

UPMETRICS TERMS OF SERVICE

Last Updated: February 20, 2024

These Terms of Service (this “**Agreement**”) are entered into by and between SportUp, Inc. dba UpMetrics, a Delaware corporation (“**UpMetrics**”), and the entity or person accessing or using the UpMetrics Platform (“**Customer**” or “**you**”). This Agreement consists of the terms and conditions set forth below and any Order Forms that reference this Agreement. If you are accessing or using the UpMetrics Platform on behalf of your company, you represent that you are authorized to accept this Agreement on behalf of your company, and all references to “you” reference your company.

Please note that UpMetrics may modify the terms and conditions of this Agreement in accordance with Section 10.3 (Amendment; Waiver).

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING THE UPMETRICS PLATFORM, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT USE THE UPMETRICS PLATFORM. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT.

1. Definitions

1.1 The following terms, when used in this Agreement will have the following meanings:

“**Affiliates**” means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists. For the purposes of this definition, “**Control**” means beneficial ownership of 50% or more of the voting power or equity in an entity.

“**Confidential Information**” means any information or data disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential in light of the nature of the information and the circumstances surrounding disclosure. However, “Confidential Information” will not include any information which (a) is in the public domain through no fault of receiving party; (b) was properly known to receiving party, without restriction, prior to disclosure by the disclosing party; (c) was properly disclosed to receiving party, without restriction, by another person with the legal authority to do so; or (d) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information.

“**Customer Data Source**” means any third-party or Customer-hosted data sources that integrates with the UpMetrics Platform.

“**Documentation**” means the printed and digital instructions, online help files, technical documentation and user manuals made available by UpMetrics for the UpMetrics Platform.

“**UpMetrics Platform**” means UpMetrics’ SaaS-based platform for data analytics and impact performance management, which will include the features and functionality set forth in the corresponding Order Form.

“Order Form” means an order form, quote or other similar document that sets forth the specific UpMetrics Platform and pricing therefor (including in relation to overages), permitted number of users and subscription term, and that references this Agreement and is mutually executed by the parties.

“Regulated Data” means data or information considered to be sensitive or otherwise subject to specific protections under applicable laws beyond any requirements that apply to “personal information” or “personal data” generally, such as for illustrative purposes, information that is regulated by the Health Information Portability and Accountability Act, the Payment Card Industry Data Security Standard, the Gramm-Leach-Bliley Act, and other U.S. federal, state or foreign laws applying specific security standards.

2. UpMetrics Platform

2.1 Provision of UpMetrics Platform. Subject to the terms and conditions of this Agreement, UpMetrics will make the UpMetrics Platform available to Customer pursuant to this Agreement and the applicable Order Form, and hereby grants Customer a non-exclusive right to access and use the UpMetrics Platform for its internal business purposes.

2.2 Data Security. UpMetrics will maintain a security program materially in accordance with industry standards that is designed to (i) ensure the security and integrity of Customer data uploaded by or on behalf of Customer to the UpMetrics Platform, including through Customer Data Sources (“**Customer Data**”); (ii) protect against threats or hazards to the security or integrity of Customer Data; and (iii) prevent unauthorized access to Customer Data. Such security program will include the measures set forth at <https://upmetrics.com/security>, and UpMetrics will not reduce any security measures during the term of this Agreement.

2.3 Customer Responsibilities. Customer will (i) be responsible for all use of the UpMetrics Platform under its account, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the UpMetrics Platform and notify UpMetrics promptly of any such unauthorized access or use or any other known or suspected breach of security or misuse of the UpMetrics Platform and (iii) be responsible for obtaining and maintaining any equipment, software and ancillary services needed to connect to, access or otherwise use the UpMetrics Platform, including as set forth in the Documentation. Customer will be solely responsible for its failure to maintain such equipment, software and services, and UpMetrics will have no liability for such failure (including under any service level agreement).

2.4 Affiliates. Any Affiliate of Customer will have the right to enter into an Order Form executed by such Affiliate and UpMetrics and this Agreement will apply to each such Order Form as if such Affiliate were a signatory to this Agreement. With respect to such Order Forms, such Affiliate becomes a party to this Agreement and references to Customer in this Agreement are deemed to be references to such Affiliate. Each Order Form is a separate obligation of Customer entity that executes such Order Form, and no other Customer entity has any liability or obligation under such Order Form.

3. Fees

3.1 Fees. Customer will pay UpMetrics the fees set forth in the applicable Order Form. Customer shall pay those amounts due and not disputed in good faith within thirty (30) days of the date of receipt of the applicable invoice, unless a specific date for payment is set forth in such Order Form, in which case payment will be due on the date specified. Except as otherwise specified herein or in any applicable Order Form, (a) fees are quoted and payable in United States dollars and (b) payment obligations are

non-cancelable and non-pro-ratable for partial months, and fees paid are non-refundable. UpMetrics reserves the right to changes its fees upon each renewal term.

