



# API TERMS OF USE

Thank you for using the foreUP Application Programming Interfaces (the “foreUP API”). This API Terms of Use, together with the foreUP Terms of Service and Privacy Policy, form a binding contract between you, or the company or legal entity that you represent, and Golf Compete, Inc. d/b/a foreUP (“foreUP” or “Company”). As used in this API Terms of Use, “we,” “our,” and “us” shall refer to foreUP and our affiliates, subsidiaries, successors and assigns; and “you” and “your” shall refer to the individual, company or legal entity that you represent. By accessing and using the foreUP APIs, you agree to abide by the API Terms of Use and any guidelines or other documentation provided by us for use in connection with the foreUP APIs (“API Documentation”). Terms not specifically defined herein shall have the meanings as set forth in Section 1 of the foreUP Terms of Service.

For clarity, some of the provisions of this API Terms of Use apply to your own use of the foreUP APIs to develop, test and support Your Application, while others apply to your access and use of the foreUP APIs to receive, modify, use and display End User Data from the foreUP System in Your Application, or to distribute Your Application to End Users and allow such End Users to access your integration of the foreUP APIs within Your Application. As such, not all provisions of this API Terms of Use may apply to your specific use of the foreUP APIs in each instance.

**1. API LICENSE GRANT.** Subject to your compliance with the API Terms of Use, as well as our Terms of Service and Privacy Policy, we grant you a non-exclusive, revocable, non-transferrable and non-sublicensable license to (a) access and use the foreUP APIs and API Documentation to receive, modify, use and display End User Data in your website or native applications for mobile devices (“Your Application”) subject to the permissions granted for the relevant End User account; (b) use the foreUP APIs, API Documentation, and/or End User Data to develop, test, and support Your Application; and/or (c) distribute Your Application to our Customers or End Users and to allow such Customers and/or End Users to access the integration of the foreUP APIs within Your Application. You may not use the foreUP APIs for any other purpose without our prior written consent. If you are integrating with foreUP APIs in Your Application, you may charge for Your Application provided you do not sell, rent, lease, sublicense, redistribute or syndicate access to the foreUP APIs, or any Customer or End User Data.

**2. TRADEMARK LICENSE GRANT.** Subject to your compliance with these API Terms of Use, we grant you a non-exclusive, revocable, non-transferrable and non-sublicensable license to reproduce and display the foreUP name and logo (the “foreUP Marks”) in accordance with our trademark guidelines and solely to promote or advertise your integration of the foreUP APIs in Your Application.

**3. RESERVATION OF RIGHTS.** We reserve all rights not expressly granted by these API Terms of Use.

**4. LICENSEE OBLIGATIONS.** In connection with your use of the foreUP APIs, you must: (a) obtain the explicit consent of End Users before collecting, using, posting or

sharing any End User Data obtained through the foreUP APIs on an End User’s behalf; (b) comply with the foreUP Terms of Service and Privacy Policy; and (c) comply with any requirements or restrictions imposed on usage of End User Data by the owner of such data. Although the foreUP APIs can be used to provide you with access to End User Data, neither foreUP’s provision of the foreUP APIs to you nor your use of the foreUP APIs overrides any requirements or restrictions placed on such End User Data by our Customer, the End User or a third party with a legal interest in the End User Data; (d) maintain a user agreement or terms of use and a privacy policy for Your Application, which is prominently identified or located where End Users download or access Your Application. Your privacy policy must meet applicable legal standards and describe the collection, use, storage and sharing of End User Data in clear, understandable and accurate terms. You must promptly notify us in writing via email to [legal@foreup.com](mailto:legal@foreup.com) of any breaches of your user agreement or privacy policy that impact or may impact users of the foreUP APIs, the Software or our Site; (e) obtain the consent of an End User prior to deleting or destroying any of the End User Data associated with their foreUP account; and (f) provide attribution to foreUP as the source of data in accordance with the following guidelines: (i) display a foreUP Mark so it is clear to the End User that the data is from foreUP; (ii) link the logo in such foreUP Mark to [www.foreupgolf.com](http://www.foreupgolf.com); and (iii) comply at all times with trademark guidelines provided by foreUP when using or displaying the foreUP Marks.

