

## Terms of Use

Thank you for visiting The Jayson Tatum Foundation website. The Jayson Tatum Foundation owns and operates this website and selected other domains (“**Site**”). As used in this Agreement, “**Foundation**,” “**we**,” “**us**,” and “**our**” shall mean The Jayson Tatum Foundation. It is important to advise you of the rules that apply to your use of our Site and ask that you read them carefully. These Terms of Use (“**Terms**”) are a legally binding agreement between you (including the organization that you represent, if any) and the Foundation.

BY ACCESSING OR USING ANY PART OF THE SITE, YOU AGREE THAT YOU HAVE READ, UNDERSTOOD, AND AGREED TO BE BOUND BY THESE TERMS, WHICH CONTAIN AN ARBITRATION AGREEMENT, A WAIVER OF CLASS-ACTION RIGHTS, AND LIABILITY LIMITATIONS. IF YOU DO NOT AGREE TO BE SO BOUND, YOU MAY NOT ACCESS OR USE THE SITE.

If you have any questions about these Terms, please contact us by email using the Contact Us link.

### 1. GENERAL.

- 1.1 Permitted Use. This Site may only be used by individuals and entities that can form legally binding contracts. No person under the age of 18 may use this Site without the permission and supervision of a parent or legal guardian. Your use of this Site will be deemed to be a representation that you are 18 years of age or older or using this Site with the permission of your parent or legal guardian. By using this Site on behalf of any third party, you are representing to us that you are an authorized representative of that third party and that your use of this Site constitutes that third party’s acceptance of these Terms. In addition, if you have been previously prohibited from accessing this Site, you are not permitted to access this Site. This Site and its contents and the related services (collectively, “**Services**”) are intended solely for your personal, non-commercial use in order to view and purchase products and participate in the programs that we offer (the “**Permitted Use**”) and subject to these Terms, you may use this Site only for the Permitted Use.
- 1.2 Prohibited Conduct. In your use of this Site, you shall not: (i) infringe any patent, trademark, trade secret, copyright, right of publicity or other right of any party; (ii) defame, abuse, harass, stalk any individual, or disrupt or interfere with the security or use of this Site or any websites linked to it; (iii) interfere with or damage this website, including, without limitation, through the use of viruses, Trojan horses, harmful code, flood pings, denial of service attacks, packet or IP spoofing, forged routing or electronic mail address information, or reverse engineering any technology used to provide this website; (iv) attempt to use another user’s account, impersonate another person or entity, misrepresent your affiliation with us or another person or entity or create or use a false identity; (v) attempt to obtain unauthorized access to this website or portions of this website that are restricted from general access; (vi) engage, directly or indirectly, in transmission of “spam,” chain letters, junk mail or any other type of unsolicited solicitation; (vii) collect, manually or through an automatic process, information about other users or other information on or relating to this Site; (viii) use any meta tags or any other “hidden text” utilizing our name, trademarks, or product names; (ix) advertise, offer to sell, or sell any goods or services; (x) engage in any activity that interferes with any third party’s ability to use or enjoy this Site; or (xi) assist any third party in engaging in any activity prohibited by these Terms.
- 1.3 Privacy Policy. Foundation’s Privacy Policy (which describes how we collect, use, and disclose your data and your consent to such collection, use, and disclosure) at [https://www.thejaysonatumfoundation.org/privacy\\_policy.pdf](https://www.thejaysonatumfoundation.org/privacy_policy.pdf) is incorporated into and is a part of these Terms.

