



UPSWING Centennial Client Form

Please fill out and sign this form prior to entering the UPSWING Centennial facility.

First name *

Last name *

Phone number *

Email *

Date of birth *

Street address *

City *

State *

Zip *

Business Policies

Cancellation Policy

Cancellation Policy

Appointments & Courses/Camps:

We understand situations may arise when appointments or courses/camps need to be canceled or rescheduled. To do so, we require notification at least 12 hours in advance. Cancellation or reschedule requests made less than 12 hours prior to an appointment or course/camp start date, will be subject to a cancellation fee equivalent to the appointment/course/camp fee.

Classes:

To ensure fair access to our classes, we require cancellations be made at least one hour prior to the beginning of class. Cancellations made within one hour of the start of class will incur a charge equivalent to the class fee. No shows will result in the same penalty.

These cancellation policies allow us to offer spots to other participants. Please contact our team to discuss unexpected emergencies.

Purchase Policy

All sales on services are subject to cancellation and refund policies.

There are no refunds or credits for partially used services or membership periods.

Memberships and services are non-transferable.

By purchasing services or memberships, you accept and are bound by the UPSWING terms of use and privacy policies, which may be updated from time to time.

By purchasing any service or membership, you are subject to any additional terms of such item, such as expiration dates, cancellation policies, refund policies, and pricing. By purchasing you consent to abide by such terms and conditions.

By purchasing, you agree you are liable for the fees set out in your chosen service or membership.

Return/Refund Policy

Services: A complete refund will be issued for all services canceled within the specified time frame outlined in the Cancellation Policy. For no shows and cancellations outside the Cancellation Policy timeframe, no refunds will be provided.

Courses/Camps: Missed course/camp days due to vacations, illness, or unforeseen emergencies will not be eligible for refunds or make-up sessions.

Please note: Our operations may be affected by Public Health Orders or weather-related events. In situations where programs are canceled due to these circumstances, we may choose to offer a partial credit or a make-up session at our discretion.

If you have questions or concerns, please reach out to our team at facilities@upswingfoundation.org.

Policy

Liability Waiver

UPSWING FOUNDATION
WARNING AND ACKNOWLEDGEMENT OF RISK, RELEASE OF LIABILITY AND
INDEMNITY AGREEMENT

PLEASE READ CAREFULLY BEFORE SIGNING.

THIS IS A RELEASE OF LIABILITY AND WAIVER OF CERTAIN LEGAL RIGHTS.
THIS AGREEMENT MUST BE SIGNED BY EACH ADULT AND THE PARENT OR LEGAL
(COURT APPOINTED) GUARDIAN OF ANY MINOR NAMED BELOW WHO ENTERS THE
TRAINING FACILITY OR PARTICIPATES IN UPSWING PROGRAMMING, AS DEFINED

BELOW ("CHILD"), REGARDLESS OF PARTICIPATION IN AN ACTIVITY AT THE TRAINING FACILITY (EACH A "PARTICIPANT" OR "ENTRANT").

In consideration for being permitted by Upswing Foundation, a Colorado nonprofit corporation ("Upswing"), JFRCO I, LLC, a Colorado limited liability company ("Owner"), and any independent contractor or other service provider engaged by Upswing to perform services (collectively, Upswing, Owner, and any such independent contractor or other service provider are referred to herein as the "Operators"), to use or simply move about in the facilities located at 7460 South University Boulevard Centennial, Colorado 80122 (including walkways, parking areas and lawn) (the "Training Facility"), to access and engage in the use of the Training Facility and the equipment located therein and participate in all activities performed therein, and to participate in or observe Upswing programming whether at the Training Facility or offsite, I on behalf of myself and any Child, acknowledge and agree to the following warning, waiver, release and indemnity, in each case to the maximum extent allowed by the laws of the State of Colorado:

I, on behalf of myself and any Child, our heirs, executors, administrators, successors and assigns, expressly agree and contract, that Operators, and their respective directors, officers, agents, insurers, employees, contractors, service providers, members, shareholders, associates, volunteers, representatives, affiliates, and successors (together, the "Released Parties"), shall not be liable for any damages whatsoever arising from any personal injuries (including death) sustained by me or any such Child in, on, or about the Training Facility, as a result of the use of the Training Facility or any equipment located therein or participation in activities performed therein, or as a result of participation in or observation of Upswing programming whether at the Training Facility or offsite, regardless of whether such injuries result, in whole or in part, from the negligence of Released Parties. Furthermore, I, on behalf of myself and any Child, our heirs, executors, administrators, successors and assigns, further agree not to sue Released Parties as a result of any injury, paralysis and/or death suffered in connection with my or any such Child's access and use of the Training Facility and the equipment located therein, participation in any activities performed therein, as well as participation in or observation of Upswing programming whether at the Training Facility or offsite.

I, on behalf of myself and any Child, understand that risks, hazards, and dangers encountered by Participants or Entrants training or simply moving in, on or about the Training Facility (including walkways, parking areas and lawn) or participating in or observing Upswing programming at the Training Facility or offsite, may result in the following, without limitation:

1. Damage to personal property (including loss or theft);
2. All manner of trauma including, without limitation, breaks, sprains, abrasions, illnesses and serious disease, emotional distress, physical injury, concussion, eye injury or loss of sight, neck or spinal cord injuries, joint or back injuries, serious brain damage, ligament and cartilage damage, damage to virtually all internal organs, and catastrophic injuries including paralysis and even death;
3. Dangers inherent in any type of transportation, including driving in private cars, buses or any other type of public or private transportation, directly or indirectly, related to the Training Facility or offsite programming;
4. Dangers inherent to participating in or commuting to outdoor activities, including exposure to the weather, climate, environment;
5. Dangers inherent to participating in activities at locations open to the public, including damage or harm caused by third parties; and
6. Other damages (both economic and non-economic) or losses of any type.

I, on behalf of myself and any Child, hereby acknowledge the risks described above and their inherency, and acknowledge that other risks, inherent and otherwise, may be encountered. I have read

and understand the below CDC Heads Up "A Fact Sheet for High School Parents" ("Exhibit A") and have read and agreed to the below CDC Heads Up "Concussion Information Sheet" ("Exhibit B"). I expressly assume all risks associated with use of the Training Facility and any equipment located therein, risks associated with participation in activities performed therein, as well as risks associated with participating in or observing Upswing programming whether at the Training Facility or offsite, inherent or not, and whether or not described above. I, on behalf of myself and any Child, fully and forever release and discharge the Released Parties from any and all claims, demands, damages, rights of action or causes of action, whether past, present or future, and whether known or unknown, anticipated or unanticipated, resulting from or arising out of the use of the Training Facility and any equipment located therein, participation in any activities performed therein, or participation in or observation of Upswing programming whether at the Training Facility or offsite. I, on behalf of myself and any Child, am fully informed of the nature of the activities and risks, and I understand them. To the extent that I am entering into this agreement on behalf of any Child, I have discussed the nature of the activities and risks with such Child, and I am voluntarily consenting to any such Child's access to and use of the Training Facility and any equipment located therein, such Child's participation in any activities performed therein, as well as such Child's participation in or observation of Upswing programming whether at the Training Facility or offsite.

I, on behalf of myself and any Child, expressly agree to indemnify, defend, and hold harmless Released Parties from and against any and all claims, actions, causes of action, demands, liabilities, suits, expenses (including reasonable attorneys' fees) and **ORDINARY NEGLIGENCE OF ANY KIND OR NATURE**, whether foreseen or unforeseen, arising directly or indirectly out of any damage, loss, injury, paralysis, and/or death to my or any such Child's person or property as a result of access and use of the Training Facility and equipment located therein, participation in any activities performed therein, or participation in or observation of Upswing programming whether at the Training Facility or offsite, for any reason, whether such damage, loss, injury, paralysis, and/or death results from **ORDINARY NEGLIGENCE** of Released Parties or from some other cause. I understand that ordinary negligence includes failure on the part of any Released Party to take reasonable steps to safeguard or protect me from the risks, dangers, and hazards of the activity. This release is intended to be a comprehensive release of liability, but is not intended to assert defenses that are prohibited by law.