3.2 Late Payment. UpMetrics may suspend access to the UpMetrics Platform immediately upon notice if Customer fails to pay any amounts hereunder at least fifteen (15) days past the applicable due date or if Customer is in material breach of this Agreement. If UpMetrics has not received payment within fifteen (15) days after the applicable due date, interest will accrue on past due amounts at the rate of one percent (1%) per month, but in no event greater than the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by UpMetrics.

3.3 Taxes. All amounts payable hereunder are exclusive of any sales, use and other taxes or duties, however designated (collectively "**Taxes**"). Customer will be solely responsible for payment of all Taxes, except for those taxes based on the income of UpMetrics. If Customer is a tax-exempt organization, Customer will provide UpMetrics with written documentation thereof, and UpMetrics will not invoice Customer for any Taxes following verification of Customer's documentation. Customer will not otherwise withhold any Taxes from any amounts due to UpMetrics.

4. Proprietary Rights

4.1 Proprietary Rights. As between the parties, UpMetrics exclusively owns all right, title and interest in and to the UpMetrics Platform, System Data and UpMetrics' Confidential Information, and Customer exclusively owns all right, title and interest in and to the Customer Data, content produced specifically for Customer via the use of the UpMetrics Platform by Customer (which will constitute Customer Data for purposes hereof) and Customer's Confidential Information. "**System Data**" means data collected by UpMetrics regarding the UpMetrics Platform that may be used to generate logs, statistics or reports regarding the performance, availability, usage, integrity or security of the UpMetrics Platform (but excluding any Customer Data).

4.2 Feedback. Customer may from time to time provide UpMetrics suggestions or comments for enhancements or improvements, new features or functionality or other feedback ("**Feedback**") with respect to the UpMetrics Platform. UpMetrics will have full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality. UpMetrics will have the full, unencumbered right, without any obligation to compensate or reimburse Customer, to use, incorporate and otherwise fully exercise and exploit any such Feedback in connection with its products and services.

4.3 Product Improvement and Aggregated Statistics. Customer further agrees that UpMetrics has the right to aggregate, collect and analyze information relating to the performance of the UpMetrics Platform (but excluding Customer Data) and shall be free (during and after the term hereof) to (i) use such data and other information to improve UpMetrics' products and services, and (ii) disclose such data and other information solely in an aggregated and anonymized format that does not identify Customer or any individual.

5. Confidentiality; Restrictions

5.1 Confidentiality. Each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose the same directly or indirectly, to any third party without the other party's prior written consent, except as otherwise

permitted hereunder. However, either party may disclose Confidential Information (a) to its employees, officers, directors, attorneys, auditors, financial advisors and other representatives who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; and (b) as required by law (in which case the receiving party will provide the disclosing party with prior written notification thereof, will provide the disclosing party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law). Neither party will disclose the terms of this Agreement to any third party, except that either party may confidentially disclose such terms to actual or potential lenders, investors or acquirers. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section 5, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

5.2 **Technology Restrictions.** Customer will not directly or indirectly: (a) reverse engineer, decompile, disassemble, modify, create derivative works of or otherwise create, attempt to create or derive, or permit or assist any third party to create or derive, the source code underlying the UpMetrics Platform; (b) attempt to probe, scan or test the vulnerability of the UpMetrics Platform, breach the security or authentication measures of the UpMetrics Platform without proper authorization or wilfully render any part of the UpMetrics Platform unusable; (c) use or access the UpMetrics Platform to develop a product or service that is competitive with UpMetrics' products or services, or engage in competitive analysis or benchmarking; (d) transfer, distribute, resell, lease, license, or assign the UpMetrics Platform or otherwise offer the UpMetrics Platform on a standalone basis; or (e) otherwise use the UpMetrics Platform in violation of applicable law (including any export law) or outside the scope expressly permitted hereunder and in the applicable Order Form (collectively, the "***License Restrictions***"). Unless Customer and UpMetrics have entered into a separate addendum relating to Regulated Data, Customer will not upload or request UpMetrics process any Regulated Data or otherwise use the UpMetrics Platform in a manner that subjects UpMetrics to compliance requirements with laws, regulations and industry standards applicable to Regulated Data.

6. Warranties and Disclaimers

6.1 **Customer.** Customer warrants that it has all rights necessary to provide any Customer Data to UpMetrics and to permit UpMetrics to use the same as contemplated hereunder.