### 2. INTELLECTUAL PROPERTY; THIRD-PARTY CONTENT AND SERVICES.

- 2.1 **Intellectual Property Rights.** The information provided on this Site is free of charge and for informational purposes only and does not create a business or professional services relationship between you and Foundation. The Site, content, visual interfaces, information, graphics, design, compilation, computer code, products, software, services, and all other elements of the Services (“**Content**”), the trademarks, service marks and logos contained therein (“**Marks**”), the design of the Site and/or Services (“**Site Design**”), and all software and other technology used to provide the Site and/or Services (“**Technology**”), are owned by or licensed to Foundation and/or its affiliates. Content is provided to you “as is” and may not be used, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever. We reserve all rights not expressly granted in and to the Site, Content, Marks, Site Design and Technology. Using the Site and/or Services does not give you any ownership of or right in or to any Content, Marks, Site Design or Technology. We reserve all rights not expressly granted herein.
- 2.2 **Third-party Content.** The Site may contain information and content provided by third parties. We have no obligation to monitor, we do not endorse, and we are not liable for any third-party content. In addition, the Site may contain links to third-party websites. Foundation is not responsible for the content on any linked site or any link contained in a linked site. We do not endorse or accept any responsibility for the content on such third-party sites.
- 2.3 **Third-party Services.** Third parties may offer their services directly to you through the Site. In such case, you may be required to agree to the third party’s terms of service and/or privacy policy to use the service. Foundation will not be liable in any way for the acts or omissions of such third party, the terms of service or privacy policy of the third party or its failure to adhere to its terms of service or privacy policy, or any loss, damages, liability, or expenses (including attorneys’ fees) that you may incur arising from or related to such third party’s services or products.
3. **PAYMENT.** In addition to the content and Services available for no charge through the Site, you may be offered the opportunity to purchase, subscribe to, or otherwise obtain access to content or Services, or other products or services through the Site from Foundation, or your use of the Services may result in charges to you for services or products. Any purchase will be subject to any terms and conditions displayed on or through the Site in connection with the purchase in addition to these Terms. Unless otherwise indicated on the Site, purchases made by you through the Site cannot be exchanged and any charges in connection with those purchases are non-refundable. All information that you provide in connection with a purchase or other transaction through the Site will be accurate, complete, and current. You authorize Foundation (or a third-party payment processor) to process the credit card, debit card, mobile services account, or other payment method provided by you in connection with any transaction made through the Site, and agree to honor all purchases incurred in connection with any such transaction.
4. **MUTUAL REPRESENTATIONS AND WARRANTIES.** Each party hereby represents and warrants to the other party that: (a) it has the legal right and authority to enter into these Terms; (b) these Terms form a binding legal obligation on behalf of such party; and (c) it has the legal right and authority to perform its obligations under these Terms and to grant the rights and licenses described herein.
5. **DISCLAIMER.**
- 5.1 **DISCLAIMERS.** THE SITE AND SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE.” EXCEPT AS EXPRESSLY PROVIDED HEREIN, FOUNDATION DOES NOT MAKE ANY REPRESENTATION, WARRANTY, OR GUARANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND FOUNDATION DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. FOUNDATION DOES NOT REPRESENT OR WARRANT THAT (A) THE SITE AND/OR SERVICES WILL BE CONTINUOUSLY AVAILABLE, ERROR-FREE, ACCURATE, COMPLETE, OR COMPLETELY SECURE; (B) MALICIOUS CODE WILL NOT BE TRANSMITTED TO YOU IN YOUR USE OF THE SERVICES; OR (C) ALL DEFECTS IN THE SERVICES WILL BE CORRECTED. FOUNDATION WILL NOT BE LIABLE IN ANY WAY RELATED TO ANY THIRD-PARTY CONTENT, SERVICES, DATA, OR APPLICATION.

- 5.2 YOUR RIGHTS MAY VARY. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY HAVE OTHER RIGHTS WHICH MAY VARY FROM STATE TO STATE OR IN OTHER JURISDICTIONS.
- 5.3 NEW JERSEY RESIDENTS. TO NEW JERSEY RESIDENTS, THE PROVISIONS ABOVE ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAW OF THE STATE OF NEW JERSEY ONLY.

## 6. INDEMNIFICATION.

- 6.1 Indemnification by You. You will defend Foundation and its affiliates, and their respective directors, officers, representatives, employees, agents, members, attorneys, contractors, successors, and assigns (“**Foundation Indemnitees**”) for any and all fines, penalties, loss, damages, liabilities, expenses (including attorney’s fees), from any and all claims, demands, suits, and proceedings made or brought against Foundation Indemnitees by a third party (including but not limited to a governmental entity) (each a “**Claim**”) based on a potential or actual allegation that:(a) your User Content violates, infringes, or misappropriates such third party’s intellectual property, privacy, personality, or other rights, or violates applicable law; (b) facts that, if true, would constitute (i) a breach of these Terms by you; or (ii) other unlawful acts or omissions by you, and will indemnify and hold Foundation Indemnitees harmless from and against all damages, attorney fees, and costs finally awarded against Foundation as a result of, or for any amounts paid or payable by Foundation incurred in connection with a Claim. You will undertake such defense upon written notice by Foundation and if you do not do so within ten (10) days of such notice, Foundation may undertake such defense at your expense. You may not settle or otherwise compromise any Claim against Foundation without Foundation's prior written approval.