I, on behalf of myself and any Child, agree to:

1. be solely responsible for safety and wellbeing of myself and any Child. I, on behalf of myself and any Child, and understand that the Owner does not provide supervision, instruction, or assistance in connection with access and use of the Training Facility and any equipment located therein, participation in any activities performed therein, or participation in or observation of Upswing programming whether at the Training Facility or offsite;
2. comply with all rules imposed by Operators regarding access and use of the Training Facility and the equipment located therein, participation in any activities performed therein, as well as participation in or observation of Upswing programming whether at the Training Facility or offsite;
3. conduct myself in a controlled and reasonable manner at all times, and to refrain from using any equipment in a manner inconsistent with its intended design and purpose; and
4. only access and use the Training Facility and any equipment located therein, and participate in any activities performed therein or offsite, only with the direct supervision, instruction and oversight by Operators (excluding the Owner).

I, on behalf of myself and any Child, agree to engage in good faith efforts to mediate any dispute that might arise between me and/or such Child, on the one hand, and any Released Parties, on the other hand. Should the issue not be resolved by mediation, I agree that all disputes, controversies, or claims between the parties will be submitted to binding arbitration in accordance with the applicable rules of the American Arbitration Association then in effect. I agree that any such mediation or arbitration will

be governed by the substantive laws (not including laws which might apply the laws of another jurisdiction) of the State of Colorado. Any mediation or arbitration shall take place only in the State of Colorado in Denver County, Colorado.

I, on behalf of myself and any Child, irrevocably permit, authorize, and license Upswing or its designee to identify me or any such Child by name and use my or any such Child's name, likeness, appearance, voice, personal biographical information, other personal characteristics, and all materials created by or on behalf of Upswing that incorporate any of the foregoing, in connection with Upswing and the promotion of Upswing or its affiliates, in perpetuity, throughout the universe, in any and all media and formats and by any and all technologies and means of delivery whether now or hereafter known or devised, including but not limited to internet streaming and downloading, websites, other digital transmission or delivery methods, mobile applications, television broadcast, cablecast, and satellite, home video, video on demand, radio, and print publications, on any platform, including but not limited to televisions, computers, and mobile devices, and in connection with ancillary products, including but not limited to merchandise, books, and software applications, without further consent from or any royalty, payment, or other compensation to me or such Child.

I ON BEHALF OF MYSELF AND ANY CHILD, TO THE MAXIMUM EXTENT ALLOWED BY THE LAWS OF THE STATE OF COLORADO, HAVE HAD THE OPPORTUNITY TO ASK THE OPERATORS TO MORE FULLY EXPLAIN THE RISKS UNDER THIS AGREEMENT, CAREFULLY READ, UNDERSTOOD AND VOLUNTARILY SIGN THIS AGREEMENT AND ACKNOWLEDGE THAT IT SHALL BE EFFECTIVE AND BINDING UPON ME, ANY CHILD, AND OUR FAMILY, HEIRS, EXECUTORS, ADMINISTRATORS AND REPRESENTATIVES. I AGREE THAT IF ANY PORTION OF THIS AGREEMENT IS HELD BY A COURT OF COMPETENT JURISDICTION TO BE NOT ENFORCEABLE, THE REMAINDER OF THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN DECIDING TO BE A PARTICIPANT OR ENTRANT, I, FOR MYSELF AND ANY CHILD, IN ACCORDANCE WITH C.R.S. § 13-22-107, AM VOLUNTARILY ALLOWING SUCH CHILD TO PARTICIPATE IN THE USE OF THE TRAINING FACILITY AND ANY EQUIPMENT LOCATED THEREIN, PARTICIPATE IN ACTIVITIES PERFORMED THEREIN, AS WELL AS PARTICIPATE IN OR OBSERVE UPSWING PROGRAMMING AT THE TRAINING FACILITY OR OFFSITE, WITH FULL KNOWLEDGE OF THE INHERENT RISKS, HAZARDS, AND DANGERS INVOLVED AND HEREBY ASSUME AND ACCEPT ANY AND ALL RISKS OF INJURY, PARALYSIS, AND/OR DEATH. I HAVE NOT RELIED ON ANY WRITTEN OR ORAL REPRESENTATIONS, STATEMENTS OR INDUCEMENTS OTHER THAN THOSE IN THIS AGREEMENT. ANY QUESTION I HAD CONCERNING THE ACTIVITIES AND RISKS HAS BEEN ANSWERED TO MY SATISFACTION BY THE OPERATORS.

To the extent that I am entering this agreement with respect to a minor child, I represent and warrant that (a) I am the parent or legal guardian of the Child named below, (b) no court has issued any order, judgment, or decree granting custody of the Child to anyone else or otherwise affecting my rights as parent or legal guardian, (c) the Child has not been emancipated, (d) I have the legal right, power, and authority to consent to this Agreement on behalf of the Child and myself, and (e) I am at least eighteen years of age. I have read, and I understand, this entire Agreement. By signing below, I hereby consent to and approve in all respects the terms and conditions of this agreement and the Child's execution of this Agreement and agree that both the Child and I shall be bound by all of its terms and conditions. I understand that this consent and approval is not revocable. I agree to defend, indemnify, and hold harmless Released Parties from and against all claims by third parties resulting from my or the Child's breach or alleged breach of this agreement or any of the representation and warranties contained herein.

(Exhibit A)**A FACT SHEET FOR HIGH SCHOOL PARENTS
CDC HEADS UP - SAFE BRAIN, STRONGER FUTURE.**

This sheet has information to help protect your teens from concussion or other serious brain injury.

What is a concussion?

A concussion is a type of traumatic brain injury—or TBI—caused by a bump, blow, or jolt to the head or by a hit to the body that causes the head and brain to move quickly back and forth. This fast movement can cause the brain to bounce around or twist in the skull, creating chemical changes in the brain and sometimes stretching and damaging the brain cells.

How can I help keep my teens safe?

Sports are a great way for teens to stay healthy and can help them do well in school. To help lower your teens' chances of getting a concussion or other serious brain injury, you should:

- Help create a culture of safety for the team.
 - o Work with their coach to teach ways to lower the chances of getting a concussion.
 - o Emphasize the importance of reporting concussions and taking time to recover from one.
 - o Ensure that they follow their coach's rules for safety and the rules of the sport.
 - o Tell your teens that you expect them to practice good sportsmanship at all time.
- When appropriate for the sport or activity, teach your teens that they must wear a helmet to lower the chances of the most serious types of brain or head injury. There is no "concussion-proof" helmet. Even with a helmet, it is important for teens to avoid hits to the head.

Talk with your teens about concussion.

Tell them to report their concussion symptoms to you and their coach right away.

How can I spot a possible concussion?

Teens who show or report one or more of the signs and symptoms listed below-or simply say they just "don't feel right" after a bump, blow, or jolt to the head or body-may have a concussion or other serious brain injury.

Signs observed by parents

- Appears dazed or stunned
- Is confused about events
- Answers questions slowly
- Repeats questions
- Can't recall events prior to the hit, bump, or fall
- Can't recall events after the hit, bump, or fall
- Loses consciousness (even briefly)
- Shows behavior or personality changes
- Forgets an instruction or assignment

Symptoms reported by teens

- Headache or "pressure" in head
- Nausea or vomiting
- Balance problems or dizziness
- Blurry or double vision
- Sensitivity to light or noise
- Feeling sluggish, hazy, foggy, or groggy
- Difficulty concentrating or remembering
- Just not "feeling right" or "feeling down"

CONCUSSIONS AFFECT EACH TEEN DIFFERENTLY.