6.2 **DISCLAIMERS.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, UPMETRICS DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT THE UPMETRICS PLATFORM IS INTENDED TO AUGMENT THE EFFICIENCY OF, BUT NOT REPLACE, CUSTOMER'S EXISTING SYSTEMS AND PROCESSES. UPMETRICS DOES NOT REPRESENT OR WARRANT THAT THE UPMETRICS PLATFORM WILL BE ERROR-FREE. UPMETRICS IS NOT RESPONSIBLE OR LIABLE FOR ANY CUSTOMER DATA SOURCES, DOES NOT GUARANTEE THE CONTINUED AVAILABILITY THEREOF OR ANY INTEGRATION THEREWITH, AND MAY CEASE MAKING ANY SUCH INTEGRATION AVAILABLE IN ITS DISCRETION.

7. Indemnification. Customer agrees to defend, indemnify, and hold harmless UpMetrics from and against any claims, actions or demands, including, without limitation, all related liabilities, damages, costs, expenses, and reasonable legal and accounting fees, arising or resulting from Customer's breach of the Agreement or Customer's unauthorized use of the UpMetrics Platform. UpMetrics shall provide notice to Customer of any such claim, suit, or proceeding. UpMetrics reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this Section. In such case, Customer agrees to cooperate with any reasonable requests assisting UpMetrics' defense of such matter.

8. Limitation of Liability

UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST CONTENT OR DATA, EVEN IF A REPRESENTATIVE OF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL UPMETRICS BE LIABLE FOR ANY AGGREGATE DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

9. Termination

9.1 Term. The term of this Agreement will commence on the Effective Date and continue until terminated as set forth below. The initial term of each Order Form will begin on the Subscription Start Date of such Order Form and will continue for the subscription term set forth therein. Except as set forth in such Order Form, the term of such Order Form will automatically renew for successive renewal terms equal to the length of the initial term of such Order Form, unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

9.2 Termination. Each party may terminate this Agreement upon written notice to the other party if there are no Order Forms then in effect. Each party may also terminate this Agreement or the applicable Order Form upon written notice in the event (a) the other party commits any material breach of this Agreement or the applicable Order Form and fails to remedy such breach within thirty (30) days after written notice of such breach or (b) subject to applicable law, upon the other party's liquidation, commencement of dissolution proceedings or assignment of substantially all its assets for the benefit of creditors, or if the other party become the subject of bankruptcy or similar proceeding that is not dismissed within sixty (60) days.

9.3 Survival. Upon expiration or termination of this Agreement all rights and obligations will immediately terminate except that any terms or conditions that by their nature should survive such expiration or termination will survive, including the License Restrictions and terms and conditions relating to proprietary rights and confidentiality, technology restrictions, disclaimers, indemnification, limitations of liability and termination and the general provisions below. Upon expiration or termination of this Agreement, each party will return or destroy, at the other party's option, any Confidential Information of such party in the other party's possession or control.

10. General

10.1 Publicity. Customer agrees that UpMetrics may refer to Customer's name and trademarks in UpMetrics' marketing materials and website; however, UpMetrics will not use Customer's name or trademarks in any other publicity (e.g., press releases, customer references and case studies) without Customer's prior written consent (which may be by email).

10.2 Assignment; Delegation. Neither party hereto may assign or otherwise transfer this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without consent to a successor to all or substantially all of its assets or business related to this Agreement. Any attempted assignment, delegation, or transfer by either party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.

10.3 Amendment; Waiver. UpMetrics reserves the right in its sole discretion and at any time and for any reason to modify this Agreement. Any modifications to this Agreement shall become effective upon Customer's next subscription renewal, unless such changes are required to comply with legal or regulatory obligations. Any such waiver will be only to the specific provision and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

10.4 Relationship. Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

10.5 Unenforceability. If a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement will remain in full force and effect and bind the parties according to its terms.

10.6 Governing Law. This Agreement will be governed by the laws of the State of California, exclusive of its rules governing choice of law and conflict of laws. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

10.7 Notices. Any notice required or permitted to be given hereunder will be given in writing by personal delivery, certified mail, return receipt requested, or by overnight delivery. Notices to the parties must be sent to the respective address set forth in the signature blocks below, or such other address designated pursuant to this Section.

10.8 Entire Agreement. This Agreement comprises the entire agreement between Customer and UpMetrics with respect to its subject matter, and supersedes all prior and contemporaneous proposals, statements, sales materials or presentations and agreements (oral and written). No oral or written information or advice given by UpMetrics, its agents or employees will create a warranty or in any way increase the scope of the warranties in this Agreement.

10.9 Force Majeure. Neither party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control,

including earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared), cyber attacks (e.g., denial of service attacks), or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree.

10.10 Government Terms. UpMetrics provides the UpMetrics Platform, including related software and technology, for ultimate federal government end use solely in accordance with the terms of this Agreement. If Customer is an agency, department, or other entity of any government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the UpMetrics Platform, or any related documentation of any kind, including technical data, software, and manuals, is restricted by the terms of this Agreement. All other use is prohibited and no rights than those provided in this Agreement are conferred. The UpMetrics Platform was developed fully at private expense.

10.11 Interpretation. For purposes hereof, “including” means “including without limitation”.