## 7. LIMITATION OF LIABILITY AND CLAIMS.

- 7.1 LIMITATION OF LIABILITY. IN NO EVENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WILL FOUNDATION AND ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, REPRESENTATIVES, DIRECTORS, EMPLOYEES, OR REPRESENTATIVES (COLLECTIVELY “**FOUNDATION**”) FOR PURPOSES OF THIS SECTION) BE LIABLE FOR ANY RELIANCE BY YOU ON ANY INFORMATION OBTAINED FROM THE SITE, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM COMMUNICATIONS FAILURE, LOST DATA, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES, WHETHER FOR TORT (INCLUDING NEGLIGENCE), CONTRACT, BREACH OF WARRANTY, OR ANY OTHER CAUSE OF ACTION OR THEORY OF LIABILITY, WHETHER OR NOT FORESEEABLE AND HOWEVER RISING, AND EVEN IF FOUNDATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOUNDATION’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER FOR TORT (INCLUDING NEGLIGENCE), CONTRACT, BREACH OF WARRANTY, OR ANY OTHER CAUSE OF ACTION OR THEORY OF LIABILITY,

WILL NOT EXCEED \$100 OR, IN THE CASE OF ANY PURCHASES YOU MAKE FROM THE FOUNDATION THROUGH THE SITE, THE AMOUNTS PAID BY YOU THROUGH THE SITE FOR THOSE PURCHASES. THE LIMITATIONS HEREIN WILL APPLY EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THIS PROVISION IS NOT INTENDED TO EXCLUDE LIABILITY THAT WE MAY NOT EXCLUDE UNDER APPLICABLE LAW.

- 7.2 LIMITATION ON TIME TO FILE CLAIMS. YOU MUST FILE ANY CLAIM ARISING FROM OR RELATED TO THESE TERMS WITHIN ONE (1) YEAR AFTER THE CLAIM AROSE, OR THE CLAIM WILL BE FORFEITED AND FOREVER BARRED.
- 7.3 YOUR RIGHTS MAY VARY. BECAUSE SOME STATES OR JURISDICTIONS MAY NOT ALLOW LIMITATIONS ON THE DURATION OF IMPLIED WARRANTIES, OR LIMITATIONS ON OR EXCLUSIONS OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU DEPENDING ON YOUR STATE OR NATION OF RESIDENCE.

## 8. TERMINATION; SURVIVAL.

- 8.1 Term. These Terms are effective unless and until terminated by you or us at any time. If you wish to terminate these Terms with us, please contact us by email using the Contact Us link.
- 8.2 Modifications. We may, in our sole and absolute discretion and without any liability, modify, suspend or discontinue any aspect of the Site, temporarily or permanently, at any time and without prior notice. We will inform you of the presence of any changes to these Terms by posting those changes on the Site or by providing you with notice through the Site. Any modifications will be effective ten (10) days following posting on the Site or delivery of such notice through the Site, except in the case of a legally required modification which will be effective upon posting. You will be deemed to have agreed to any and all modifications through your continued use of the Site and/or Services following such notice period.
- 8.3 Effect of Termination. Upon termination of these Terms for any reason: (a) all rights and licenses granted to you under these Term will terminate; (b) you will immediately cease all use of and access to the Site and Services; (c) you will remain liable under these Terms for any outstanding fees or charges accrued prior to termination (if applicable). Such fees or charges shall be due and payable within five (5) days from the date of termination. The following provisions will survive termination: 2 through 10.

## 9. DISPUTES.

You and Foundation agree that any claim or controversy that arises between us relating in any way to any breach, enforcement, or termination of the Terms or your use of or access to the Site or Service (each a "**Covered Matter**" and collectively, "**Covered Matters**"), will be resolved in accordance with the provisions set forth in this Section 9.

- 9.1 Informal Resolution. If you have any dispute with Foundation, you and Foundation agree that before taking any formal action, you will contact us at [legal@thejaysontaytumfoundation.org](mailto:legal@thejaysontaytumfoundation.org), provide a brief, written description of the dispute and your contact information (including the email address associated with your account, if your dispute relates to an account), and allow ninety (90) days to pass, during which Foundation will attempt to reach an amicable resolution of any issue with you.
- 9.2 Applicable Law. You and Foundation agree that United States federal law including the Federal Arbitration Act, and (to the extent not inconsistent with or pre-empted by federal

law) the laws of the State of Missouri, USA, without regard to conflict of laws principles, will govern all Covered Matters. Such body of law will apply regardless of your residence or the location of where you use the Foundation Services.