Although most teens with a concussion feel better within a couple of weeks, some will have symptoms for months or longer. Talk with your teens' healthcare provider if their concussion symptoms do not go away or if they get worse after they return to their regular activities. **Be sure to offer support during their recovery and allow them to stay connected with friends and others.**

What are some more serious danger signs to look out for?

In rare cases, a dangerous collection of blood (hematoma) may form on the brain after a bump, blow, or jolt to the head or body, and can squeeze the brain against the skull. Call 9-1-1 or take your teen to the emergency department right away if after a bump, blow, or jolt to the head or body he or she has one or more of these danger signs:

- One pupil (the black part in the middle of the eye) larger than the other
- Drowsiness or cannot be awakened
- A headache that gets worse and does not go away
- Weakness, numbness, or decreased coordination
- Repeated vomiting or nausea
- Slurred speech
- Convulsions or seizures
- Difficulty recognizing people or places
- Increasing confusion, restlessness, or agitation
- Unusual behavior
- Loss of consciousness (even a brief loss of consciousness should be taken seriously)

What should I do if my teen has a possible concussion?

As a parent, if you think your teen may have a concussion, you should:

1. Remove your teen from play.
2. Keep your teen out of play the day of the injury. Your teen should be seen by a healthcare provider and only return to play with permission from a healthcare provider who is experienced in evaluating for concussion.
3. Ask your teen's healthcare provider for written instructions on helping your teen return to school. You can give the instructions to your teen's school nurse and teacher(s) and return-to-play instructions to the coach and/or athletic trainer.

Do not try to judge the severity of the injury yourself. Only a healthcare provider should assess a teen for a possible concussion. You may not know how serious the concussion is at first, and some symptoms may not show up for hours or days. A teen's return to school and sports should be a gradual process that is carefully managed and monitored by a healthcare provider.

Teens who continue to play while having concussion symptoms or who return to play too soon-while the brain is still healing-have a greater chance of getting another concussion. A repeat concussion that occurs while the brain is still healing from the first injury can be very serious and can affect a teen for a lifetime. It can even be fatal.

To learn more, go to [cdc.gov/headsup](https://www.cdc.gov/headsup)

(Exhibit B)

CONCUSSION INFORMATION SHEET

This sheet has information to help protect your children or teens from concussion or other serious brain injury. Use this information at your children's or teens' games and practices to learn how to spot a concussion and what to do if a concussion occurs.

What Is a Concussion?

A concussion is a type of traumatic brain injury—or TBI—caused by a bump, blow, or jolt to the head or by a hit to the body that causes the head and brain to move quickly back and forth. This fast movement can cause the brain to bounce around or twist in the skull, creating chemical changes in the brain and sometimes stretching and damaging the brain cells.

How Can I Help Keep My Children or Teens Safe?

Sports are a great way for children and teens to stay healthy and can help them do well in school. To help lower your children's or teens' chances of getting a concussion or other serious brain injury, you should:

- Help create a culture of safety for the team.
 - o Work with their coach to teach ways to lower the chances of getting a concussion.
 - o Talk with your children or teens about concussion and ask if they have concerns about reporting a concussion. Talk with them about their concerns; emphasize the importance of reporting concussions and taking time to recover from one.
 - o Ensure that they follow their coach's rules for safety and the rules of the sport.
 - o Tell your children or teens that you expect them to practice good sportsmanship at all times.
- When appropriate for the sport or activity, teach your children or teens that they must wear a helmet to lower the chances of the most serious types of brain or head injury. However, there is no "concussion-proof" helmet. So, even with a helmet, it is important for children and teens to avoid hits to the head.

Talk with your children and teens about concussion. Tell them to report their concussion symptoms to you and their coach right away. Some children and teens think concussions aren't serious, or worry that if they report a concussion they will lose their position on the team or look weak. Be sure to remind them that it's better to miss one game than the whole season.

Plan ahead. What do you want your child or teen to know about concussion?

How Can I Spot a Possible Concussion?

Children and teens who show or report one or more of the signs and symptoms listed below—or simply say they just "don't feel right" after a bump, blow, or jolt to the head or body—may have a concussion or other serious brain injury.

Signs Observed by Parents or Coaches

- Appears dazed or stunned
- Forgets an instruction, is confused about an assignment or position, or is unsure of the game, score, or opponent
- Moves clumsily
- Answers questions slowly
- Loses consciousness (even briefly)
- Shows mood, behavior, or personality changes
- Can't recall events prior to or after a hit or fall

Symptoms Reported by Children and Teens

- Headache or "pressure" in head
- Nausea or vomiting
- Balance problems or dizziness, or double or blurry vision
- Bothered by light or noise
- Feeling sluggish, hazy, foggy, or groggy
- Confusion, or concentration or memory problems
- Just not "feeling right," or "feeling down"

CONCUSSIONS AFFECT EACH CHILD AND TEEN DIFFERENTLY.

While most children and teens with a concussion feel better within a couple of weeks, some will have symptoms for months or longer. Talk with your children's or teens' healthcare provider if their concussion symptoms do not go away, or if they get worse after they return to their regular activities.

What Are Some More Serious Danger Signs to Look Out For?

In rare cases, a dangerous collection of blood (hematoma) may form on the brain after a bump, blow, or jolt to the head or body and can squeeze the brain against the skull. Call 9-1-1 or take your child or teen to the emergency department right away if, after a bump, blow, or jolt to the head or body, he or she has one or more of these danger signs:

- One pupil larger than the other
- Drowsiness or inability to wake up
- A headache that gets worse and does not go away
- Slurred speech, weakness, numbness, or decreased coordination
- Repeated vomiting or nausea, convulsions or seizures (shaking or twitching)
- Unusual behavior, increased confusion, restlessness,
- or agitation
- Loss of consciousness (passed out/knocked out). Even a brief loss of consciousness should be taken seriously

Children and teens who continue to play while having concussion symptoms, or who return to play too soon—while the brain is still healing—have a greater chance of getting another concussion. A repeat concussion that occurs while the brain is still healing from the first injury can be very serious, and can affect a child or teen for a lifetime. It can even be fatal.

What Should I Do If My Child or Teen Has a Possible Concussion?

As a parent, if you think your child or teen may have a concussion, you should:

1. Remove your child or teen from play.
2. Keep your child or teen out of play the day of the injury. Your child or teen should be seen by a healthcare provider and only return to play with permission from a healthcare provider who is experienced in evaluating for concussion.
3. Ask your child's or teen's healthcare provider for written instructions on helping your child or teen return to school. You can give the instructions to your child's or teen's school nurse and teacher(s) and return-to-play instructions to the coach and/or athletic trainer.

Do not try to judge the severity of the injury yourself. Only a healthcare provider should assess a child or teen for a possible concussion. Concussion signs and symptoms often show up soon after the injury. But you may not know how serious the concussion is at first, and some symptoms may not show up for hours or days.

The brain needs time to heal after a concussion. A child's or teen's return to school and sports should be a gradual process that is carefully managed and monitored by a healthcare provider.

To learn more, go to [cdc.gov/HEADSUP](https://www.cdc.gov/HEADSUP)

Discuss the risks of concussion and other serious brain injuries with your child or teen, and have each person sign below.

By signing this waiver you agree: As an athlete, I learned about concussion and talked with my parent or coach about what to do if I have a concussion or other serious brain injury.

By signing this waiver you agree: As a parent/guardian, I have read this fact sheet for parents on concussion with my child or teen, and talked about what to do if they have a concussion or other serious brain injury.

