials”) are the sole property of the Company or our licensors and is protected by copyright, trademark, patent, or other proprietary rights.

It is expressly prohibited for you to modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any part of the Site including the Materials in any manner. If you breach any of these Terms, the above license will terminate automatically. Any rights or licenses not expressly granted herein are reserved.

Reporting Violations of Your Copyrights or other Intellectual Property Rights

We respect the intellectual property rights of others, and we ask you to do the same. We may, in appropriate circumstances and at our discretion, terminate service and/or access to the Site for users who infringe the intellectual property rights of others. If you believe that your work is the subject of copyright infringement and/or trademark infringement and appears on our Site, please provide our designated agent with the following information in accordance with the provisions of the Digital Millennium Copyright Act (“DMCA”):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- Identification of the copyrighted work and/or trademark claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such copyrighted works at that site, and a description of your interest or rights with respect to those works or trademarks.
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity (and the date and time of the alleged infringement) and that is to be removed or access to which is to be disabled at the Site, and information reasonably sufficient to permit us to locate the material.
- Information reasonably sufficient to permit us to contact you as the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted.
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright and/or trademark owner, its agent, or the law.
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Our agent for notice of claims of copyright or trademark infringement on this Site can be reached as follows:

By Mail:

Gradum, LLC

7872 SW Jack James Drive, Suite 4

Stuart, FL 34997

Attn: Legal Department

By Email: info@gradumbaseball.com

Please also note that for copyright infringements under Section 512(f) of the United States Copyright Act, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability. We reserve the right, in our sole discretion, to terminate the account or access of any user of the Site or mobile applications who is the subject or repeated DMCA or other infringement notifications.

Disclaimer of Warranties

Your use of this Site is at your own risk. The Company endeavors to ensure the accuracy of the Materials on the Site at all times, however the Materials may from time to time include inaccuracies or typographical or other errors. To the extent permitted by applicable law, the Company does not warrant the accuracy or timeliness of the Materials contained on the Site. To the extent permitted by applicable law, the Company has no liability for any errors or omissions in the Materials, whether provided by the Company, our licensors or suppliers or other users.

THE COMPANY, FOR ITSELF AND ITS LICENSORS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, MAKES NO EXPRESS, IMPLIED OR STATUTORY REPRESENTATIONS, WARRANTIES, OR GUARANTEES IN CONNECTION WITH THE SITE, THE SERVICES, THE MOBILE APPLICATIONS, OR ANY MATERIALS RELATING TO THE QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF ANY INFORMATION OR CONTENT CONTAINED OR PRESENTED ON THE SITE OR THE MOBILE APPLICATIONS, INCLUDING WITHOUT LIMITATION THE MATERIALS. UNLESS OTHERWISE EXPLICITLY STATED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THIS SITE, THE SERVICES, THE MOBILE APPLICATIONS, MATERIALS AND ANY INFORMATION OR CONTENT CONTAINED OR PRESENTED ON OR THROUGH THE SITE AND MOBILE APPLICATIONS, IS PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE" AND "WHERE-IS" BASIS WITH NO WARRANTY WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AS WELL AS ANY WARRANTIES IMPLIED FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE OR USAGE OF TRADE. THE COMPANY DOES NOT PROVIDE ANY WARRANTIES AGAINST VIRUSES, SPYWARE OR MALWARE THAT MAY BE INSTALLED ON YOUR COMPUTER.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE QUALITY OR SUITABILITY OF ANY PRODUCTS, SERVICES OR BUSINESSES THAT MAY BE DISPLAYED ON THE SITE, ON THE MOBILE APPLICATIONS, OR THROUGH SERVICES, OR THE CONDUCT OF USERS OF THE SITE, MOBILE APPLICATIONS, OR SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SITE, MOBILE APPLICATIONS, OR SERVICES AND WITH OTHER PERSONS OR ENTITIES WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE, MOBILE APPLICATIONS, AND/OR SERVICES, PARTICULARLY IF YOU DECIDE MEET OR CONDUCT BUSINESS OFFLINE OR IN PERSON.

Consumer Law

Your use of the Site and/or the Mobile Applications may be subject to laws that provide you with certain warranties, guarantees, rights and remedies that cannot be excluded ("Non-excludable Guarantees"). Nothing in these Terms (including the disclaimers above and limitations of liability below) will be read or applied so as to exclude, restrict or modify any Non-excludable Guarantees, however, to the extent permitted by law, our liability is limited to the statutory remedies (if any) available for breach or failure to comply with the Non-excludable Guarantees.

Limitation of Liability

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR USE OF THE MOBILE APPLICATIONS OR FROM YOUR DISPLAYING, COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THE SITE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE COMPANY BE LIABLE TO YOU FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) HOWEVER ARISING (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE), EVEN IF THE COMPANY KNOWS THERE IS A POSSIBILITY OF SUCH DAMAGE.

YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SITE, MOBILE APPLICATIONS, OR SERVICES, AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE THEREOF (INCLUDING, BUT NOT LIMITED TO, ORANGETHEORY FRANCHISEES). YOU UNDERSTAND THAT WE DO NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE SITE, MOBILE APPLICATIONS, OR SERVICES. WE MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE SITE, MOBILE APPLICATIONS, OR SERVICES OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE USERS OF THE SITE, MOBILE APPLICATIONS, OR SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH ANY PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE, SITE, THE MOBILE APPLICATIONS, OR SERVICES, PARTICULARLY IF YOU MEET OFFLINE OR IN PERSON.

Dispute Resolution and Arbitration; Class Action Waiver

Please read the following Dispute Resolution and Arbitration; Class Action Waiver provision (this "Provision") carefully. It affects your rights (without limiting any rights available to you under any applicable Non-excludable Guarantees).

All Disputes (as defined below) between you and the Company shall be resolved by binding arbitration. Arbitration is a form of private dispute resolution and replaces the right to go to court. In the absence of this Provision, you may otherwise have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). Except as otherwise provided, entering into these Terms constitutes a waiver of your right to litigate claims and all opportunity to be heard by a judge or jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. The

arbitrator must follow these Terms and can award the same damages and relief as a court (including attorney's fees).

For the purpose of this Provision, "the Company" means the Company and its parents, subsidiary, and affiliate companies, and each of their respective officers, directors, employees, and agents. The term "Dispute" means any dispute, claim, or controversy between you and the Company regarding, arising out of or relating to any aspect of your relationship with the Company, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable cause of action or claim for relief, and includes the validity, enforceability or scope of this Provision (with the exception of the enforceability of the Class Action Waiver clause below). "Dispute" is to be given the broadest possible meaning that will be enforced, and shall include any claims against other parties relating to services or products provided or billed to you (such as the Company's licensors, suppliers, dealers or third-party vendors) whenever you also assert claims against us in the same proceeding.

YOU AND THE COMPANY EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION.

Pre-Arbitration Claim Resolution

For all Disputes, whether pursued in court or arbitration, you must first give the Company an opportunity to resolve the Dispute. You must commence this process by mailing written notification to Gradum, LLC, 7872 SW Jack James Drive, Suite 4, Stuart, FL 34997, Attn.: Legal Department, Telephone: (888) 9GRADUM (888-947-2386). That written notification must include (1) your name, (2) your address, (3) a written description of your claim, and (4) a description of the specific relief you seek. If the Company does not resolve the Dispute within 45 days after it receives your written notification, you may pursue your Dispute in arbitration. You may pursue your Dispute in a court only under the circumstances described below.

Exclusions from Arbitration/Right to Opt Out

Notwithstanding the above, you or the Company may choose to pursue a Dispute in court and not by arbitration if (a) the Dispute qualifies, it may be initiated in small claims court or, to the extent it has jurisdiction, an equivalent authority; or (b) YOU OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST CONSENT TO THESE TERMS (the "Opt-Out Deadline"). You may opt out of this Provision by mailing written notification to Gradum, LLC, 7872 SW Jack James Drive, Suite 4, Stuart, FL 34997, Attn.: Legal Department, Telephone: (888) 9GRADUM (888-947-2386). Your written notification must include (1) your name, (2) your address, and (3) a clear statement that you do not wish to resolve disputes with the Company through arbitration. Your decision to opt-out of this Arbitration Provision will have no adverse effect on your relationship with the Company. Any opt-out request received after the Opt-Out Deadline

will not be valid and you must pursue your Dispute in arbitration or small claims court (or, to the extent it has jurisdiction, an equivalent authority).

Arbitration Procedures

If this Provision applies and the Dispute is not resolved as provided above (Pre-Arbitration Claim Resolution) either you or the Company may initiate arbitration proceedings. The American Arbitration Association ("AAA"), www.adr.org, or JAMS, www.jamsadr.com, will arbitrate all Disputes, and the arbitration will be conducted before a single arbitrator. The arbitration shall be commenced as an individual arbitration only, and shall in no event be commenced as a class arbitration or a consolidated or representative action or arbitration. All issues shall be for the arbitrator to decide, including the scope of this Provision.

For arbitration before AAA, for Disputes of less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA's Commercial Arbitration Rules will apply. In either instance, the AAA's Optional Rules For Emergency Measures Of Protection shall apply. The AAA rules are available at www.adr.org or by calling 1 (800) 778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at www.jamsadr.com or by calling 1 (800) 352-5267. This Provision governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action or representative action procedures or rules apply to the arbitration.

Because the Site, the mobile applications, and these Terms concern interstate commerce, the Federal Arbitration Act ("FAA") governs the arbitrability of all Disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

Arbitration Award – The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party or if required by applicable law. Such award will be final and binding on the parties, except for any right of appeal provided by the FAA or other applicable law and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

Location of Arbitration – You or the Company may initiate arbitration in either Martin County, Florida or the federal judicial district that includes your billing address.