- 9.3 Agreement to Arbitrate Disputes. You and Foundation agree that these Terms and each of its parts evidence a transaction involving interstate commerce, and the Federal Arbitration Act applies in all cases and governs the interpretation and enforcement of the arbitration rules and arbitration proceedings. Any Covered Matter must be asserted individually in binding arbitration administered by Judicial Arbitration and Mediation Services, Inc. (“**JAMS**”) in accordance with JAMS Streamlined Arbitration Rules and Procedures (including, without limitation, utilizing desk, phone, or video conference proceedings where appropriate and permitted to mitigate costs of travel) and the JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness (which will prevail over any inconsistent terms in this Section 9). The arbitrator shall not conduct any form of class or collective arbitration nor join or consolidate claims by or for individuals. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of these Terms, including, any claim that all or any part of these Terms is void or voidable or a particular claim is subject to arbitration. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- 9.4 Exceptions To Our Agreement To Arbitrate Disputes. There are only two exceptions to this agreement to arbitrate:
- First, if either party reasonably believes that the other party has in any manner violated or threatened to infringe the intellectual property rights of the other party, the party whose rights have been violated may seek injunctive or other appropriate interim relief in any court of competent jurisdiction.
  - Second, each party will retain the right to seek relief in a small claims court within the United States for disputes or claims brought on an individual basis within the scope of the jurisdiction of such courts.
- 9.5 Who Bears the Costs of Arbitration. You and Foundation agree that payment of all filing, administration, and arbitrator fees will be governed by the JAMS’s rules, unless otherwise stated in this agreement to arbitrate. If the value of the relief sought is \$5,000 or less, at your written request, Foundation will reimburse you for the filing, administration, and arbitrator fees associated with the arbitration following the earlier of the arbitrator’s decision or settlement, provided that you make your request no more than thirty (30) days following the earlier of such decision or settlement. In the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous or without merit, you agree that Foundation is relieved of its obligation to reimburse you for any fees associated with the arbitration.
- 9.6 Future Amendments to the Agreement to Arbitrate. Notwithstanding any provision in the Terms to the contrary, you and Foundation agree that if Foundation makes any amendment to the agreement to arbitrate under this Section in the future that amendment shall not apply to any claim that was filed in a legal proceeding against Foundation prior to the effective date of the amendment. However, the amendment shall apply to all other disputes or claims governed by the agreement to arbitrate that have arisen or may arise between you and Foundation. If you do not agree to these amended terms, you may close your account within thirty (30) days of the posting or notification of such amended terms and you will not be bound by the amended terms.

- 9.7 Judicial Forum for Legal Disputes. Unless you and we agree otherwise, in the event that the agreement to arbitrate above is found not to apply to you or to a particular claim or dispute, either as a result of your decision to opt out of the agreement to arbitrate, as a result of a decision by the arbitrator or a court order or because you have chosen to file an eligible lawsuit in small claims court, you agree that any claim or dispute that has arisen or may arise between you and the Foundation must be resolved exclusively by a state, federal, or small claims court located in St. Louis, Missouri. You and the Foundation agree to submit to the exclusive personal jurisdiction of the courts located within St. Louis, Missouri for the purpose of litigating all such claims or disputes.
- 9.8 YOU MAY OPT-OUT OF ARBITRATION. IF YOU ARE A NEW FOUNDATION USER, YOU CAN CHOOSE TO REJECT THE AGREEMENT TO ARBITRATE PROVISION (“**OPT-OUT**”) BY EMAILING US AN OPT-OUT NOTICE TO ARBITRATIONOPTOUT@THEJAYSONTAYTUMFOUNDATION.ORG (“**OPT-OUT NOTICE**”) OR REGULAR MAIL TO: One Metropolitan Square, 211 North Broadway, Suite 3600 St. Louis, MO 63102-2750, Attention: Constantino Ochoa Jr. THE OPT-OUT NOTICE MUST BE RECEIVED NO LATER THAN THIRTY (30) DAYS AFTER THE DATE YOU ACCEPT THE TERMS OF USE FOR THE FIRST TIME. IF YOU ARE NOT A NEW USER, YOU HAVE UNTIL THIRTY (30) DAYS AFTER THE POSTING OF THE NEW TERMS TO SUBMIT AN ARBITRATION OPT-OUT NOTICE.
- 9.9 Arbitration Opt-Out Procedure. In order to opt-out, you must email your name, address (including your street address, city, state, and zip code), email address(es) associated with your account(s) to which the opt-out applies, and an unaltered digital image of your valid driver’s license to: arbitrationoptout@thejaysontaytumfoundation.org. This procedure is the only way you can opt out of the agreement to arbitrate in this Section. If you opt out of the agreement to arbitrate, all other parts of the Terms and this Section will continue to apply to you. Opting out of this agreement to arbitrate has no effect on any previous, other, or future arbitration agreements that you may have with Foundation.
- 9.10 YOU WAIVE CERTAIN RIGHTS. BY AGREEING TO THE TERMS, YOU HEREBY IRREVOCABLY WAIVE ANY RIGHT YOU MAY HAVE (i) TO A COURT TRIAL (OTHER THAN SMALL CLAIMS COURT AS PROVIDED ABOVE); (ii) TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING FILED AGAINST US AND/OR RELATED THIRD PARTIES; AND (iii) TO A TRIAL BY JURY EVEN IF ANY ARBITRATION IS NOT REQUIRED UNDER THE TERMS.