UPSWING Foundation Child Sexual Abuse/Misconduct Policy

Zero-Tolerance Statement

UPSWING Foundation (“UPSWING”) has a Zero-Tolerance-Policy for incidents of child abuse of any kind, including child sexual abuse. In EVERY case, the report of molestation and abuse, or suspected molestation or abuse, will be taken seriously and treated with the utmost priority.

How the Policy Will be Used

The Policy will be made available to each UPSWING employee, volunteer, intern, and contractor whose position necessitates direct and ongoing interaction with UPSWING athletes age 18 and under (“Minor Athletes”), including coaches, athletic directors, and on-site medical providers prior to any interaction with Minor Athletes, and on an annual basis thereafter.

This Policy will also be made available to the parent/guardian of each Minor Athlete. It is recommended by the U.S. Center for SafeSport (“SafeSport”) that all Minor Athletes and their parent(s)/guardian(s) participate in SafeSport education and training on child abuse prevention before providing the consents required under this Policy. Such training materials will be made available to each parent, guardian, and Minor Athlete by UPSWING and are also available on the SafeSport website.

Goals of the Policy

- Define Sexual Abuse/Misconduct.
- Adopt best practice policies around, grooming; physical contact; one-on-one interactions; athletic training, massages and rubdowns; locker rooms/changing areas; electronic communications; transportation; lodging and other sleeping arrangements; and additional best practices to minimize the chance an incident will occur and to prevent false accusations.
- Adopt best practice policies for reporting child sexual and physical abuse; as well as retaliation and prohibiting false reporting.
- Adopt best practice policies in background screenings during the hiring process.
- Adopt best practice policies for monitoring compliance.

UPSWING Foundation and any organization wholly owned by UPSWING Foundation (collectively referred to hereinafter as “UPSWING”), has chosen to adopt this Policy to adopt best practices regarding the prevention of sexual abuse and misconduct with respect to Minor Athletes. In no way can these policies guarantee athlete safety in all circumstances, however they will greatly improve the odds against an incident arising. All UPSWING employees, partners, volunteers, interns, and contractors, whose position necessitates direct and ongoing interaction with Minor Athletes, including coaches, athletic directors, and onsite-medical providers, (hereinafter referred to as “Adult Participants”), who engage directly with minor athletes in UPSWING programs, agree to adhere to the policies herein and report noncompliance, immediately.

I. Sexual Abuse/Misconduct

Sexual abuse/misconduct by Adult Participants with respect to Minor Athletes is prohibited by UPSWING. Sexual offenses include but are not limited to:

- Sexual harassment;
- Sexual contact (or attempts to commit the same);
- Sexual Intercourse (or attempt to commit the same);
- Sexual Exploitation;
- Exposing a minor to Sexual Content/Imagery;

- Bullying Behavior of a sexual nature (SafeSport defines sexual bullying as ridiculing or taunting based on gender or sexual orientation - real or perceived - gender traits or behavior, or teasing someone about their looks or behavior as it relates to sexual attractiveness.)
- Sexual Hazing; and
- Other inappropriate conduct of a sexual nature.

II. Child Abuse Prohibition and Identifying Related Signs

Child abuse of any kind is prohibited by UPSWING. With physical abuse, there may be signs of bruises, welts, or broken bones. With sexual abuse, most often, the effects are less obvious. Children may respond in different ways, and some may show no sign at all. Some indicators of child abuse include:

- Unexplained injuries or unlikely explanations;
- Sudden shifts in behavior or attitudes: an outgoing child suddenly withdraws, a generally happy child becomes aggressive and angry, or a trusting child becomes fearful;
- Extreme fear of a sports organization employee or volunteer, a desire to dropout of activities they previously loved;
- Extremely low self-esteem or self worth, poor self-care, sudden weight changes;
- A child's attachment to a coach/staff to the point of isolation from others;
- Bedwetting, nightmares, night terrors, fear of bedtime;
- Young children using slang terms for private parts or sexual acts, explicit drawings or descriptions that are not age appropriate, sexualized play;
- Difficulty walking or sitting, genital itching;
- Cutting;
- Startled response to touch;
- Depression, suicidal thoughts or actions;
- Eating disorders;
- Substance abuse;
- A drop in academic performance by at least two letter grades; and
- Excessive modesty: girls will often choose to wear many layers of clothes to protect themselves or to avoid drawing attention to their bodies.

III. Grooming Prohibition and Identifying Related Signs

Grooming tactics of any kind are prohibited by UPSWING. Grooming describes the process whereby a person engages in a series or pattern of behaviors with the goal of engaging in sexual misconduct. Grooming occurs through direct or indirect in-person or virtual contact. Grooming behaviors include the following:

1. Identify the gatekeepers (adults in charge) and gain their trust to have access to children;
2. Identify a vulnerable child and their needs (e.g. feeling misunderstood, lack of parental attention, loss of parent, lack of money or food, etc.);
3. Fill the child's need to create a special bond and gain trust (e.g. provide gifts and spending money, help with homework, provide transportation, give special considerations such as more playing time, better team position etc.);
4. Spend a disproportionate amount of time with the child's family to gain their trust;
5. Isolate the victim from peers to create alone time;
6. Desensitize the child to touch by contact such as tickling, horse play, wrestling and massage;
7. Gradually introduce sexual interplay that may start with conversation of asexual nature (in person, texting, and social media), providing alcohol or drugs to lower inhibitions, watching pornography, sharing nude photos; and
8. Use shame and fear as motivating factors to continue the relationship and to silence the victim.

IV. Physical Contact:

A. Adult Participants should make an effort to use substitute techniques that reduce physical touch of Minor Athletes.

B. Permissible physical contact between an Adult Participant and Minor Athlete in training and instruction includes, but is not limited to the following:

- The physical contact takes place in public;
- The physical contact is necessary for safety and/or education (e.g. spotting or establishing body positioning); and
- Brief celebratory or consolatory hugging is permitted. Shoulder to shoulder hugging is better than full embrace. Fist bumps and high fives are good options.

C. Prohibited physical contact between an Adult Participant and Minor Athlete includes but is not limited to:

- Tickling, horseplay, wrestling, as well as massage or rubdowns outside of athletic training (massage and rubdowns during athletic training are covered below);
- Lingering or repeated physical contact or embrace that is not necessary for safety and/or education; and
- Anything sexual in nature.

V. One-on-One Interactions

Except in the case of emergencies, all One-on-One Contact between Adult Participants and Minor Athletes must be observable and interruptible.

- Observable: can be seen by another adult.
- Interruptible: the 2nd adult is close enough in proximity to interrupt any inappropriate interaction between the Adult Participant and Minor Athlete.
- The two adults can be any combination of: coaches, volunteers, parents, etc. This also helps protect staff members from false accusations.

A. Individual Meetings

1. Individual meetings with a Minor Athlete must follow the One-on-One interaction policy described above. The individual meeting should take place in a publicly visible and open area, such as in the corner of a room or in a hallway, within an interruptible distance of another adult.

B. Independent Coaching Sessions

1. All independent coaching sessions must follow the One-on-One interaction policy described above;
2. The Adult Participant providing the independent coaching session must receive advance, written consent from the Minor Athlete's parent/guardian, as well as the Minor Athlete if he or she is age 18, at least annually which can be withdrawn at any time by either the athlete or parent/guardian; and
3. Parents/guardians must be allowed to observe independent coaching sessions.