Payment of Arbitration Fees and Costs – The Company will pay all arbitration filing fees and AAA or JAMS hearing fees and any arbitrator's hearing fees, costs and expenses upon your written request to the arbitrator given at or before the first evidentiary hearing in the arbitration. You are responsible for all additional fees and costs that you incur in the arbitration, including, but not limited to, attorneys or expert witnesses. Fees and costs may be awarded as provided pursuant to applicable law. In addition to any rights to recover fees and costs under applicable law, if you provide notice and negotiate in good faith with the Company as provided in the section above titled "Pre-Arbitration Claim

Resolution” and the arbitrator concludes that you are the prevailing party in the arbitration, you will be entitled to recover reasonable attorney’s fees and costs as determined by the arbitrator.

Class Action Waiver

Except as otherwise provided in this Provision, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, consolidated action, representative action, or private attorney general action) unless both you and the Company specifically agree to do so in writing following initiation of the arbitration. If you choose to pursue your Dispute in court by opting out of the Arbitration Provision, as specified above, this Class Action Waiver will not apply to you. Neither you, nor any other user of the Site or the mobile applications can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

Jury Waiver

You understand and agree that by entering into these Terms, to the extent that a civil jury trial would otherwise be available to you and the Company, you and the Company are each waiving the right to a jury trial or a trial before a judge in a public court (except where applicable law prohibits such a waiver). In the absence of this Provision, you and the Company might otherwise have had a right or opportunity to bring Disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). Except as otherwise provided below, those rights are waived. Other rights that you would have if you went to court, such as the right to appeal and to certain types of discovery, may be more limited or may also be waived.

Severability

If any clause within this Provision (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Provision, and the remainder of this Provision will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire Provision will be unenforceable, and the Dispute will be decided by a court.

If this Provision as a whole is not enforceable for any reason, then, except where prohibited by law, you agree that exclusive jurisdiction and venue in any legal proceeding directly or indirectly arising out of or relating to any Dispute will be decided in the courts located in Martin County in the State of Florida.

Continuation

This Provision shall survive the termination of your service with the Company or its affiliates. Notwithstanding any provision in these Terms to the contrary, we agree that if the Company makes any change to this Provision (other than a change to the Notice Address), you may reject any such change and require the Company to adhere to the present language in this Provision if a dispute arises between you and the Company.

Language

The Parties hereto have expressly required that these Terms and all documents and notices relating thereto be drafted in the English language.

General

We prefer to advise you if we feel you are not complying with these Terms and to recommend any necessary corrective action. However, certain violations of these Terms, as determined by us, may result in immediate termination of your access to the Site and/or license to use the mobile applications without prior notice to you. The Federal Arbitration Act, Florida state law and applicable U.S. federal law, without regard to the choice or conflicts of law provisions, will govern these Terms. Foreign laws do not apply. The United Nations on Contracts for the International Sale of Goods and any laws based on the Uniform Computer Information Transactions Act (UCITA) shall not apply to these Terms. Except for Disputes subject to arbitration as described above, any disputes relating to these Terms, the Site, or the mobile applications will be heard in the courts located in Martin County in the State of Florida. If any of these Terms is found to be inconsistent with applicable law, then such term shall be interpreted to reflect the intentions of the parties, and no other terms will be modified. Our failure to enforce any of these Terms is not a waiver of such term. These Terms are the entire agreement between you and the Company and supersede all prior or contemporaneous oral or written negotiations, discussions or agreements between you and the Company about the Site and the mobile applications. The proprietary rights, disclaimer of warranties, representations made by you, indemnities, limitations of liability and general provisions shall survive any termination of these Terms.

California Consumer Notice

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: This Site and the mobile applications are provided by Gradum, LLC, 7872 SW Jack James Drive, Suite 4, Stuart, FL 34997. If you have a question or complaint regarding the Site or the mobile applications, please contact Customer Service at info@gradumbaseball.com. You may also contact us by writing Gradum, LLC, 7872 SW Jack James Drive, Suite 4, Stuart, FL 34997, Attn.: Legal Department. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by post at 1625 North Market Boulevard, Sacramento, CA 95834 or by telephone at (916) 445-1254 or (800) 952-5210 or Hearing Impaired at TDD (800) 326-2297 or TDD (916) 322-1700.

Contact Us

If you have any questions about these Terms or otherwise need to contact us for any reason, you can reach us at Gradum, LLC, 7872 SW Jack James Drive, Suite 4, Stuart, FL 34997, Attn.: Legal Department, Telephone: (888) 9GRADUM (888-947-2386). Questions or complaints about Gradum Gswing locations and the services offered at such locations should be directed to the operator of the specific location in question.