## 10. GENERAL TERMS.

- 10.1 Force Majeure. Under no circumstances shall Foundation or its licensor or supplier be held liable for any delay or failure in performance resulting directly or indirectly from an event beyond its reasonable control.
- 10.2 No Waiver; Severability. No waiver of any term of these Terms will be binding unless in writing, no waiver of any term of these Terms will be deemed a further or continuing waiver of such term or any other term, and the failure of Foundation to exercise or enforce any right or remedy in these Terms does not waive that right or remedy. If an arbitrator or a court of competent jurisdiction finds any provision of these Terms to be invalid, the parties agree that the court should endeavor to give effect, to the maximum extent permitted by law, to the parties’ intentions as reflected in the provision, and the other provisions of these Terms will remain in full force and effect.
- 10.3 Miscellaneous. These Terms (and all policies, terms, and conditions referenced herein) constitute the entire agreement between you and Foundation and govern your use of the

Site and Services provided by Foundation and supersede any prior agreements between you and Foundation on the subject matter. You also may be subject to additional terms that may apply when you use certain Foundation services or third-party content, links, or websites. These Terms, and any rights or licenses granted hereunder, may not be assigned or delegated by you. These Terms, and any rights or licenses granted hereunder, may be assigned or delegated by Foundation without restriction. These Terms bind and inure to the benefit of each party and the party's successors and permitted assigns. These Terms may not be modified by an oral statement by a representative of Foundation. A party's failure or delay in exercising any right, power, or privilege under these Terms will not waive its rights to exercise such right, power, or privilege in the future, nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege under these Terms. No agency, partnership, joint venture, or employee-employer relationship is intended or created by these Terms. You agree to comply with all applicable laws in your use of the Site and Services. You agree that any agreements made by and between you and us in electronic form are as legally binding as if made in physical written form. These Terms will not be construed against the drafter. "Include(s)" or "including" means, respectively, "include(s), without limitation," or "including, without limitation," unless expressly stated otherwise. If you are using the Site or Services for or on behalf of the U.S. or any other government, your license rights do not exceed those granted to non-government consumers.

- 10.4 Use Outside the United States of America. The Site is controlled and offered by Foundation from the United States of America. Foundation makes no representations that the Site is appropriate for use in other locations. Those who access or use the Site from other locations do so at their own risk and are responsible for compliance with local law. You consent to the processing in the United States of America of information you provide to us.
- 10.5 Notices and Electronic Communications. You hereby consent to receiving and transacting with us by electronic means. We may deliver notice to you by e-mail, posting a notice on the Site, or any other method we choose and such notice will be effective on dispatch. If you give notice to us, it will be effective when received and you must use the following email address: [info@thejaysonatumfoundation.org](mailto:info@thejaysonatumfoundation.org).

## **CONTACT US**

The Jayson Tatum Foundation

[info@thejaysonatumfoundation.org](mailto:info@thejaysonatumfoundation.org)

314-203-3471

**These Terms are effective as of June 19, 2019.** [Click here](#) to see any prior version of the Terms.