C. Meetings with Adult Participants (other than athletic trainers) performing services as an independent contractor or employee of a healthcare provider, as defined under the privacy and security regulations issued under Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA")

1. UPSWING does not provide health care and does not collect, transmit, provide or receive any information that is subject to HIPAA. Adult Participants are not authorized by UPSWING to provide health care services to Minor Athletes, unless the Adult Participant is employed by or performing such services as an independent contractor for a health care provider, as defined under HIPAA, and such Adult Participant is providing such services in connection with his or her employment or engagement by the health care provider in a manner that is covered by and complies with the health care provider's established and legally compliant policies and procedures, subject to such health care provider's control and oversight.
2. One-on-one meetings between a Minor Athlete and an Adult Participant (other than an athletic trainer) performing services as an independent contractor or employee of a healthcare provider, as

defined under HIPAA, at a sanctioned event or a facility that is at least partially under UPSWING's jurisdiction must follow the One-on-One interaction policy described above, additionally:

- The door to the room in which such meeting takes place must remain unlocked throughout the meeting;
- Another adult (e.g., parent, guardian or a second health care provider) must be present in the room where the meeting takes place throughout the meeting;
- UPSWING must be notified prior to the meeting that the Adult Participant will be meeting with the Minor Athlete, provided that no information that is subject to HIPAA is transmitted to, provided by or received by UPSWING; and
- The health care provider obtains consent regarding the Minor Athlete's participation in such meeting in a manner that is consistent with applicable laws and ethical standards, which can be withdrawn at any time. Any and all obligations with respect to obtaining the Minor Athlete's consent and maintaining records regarding such consent shall be the sole and absolute responsibility of the health care provider with respect to which such Adult Participant is performing such services as an employee or independent contractor.

VI. Athletic Training, Massages and Rubdowns

Athletic training, massages or rubdowns of Minor Athletes must follow the One-on-One interaction policy described above and must meet the following requirements:

- Another adult must be physically present for the entirety of the athletic training, massage or rubdown;
- The Adult Participant providing the athletic training, massage or rubdown must receive advance, written consent from the Minor Athlete's parent/guardian, as well as the Minor Athlete if he or she is age 18, at least annually, which can be withdrawn at any time by either the athlete or parent/guardian;
- Must be performed with the Minor Athlete fully or partially clothed, ensuring that the breasts, buttocks, groin and genitals are always covered; and
- Parents/guardians must be allowed to observe the athletic training sessions, massages and rubdowns.

Although not required under the Policy:

- Adult Participants should talk through the steps of the athletic training, massage or rubdown, before taking the steps, seeking assent of the Minor Athlete throughout the process.
- Massages and rubdowns should be performed by licensed professionals. Coaches, even if they are licensed massage therapists, should not massage Minor Athletes who they coach.

VII. Locker Rooms/Changing Areas

UPSWING is concerned with changing area activities of Minor Athletes, Minor Athletes and adult athletes, adults being alone with individual Minor Athletes in changing areas, and with non-official or non-related adults having unsupervised access to Minor Athletes at events offered by UPSWING or its affiliates.

- Adult Participants must ensure that all contact with Minor Athletes in a locker room, changing area or similar space is observable and interruptible;
- The use of photo or recording devices is prohibited;
- Adult Participants must not change clothes in front of, or behave in a manner that intentionally or recklessly exposes breasts, buttocks, groin or genitals to Minor Athletes;
- Adult Participants must not shower with or in the presence of Minor Athletes;
- Parents/Guardians may request in writing that their Minor Athlete(s) not change with Adult Participants present;
- Private or semi-private places must be provided for Minor Athlete(s) to change clothes or undress, unless the changing area policy for the location requires Minor Athletes to come dressed for events, practices and competitions and to change and shower at home; and
- Adult Participants must adhere to any applicable, as determined by UPSWING in its discretion, policies and schedules to monitor the use of locker rooms, changing areas or similar spaces and

report non-compliance immediately.

VIII. Electronic Communications

Electronic communication includes but is not limited to phone calls, video calls, texts, social media platforms (e.g., Facebook, Twitter, Instagram, WhatsApp, etc.), fitness applications, and emails that occur between an Adult Participant and Minor Athlete. UPSWING requires that all electronic communications between an Adult Participant and Minor Athlete be open and transparent.

A. All One-on-One and Team electronic communications between an Adult Participant and Minor Athlete(s) must be open and transparent, which means that:

- Adult Participants, when communicating with an individual Minor Athlete, must copy or include the Minor Athlete's parent/guardian, another adult family member, or another Adult Participant in the electronic communication;
- Adult Participants, when communicating electronically with the entire team or any number of Minor Athletes on the team, must copy or include another Adult Participant, or the Minor Athletes' parents/guardians;
- All electronic communications originating from an Adult Participant to a Minor Athlete must be professional in nature;
- Only platforms that allow for open and transparent communication may be used to communicate with Minor Athletes, meaning platforms with content designed to be hidden or automatically deleted are not permitted (e.g., SnapChat and direct messaging are prohibited);
- Adult Participants are not permitted to maintain private or direct message social media communications with Minor Athletes; and
- Parents/guardians may request in writing that UPSWING or Adult Participants not contact their Minor Athlete through any form of electronic communication. UPSWING and Adult Participants must abide by any request to discontinue, except in emergency circumstances.

IX. Transportation

- Adult Participants may not transport Minor Athletes one-on-one.
- Adult Participant can transport a Minor Athlete(s) only if the Adult Participant is accompanied by another Adult Participant or at least 2 Minor Athletes.
- Annual Written Consent from each Minor Athlete's parent/guardian, as well as the Minor Athlete if he or she is age 18, is required for all transportation, and may be withdrawn at any time.
- Exceptions for dual relationships may be made if the coach transporting is also the parent of the Minor Athlete.

X. Lodging and Other Sleeping Arrangements

- All contact at a hotel or lodging site between an Adult Participant and a Minor Athlete must be observable and interruptible.
- Adult Participants cannot share a hotel room or otherwise sleep in the same room as a Minor Athlete. Dual relationship exceptions may be made for parents who are coaches and sharing a room with their child.
- All Monitoring and Room Checks must adhere to the One-on-One interaction policy, with at least 2 adults being present for room checks.
- All Adult Participants who travel with Minor Athletes are assumed to have authority over such Minor Athletes and must complete SafeSport-compliant education and training.
- Annual Written Consent from each Minor Athlete's parent/guardian, as well as the Minor Athlete if he or she is age 18, is required for all lodging or sleeping arrangements.

XI. Additional Best Practices

A. Out-of-Program Contact

- Adult Participants should not have direct out-of-program contact with Minor Athletes without legal parent/guardian consent, even if the Out-of-Program contact is not one-on-one.

B. Gifting

- Adult Participants who do not have a dual relationship with a Minor Athlete should not give personal gifts to a Minor Athlete.
- Gifts from Adult Participants to Minor Athletes that are equally distributed to all athletes and that serve as a motivational or educational purpose are permitted.

C. Photography/Video

- Photos or Videos of Minor Athletes must only be taken in public view and must observe generally accepted standards of decency and will only be publicly shared by UPSWING on UPSWING sanctioned locations, such as UPSWING's website and social media pages.
- Adult Participants are prohibited from publicly sharing or posting photos or videos of Minor Athletes if the Adult Participant has not obtained the parent's/guardian's AND Minor Athlete's consent, as applicable.

XII. Reporting Child Sexual and Child Physical Abuse

NOTE: In Colorado, mandatory reporters can call: CO Child Abuse & Neglect Hotline (24 hours a day) 844-CO-4-KIDS

A. Legal Requirement to Report

- Failure of a "mandatory reporter" (as defined below) to report to the county department, local law enforcement or the child abuse reporting hotline system (see above) immediately may be a criminal violation under state and federal law. Notifying UPSWING management does not fulfill this requirement, even if it is believed management is contacting law enforcement.
 - Mandatory reporters include directors, coaches, assistant coaches and athletic program personnel employed by a private sports organization or program.
 - Note: Under Colorado law, failure of a mandatory reporter to report concerns immediately can result in the mandatory reporter being charged with a class 2 misdemeanor, as well as being subject to a fine of up to \$750 and up to 120 days of imprisonment. The mandatory reporter may also be liable for the "damages proximately caused" by the failure to report a suspicion of child abuse or neglect.
- It is NOT the responsibility of the mandatory reporter to decide if an incident is valid, truthful, or worth reporting. This determination will be made by local authorities. As such, reporters should not attempt to do their own investigation before reporting.

B. UPSWING Procedure

- Mandatory reporters shall comply with all applicable legal requirements.
- Adult Participants who are not mandatory reporters and who have a reasonable suspicion of child abuse shall, within 24 hours of such suspicion arising, notify local law enforcement or the child abuse reporting hotline system (see above).
- All Adult Participants who have a reasonable suspicion of child abuse shall, within 24 hours of such suspicion arising, notify the Compliance Committee: CEO, Josh Wilson (joshw@upswingfoundation.org) and/or VP of Operations, Kristy Detrick (kristyd@upswingfoundation.org).
 - Internal reports to the Compliance Committee must be in writing with the following information: Name(s) of the child/children involved, name of staff/or Adult(s) involved, date of report, incident date, location of the incident, additional details.
- After initial clarifying questions of the complainant or Minor Athletes involved to adequately report the suspicion to law enforcement, UPSWING will not engage in any internal investigations or attempt to investigate the credibility of any such allegation, as an internal investigation may interfere with the investigation of law enforcement.
- To the extent permitted by law, UPSWING will endeavor to keep the names and confidentiality of the complainant (if requested), the accused, and the alleged victims confidential.
- The accused Adult Participants will be suspended from his/her duties pending conclusion of the investigation. If peer-to-peer abuse has been reported, the accused Minor Athlete(s) will be suspended from UPSWING programming.
- UPSWING may decide at its discretion to inform other staff members, parents, and participants, or others with a need to know, of any child sexual abuse or child physical abuse allegations that law enforcement is actively investigating, in an effort to find out if there may be other cases of child abuse that should be reported to law enforcement or as otherwise necessary to ensure safety.

- After the investigation by law enforcement has concluded, UPSWING will determine whether or not the accused is permitted to again participate in UPSWING programming.

XIII. Retaliation & False Reporting Prohibited

A. Retaliation

- UPSWING prohibits retaliation against anyone who in good faith reports suspicions of sexual abuse/misconduct or participates in an investigation. Anyone who retaliates is subject to disciplinary action by UPSWING, up to and including termination of employment and/or exclusion from participation in UPSWING programs.

B. False Allegations

- Filing a knowingly false allegation of child abuse is prohibited and may violate state criminal and civil defamation laws. An allegation is knowingly false if the events reported did not occur and the person making the report knows the events did not occur. A false allegation is different from an unsubstantiated allegation, with respect to which there is insufficient supporting evidence to determine whether an allegation is true or false. Anyone filing reports containing knowingly false information will be subject to termination of employment and/or exclusion from participation in UPSWING programs.

XIV. Background Screenings during the Hiring Process

- UPSWING has partnered with NCSI to run criminal background checks and assist in interpreting results and compliance with state and federal laws.
- NCSI will run records from all 50 states to include the National CriminalDatabase and the National Sex Offender Registry, as well as social security number verification, and address traces.
- All Adult Participants will undergo a background check for acceptability prior to initial assignment of duties. Re-checks will be run, annually.
- Prior to running any criminal background check, the applicant or AdultParticipant will sign a form giving his or her consent to the running of such check.
- To ensure all applicants are treated fairly and consistently, UPSWING will utilize established background screening disqualification criteria. The disqualification criteria are included as an addendum to this Policy.
- NCSI will provide assistance in interpreting background check results and will send adverse action notifications required by law to all disqualified applicants.
- NCSI will provide disqualified applicants with all required documents: a. Fair Credit Reporting Act: Summary of Rights b. Letter of Disqualification c. Copy of the criminal background check results d. Any other requirements under state or federal law
- NCSI is responsible for the background check process. Background checks rely on public records and other sources of information that may be inaccurate or incomplete. UPSWING is not responsible for the failure of a background check to include all relevant information.
- Candidates disqualified due to an unsatisfactory criminal background check will be given a right to appeal through NCSI. Disqualified candidates will be responsible for providing any additional information. Final decision is solely at the discretion of UPSWING Foundation.
- The information obtained during the background screening process, will be held in strict confidence to protect against claims of slander and libel. Information will be kept in a secure location with access limited to the CEO and VP of Operations. Confidential information will not be disclosed outside of the organization and will only be shared within the organization on a need-to-know basis. However, under certain circumstances, the organization may have a legal duty to disclose certain types of information to government agencies or law enforcement.

XV. Monitoring Compliance

UPSWING will monitor and supervise the implementation of and compliance with the UPSWING Foundation Child Sexual Abuse/Misconduct Policy as follows:

- Require all Adult Participants to undergo and pass a criminal background check.
- Require documented Child Sexual Abuse and Misconduct training for all Adult Participants in connection with initial onboarding process and prior to having access to any Minor Athlete.

UPSWING may, in its discretion, require training that differs in nature, content and source for individual Adult Participants.

- Promptly address any reports of child abuse or other misconduct and take action, as required under the Policy.
- Observe and periodically spot check compliance: interactions at practice/games, UPSWING facilities and restrooms, social media etc.

XVI. Distribution/Acknowledgement/Documentation

A hard or electronic copy of this Policy will be made available to each Adult Participant annually. A hard or electronic copy of this Policy will also be made available to all Minor Athletes and their parent(s)/guardian(s). Each Adult Participant will acknowledge by signature they have received, and carefully reviewed the policy, will refrain from engaging in misconduct, and agree to abide by the policy. The organization will maintain all documentation.

By signing below, I acknowledge that I have received, read, accept, and agree to abide by the UPSWING Foundation Child Sexual Abuse/Misconduct Policy.

Addendum to the UPSWING Child Sexual Abuse and Misconduct Policy

UPSWING Foundation Background Screening Disqualification Criteria

A reportable record or disclosure that contains a disposition or resolution of a criminal proceeding, other than an adjudication of not guilty, or the existence of pending charges, for any of the below criminal offenses should be reported as “Flagged,” which means it does not meet the following screening criteria of:

- Any felony;
- Any misdemeanor involving any sexual crimes, criminal offenses of a sexual nature, including, but not limited to, rape, child molestation, sexual battery, sexual assault, lewd conduct, possession and distribution for child pornography, possession and distribution of obscene material, prostitution, solicitation, indecent exposure, public indecency and any sex offender registrant
- Any misdemeanor drug related offenses in the past seven (7)years, including, but not limited to, simple drug possession and possession of drug paraphernalia;
- Two or more misdemeanor alcohol offenses within the past seven (7) years, including, but not limited to, DUI, drunk and disorderly and public intoxication;
- Harm to a minor or vulnerable person, including, but not limited to, offenses such as child abandonment, child endangerment/neglect/abuse and DUI with a minor;
- Any other misdemeanor that would be considered a potential danger to children or is directly related to the functions of the employee or volunteer, including, but not limited to, contributing to the delinquency of a minor and providing alcohol to a minor;
- Violence against a person, force or threat of force, including, but not limited to, crimes involving weapons;
- Violence offenses including, but not limited to, simple assault, battery and domestic violence;
- Destruction of property, including arson; and
- Animal abuse, cruelty or neglect.

UPSWING Code of Conduct

Our vision is to Connect People and Catapult Dreams. We believe all athletes should have an equal opportunity to experience sports, to learn and grow, to connect with others, and to discover and pursue their dreams. We commit to supporting others through empathy, compassion, and encouragement. We demonstrate these commitments every day in everything we do - and we expect the same from all UPSWING athletes.

As UPSWING Athletes, this is our Code of Conduct:

- I am responsible for my behavior at UPSWING, as well as on and off the field. I understand that what I do and say affects me, my team, my school, UPSWING, and other people.
- I lead courageously and live with integrity by speaking up against injustice, and on behalf of others, even when it is hard or unpopular.
- I respect myself, the people around me, including my parents, coaches, teammates, officials, teachers, opponents, and spectators.
- I do not judge or mistreat others according to their race, sex, religion, background, sexual orientation, or abilities.
- I act with empathy. I seek to understand and be supportive and encouraging. I ask others how I can help them.
- I give 100% effort within training, practice, and games. I understand that my effort demonstrates my commitment to myself, trainers and coaches, and teammates.
- I maintain clear communication with UPSWING trainers and teammates.
- I show respect for all equipment, public property and playing facilities.
- I will be on time and prepared for all games and training/practice sessions
- I will show up with a positive attitude, ready to listen and learn, to promote the best training atmosphere for everyone.
- I will give my undivided attention to my teammates and coaches, leaving electronic devices stowed away during training sessions, practices and games..
- I will exercise self control at all times, and will refrain from the use of profanity, offensive language and gestures.
- I understand that verbal or physical abuse, or threats of abuse towards teammates, coaches, parents, volunteers etc. will not be tolerated.
- As a member of the UPSWING community, and as a minor athlete, I understand the use of drugs, tobacco and/or alcohol is prohibited.

I acknowledge that I have read and agree to abide by this Code of Conduct. I understand that failure to adhere to these guidelines may result in disciplinary action, including possible termination of my access to UPSWING facilities and programs.

Terms & Conditions

Acceptance of the Terms of Use

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- to impersonate or attempt to impersonate Upswing, an Upswing employee, another user, or any other person or entity (including, without limitation, by using email addresses associated with any of the foregoing);
- in any manner that could disable, overburden, damage, or impair the Site; or
- to engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Site, or which, as determined by us, may harm the Upswing or users of the Site, or expose them to liability.

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- attack the Site via a denial-of-service attack or a distributed denial-of-service attack; or
- otherwise attempt to interfere with the proper working of the Site.

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Limitation on Liability

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL UPSWING, ITS AFFILIATES, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE SITE, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE SITE OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE.

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COLLECTIVE LIABILITY OF UPSWING AND ITS SUBSIDIARIES AND AFFILIATES, AND THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, AND DIRECTORS, TO ANY PARTY (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE) EXCEED \$100.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Indemnification

You agree to defend, indemnify, and hold harmless the Upswing, its affiliates, licensors, and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to your violation of these Terms of Use or your use of the Site other than as expressly authorized in these Terms of Use, or your use of any information obtained from the Site.

Governing Law and Jurisdiction

All matters relating to the Site and these Terms of Use, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction).

Any legal suit, action, or proceeding arising out of, or related to, these Terms of Use or the Site shall be instituted exclusively in the federal courts of the United States or the courts of the State of Colorado, in each case located in the City of Denver and County of Denver. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

Limitation on Time to File Claims

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE SITE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

Waiver and Severability

No waiver by the Upswing of any term or condition set out in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Upswing to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.

Entire Agreement

The Terms of Use and our Privacy Policy constitute the sole and entire agreement between you and Upswing regarding the Site and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Site.

Your Comments and Concerns

All feedback, comments, requests for technical support, and other communications relating to the Site should be directed to: contact@upswingfoundation.org.

Privacy Policy

This Privacy Policy (“Policy”) is effective as of February 6, 2024. This Policy describes the types of information that Upswing Foundation, a Colorado nonprofit corporation, with offices located at 1746 Cole Blvd., Lakewood, CO 80401 and 7460 South University Blvd, Centennial, CO 80122 (“Upswing”, “we”, “our”, or “us”) may collect from you (“you” or “your”) or that you may provide (“Personal Information”) on through upswingfoundation.org and the UPSWING Foundation App, and any of our other websites (the “Site”), and our practices for collecting, using, maintaining, protecting, and disclosing that Personal Information. It also describes the choices available to you regarding our use of your Personal Information and how you can access and update it.

This Policy is a legally binding agreement between you and Upswing. If you are entering into this Policy on behalf of a business or other legal entity, you represent that you have the authority to bind such entity to this Policy, in which case the terms “you” or “your” shall refer to such entity. If you do not have such authority, or if you do not agree with the terms of this Policy, then you must exit the Site immediately and cease all access and use of the Site. By accessing and using the Site, you acknowledge that you have read, understood, and agree to be bound by the terms of this Policy. This Policy does not apply to the practices of companies that we do not own or control, or to individuals that we do not employ or manage.

You acknowledge and agree that this Policy does not apply to any Personal Information you choose to make public.

Information We Collect

We collect and maintain personally identifiable information and automatic information. We will collect the following data:

- Full name
- Email address
- Phone number
- Physical address

We also collect data to communicate with users of the Site in case they have any questions regarding the Site. To exercise your right to know or your right to delete, please email us at contact@upswingfoundation.org. Please include in your request:

- Full name and address
- Former names (if applicable)
- Contact information (Phone number or email address)
- Your relationship to us

Please indicate if you are acting as a representative of another individual. If that is the case, include the identification information both for yourself and for the individual you represent and a copy of the written authorization you have received.

Automatic Collection of Information

When you open the Site, our servers automatically record information that your browser sends. This data may include but is not limited to information such as your browser type and version, operating system type and version, language preferences, geographic location, the webpage you were visiting before you came to the Site, pages of the Site that you visit, the time spent on those pages, information you search for on the Site, access times and dates, and other statistics.

Information collected automatically is used only to identify potential cases of abuse and establish statistical information regarding the usage and traffic of the Site. This statistical information is not otherwise aggregated in such a way that would identify you in particular.

Internet Protocol Address

All computers and servers on the Internet use Internet Protocol (“IP”) addresses to recognize and communicate with each other. We collect and maintain IP addresses to administer and analyze our Site and report aggregate information. We may associate your IP address with your personally identifiable information and may maintain, use, and disclose such information in accordance with the terms of this Policy.

Use and Processing of Personal Information

We act in the capacity of a data controller when we ask you to submit your Personal Information that is necessary to ensure your access and use of the Site. In such instances, we are a data controller because we determine the purposes and means of the processing of Personal Information.

In order to make the Site available to you, or to meet a legal or regulatory obligation, we may collect and use certain of your Personal Information. If you do not provide the Personal Information that we request, we may not be able to provide you with full access to all of the features of the Site. Any of the Personal Information we collect from you may be used for the following purposes:

- Send administrative information
- Respond to inquiries and offer support
- Improve user experience
- Protect from abuse and malicious users
- Respond to legal or regulatory requests and prevent harm
- Run and operate the Site
- Communicate with you regarding our Site
- Send you advertisements, promotions, and information about us generally
- Process applications or other intake forms directly related our programs or services

How we process your Personal Information depends on how you interact with the Site, where you are located in the world and if one of the following applies:

- (i) you have given your consent for one or more specific purposes;
- (ii) provision of Personal Information is necessary for the performance of an agreement with you and/or for any pre-contractual obligations thereof;
- (iii) processing is necessary for compliance with a legal obligation to which you are subject;
- (iv) processing is related to a task that is carried out in the public interest or in the exercise of official authority vested in us;
- (v) processing is necessary for the purposes of the legitimate interests pursued by us or by a third party. We may also combine or aggregate some of your Personal Information in order to better serve you and to improve and update our Site.

Disclosure of Personal Information

We may share your Personal Information with our affiliates, contracted companies, and service providers (collectively, “Service Providers”) who we rely upon to assist in the operation of the Site

available to you and whose privacy policies are consistent with ours or who agree to abide by our policies with respect to Personal Information. Service Providers will be provided access to Personal Information to the extent necessary to perform their functions.

We may also disclose any Personal Information we collect, use or receive if required or permitted by law, such as to comply with a subpoena or similar legal process, and when we believe in good faith that disclosure is necessary to protect our rights, protect your safety or the safety of others, investigate fraud, or respond to a government request.

In the event of a sale of Upswing or a sale of some of all of our assets, Personal Information may be one of the assets transferred or sold.

Retention of Personal Information

We will retain and use your Personal Information for the period necessary to provide you with access to the Site, comply with our legal obligations, to enforce our agreements, resolve disputes, unless a longer retention period is required or permitted by law.

We may use any aggregated data derived from or incorporating your Personal Information after you update or delete it, but not in a manner that would identify you personally. Once the retention period expires, Personal Information shall be deleted. Therefore, the right to access, the right to erasure, the right to rectification, and the right to data portability cannot be enforced after the expiration of the retention period.

Cookies

The Site may use Cookies. “Cookies” are small text files that allow websites to store and retrieve information about you from your computer system. Cookies are served to track individual site usage for later aggregation and for other purposes explained in this Policy. You are always free to decline our Cookies if your browser permits, but you may not be able to take full advantage of our Site features if you do.

Data Analytics

Our Site may use third-party analytics tools that use Cookies, web beacons, or other similar information-gathering technologies to collect standard internet activity and usage information. The information gathered is used to compile statistical reports on user activity such as how often users visit our Site, what pages they visit and for how long, etc. We use the information obtained from these analytics tools to monitor the performance and improve our Site. We do not use third-party analytics tools to track or to collect any personally identifiable information of our users and we will not associate any information gathered from the statistical reports with any individual user.

Do Not Track Signals

Some browsers incorporate a Do Not Track feature that signals to websites you visit that you do not want to have your online activity tracked. Tracking is not the same as using or collecting information in connection with a website. For these purposes, tracking refers to collecting personally identifiable information from consumers who use or visit a website or online service as they move across different websites over time. How browsers communicate the Do Not Track signal is not yet uniform. As a result, the Site may not yet be set up to interpret or respond to Do Not Track signals communicated by your browser.

Email Marketing

We offer electronic newsletters to which you may voluntarily subscribe at any time. We will maintain the information sent via email in accordance with applicable laws and regulations.

In compliance with the CAN-SPAM Act, all emails sent from us will clearly state who the email is from and provide clear information on how to contact the sender. You may choose to stop receiving our newsletter or marketing emails by following the unsubscribe instructions included in these emails or by contacting us.

Links to Other Resources

The Site may contain links to other resources that are not owned or controlled by us. Please be aware that we are not responsible for the privacy practices of such other resources or third parties. We encourage you to be aware when you leave our Site and to read the privacy statements of each and every resource that may collect Personal Information.

Information Security

We use reasonable efforts to protect your Personal Information from unauthorized use or disclosure. Unfortunately, information transmitted on the Internet and/or stored on systems attached to the Internet are not 100% secure. As a result, we do not ensure, warrant, or guarantee the security or integrity of such Personal Information. We will not be responsible for disclosure of any information (including Personal Information) due to errors in transmission or the unauthorized acts of third parties.

Data Breach

In the event we become aware that the security of any Site has been compromised or your Personal Information has been disclosed to unrelated third parties as a result of external activity, including, but not limited to, security attacks or fraud, we reserve the right to take reasonably appropriate measures, including, but not limited to, investigation and reporting, as well as notification to and cooperation with law enforcement authorities. In the event of a data breach, we will make reasonable efforts to notify affected individuals if we believe that there is a reasonable risk of harm to the user as a result of the breach or if notice is otherwise required by law.

Privacy of Children

We encourage parents and legal guardians to monitor their children's Internet usage and to help enforce this Policy by instructing their children never to provide Personal Information through the Site without their permission. We also ask that all parents and legal guardians overseeing the care of children take the necessary precautions to ensure that their children are instructed to never give out Personal Information when online without their permission.

The Children's Online Privacy Protection Act of 1998 and its rules (collectively, "COPPA") require us to inform parents and legal guardians (as used in this section, "parents") about our practices for collecting, using, and disclosing personal information from children under the age of 13 ("children"). It also requires us to obtain verifiable consent from a child's parent for certain collection, use, and disclosure of the child's personal information.

This section only applies to children under the age of 13 and supplements the other provisions of this Policy.

- **Information We Collect from Children** o Children can access many parts of the Site and its content and use many of its features without providing us with Personal Information. However, some content and features require us to collect certain information, including Personal Information, from them. In addition, we use certain technologies, such as cookies, to automatically collect information from our users (including children) when they visit or use the Site.

o We only collect as much information about a child as is reasonably necessary for the child to participate in an activity on the Site, and we do not condition his or her participation on the disclosure of more Personal Information than is reasonably necessary.

- **Collection of Information from Children**

- o We collect information directly from children in accordance with the Section titled Information We Collect

- o We collect information automatically from children in accordance with the Section titled Automatic Collection of Information

- **How We Use Your Child's Information** o We use the Personal Information we collect from your child in accordance with the Section titled Use and Processing of Personal Information

- **Our Practices for Disclosing Children's Information**

- o We do not share, sell, rent, or transfer children's Personal Information other than as described in this section.

- o We may disclose aggregated information about many of our users, including children.

- o We may disclose children's Personal Information in accordance with the Section titled Disclosure of Personal Information In addition, we may disclose children's Personal Information to protect the safety of a child.

- **Accessing and Correcting Your Child's Personal Information** o At any time, you may review your child's Personal Information maintained by us, require us to correct or delete the Personal Information, and/or refuse to permit us from further collecting or using the child's Personal Information.

- o You can review, change, or delete your child's Personal Information by: Sending us an email at contact@upswingfoundation.org. To protect your child's privacy and security, we may require you to take certain steps or provide additional information to verify your identity before we provide any information or make corrections.

- o Operators That Collect or Maintain Information from Children:

1. Virtuous (CRM): 1 N 1st St, Phoenix, AZ 85004; (866) 329-4009; info@virtuous.org

2. Design Like You Mean It (DLYMI): 1115 Acoma Street, Suite 129, Denver, CO 80204; hello@dlymi.com

3. MINDBODY, Inc.: 651 Tank Farm Rd. San Luis Obispo, CA 93401; (877) 755-4279; privacy@mindbodyonline.com

- Please direct inquiries about any third-party operator's privacy practices and use of children's Personal Information to the individual operator using the contact information provided above.

Changes and Amendments

We reserve the right to modify this Policy or the terms related to the Site at any time at our discretion. An updated version of this Policy will be effective immediately upon the posting of the revised Policy unless otherwise specified. Your continued use of the Site after the effective date of the revised Policy (or such other act specified at that time) will constitute your consent to those changes. However, we will not, without your consent, use your Personal Information in a manner materially different than what was stated at the time your Personal Information was collected.

Contacting Us

If you have any questions, concerns, or complaints regarding this Policy, the information we hold about you, or if you wish to exercise your rights, we encourage you to contact us at contact@upswingfoundation.org.

Parent/Guardian Signature for Minors

*If under the age of 18, this release **must be signed by the parent/guardian of the minor.**

I hereby state that I am 18 years of age or older, or the parent or guardian of the minor whose name appears above. I am familiar with and consent to the terms and provisions set forth in this Release.

I have read and agree to the above policies: Liability Waiver, Exhibit A, Exhibit B, UPSWING Foundation Child Sexual Abuse/Misconduct Policy, UPSWING Code of Conduct, Terms & Conditions, Privacy Policy, Cancellation Policy, Purchase Policy, Return/Refund Policy, Parent/Guardian Signature for Minors

Signature

Please sign here to consent to cancellation and liability information *

Clear

* Indicates a required field

Done