**5. USE RESTRICTIONS.** You and Your Application may not: (a) access, store or share End User Data to which the End User has not granted you explicit access rights; (b) make requests that exceed our rate limit or use the foreUP APIs in a manner that impacts the stability of our servers or

impacts the behavior of other applications using the foreUP APIs; (c) engage in any activity that compromises, breaks or circumvents any of our technical processes or security measures associated with the foreUP APIs, the Software or our Sites, or that poses a security vulnerability to any other Customer or End User; (d) request or publish information impersonating a Customer or End User, or misrepresenting any Customer or End User or other third party in requesting or publishing information; (e) create or disclose metrics about, or perform any statistical analysis of the foreUP APIs; (f) display foreUP's Marks or Customer or End User Data in a manner that could reasonably imply an endorsement, relationship or affiliation with or sponsorship between you or a third party and foreUP, other than your permitted use of the foreUP APIs; (g) display Customer and/or End User Data on any site that disparages foreUP or our products or services, or infringes any foreUP intellectual property or other rights; (h) copy, sell, rent, lease, transfer, assign, sublicense, disassemble, reverse engineer or decompile (except to the limited extent expressly authorized under applicable statutory law), modify or alter any part of the foreUP APIs; (i) sell, rent, lease, share, transfer, assign, or sublicense any Customer or End User Data or other information or data obtained through the foreUP APIs, directly or indirectly, to or with any third party, including any data broker, ad network, ad exchange or other advertising or monetization-related party; (j) use Customer or End User Data in any advertisements or for purposes of targeting advertisements (whether such advertisements appear in Your Application or elsewhere); (k) attempt to cloak or conceal your identify when requesting authorization to use the foreUP APIs; (l) use the foreUP API for any application that constitutes, promotes or is used primarily for the purpose of dealing in spyware or any other malicious programs or code, activities that violate any law or regulation, or any rights of any person including, but not limited to, intellectual property rights, and activities that, in our sole judgment, are offensive or might harm our business or our reputation; and (m) access the foreUP APIs or API Documentation in order to replicate or compete with the foreUP APIs, the Software, or our Sites.

**6. USE LIMITATIONS.** We may limit the maximum End User Data that may be accessed, the rate at which such End User Data may be accessed, and/or the number of network calls that Your Application may make via the foreUP APIs. We may change such usage limits at any time, without prior notice, and/or may utilize technical measures to prevent over-usage and/or stop usage of the foreUP APIs by an application after any usage limitations are exceeded.

**7. FEES.** We reserve the right to charge you a fee per API call. As applicable, fees associated with your access and/or use of the foreUP APIs shall be provided to you in a separate API Fee Schedule.

**8. TERMINATION.** Your license to utilize the foreUP APIs and foreUP Marks shall continue until terminated by either you or us as set forth in this provision. You may terminate this license at any time by discontinuing your use of the foreUP APIs. We may suspend or terminate your right and license to use any or all of the foreUP APIs and the API Documentation at any time, with or without cause, and with or without notice to you. Upon termination of your license for any reason, you shall destroy and remove from all computers, hard drives, networks and other storage media all copies of End User Data and foreUP Marks.

**9. WARRANTY DISCLAIMERS.** We do not represent and warrant that the foreUP APIs are free of inaccuracies, errors, bugs or interruptions, or are reliable, accurate, complete or otherwise valid. **THE FOREUP APIs ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS, WITH NO WARRANTIES OF ANY KIND AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING AN IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, SECURITY, TITLE AND/OR NON-INFRINGEMENT. WE DO NOT WARRANT THAT THE FOREUP APIs WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. YOUR USE OF THE FOREUP APIs IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE THAT RESULTS FROM THE USE OF FOREUP APIs INCLUDING, BUT NOT LIMITED TO, ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA.**

**10. LIMITATION OF LIABILITY. WE SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH USE OF THE FOREUP APIs, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE), OR ANY OTHER PECUNIARY LOSS, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS API TERMS OF USE (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED \$100. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU.**

**11. RELEASE AND WAIVER.** To the maximum extent permitted by applicable law, you hereby release and waive

all claims against us, and our subsidiaries, affiliates, parent company, officers, agents, licensors, co-branders or other partners, and employees from any and all liability for claims, damages (actual and/or consequential), costs and expenses (including litigation costs and attorneys' fees) of every kind and nature, arising from or in any way related to your use of the foreUP APIs, Customer or End User Data, or the foreUP Marks. If you are a California resident, you waive your rights under California Civil Code 1542, which states:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”**

You understand that any fact relating to any matter covered by this release may be found to be other than now believed to be true and you accept and assume the risk of such possible differences in fact. In addition, you expressly waive and relinquish any and all rights and benefits that you may have under any other state or federal statute or common law principle of similar effect, to the fullest extent permitted by law.

**12. INDEMNIFICATION.** To the maximum extent permitted by applicable law, you agree to indemnify, defend and hold us harmless, as well as our subsidiaries, affiliates, parent company, officers, agents, attorneys, licensors, co-branders or other partners, and employees from any and all third party claims arising from or in any way related to your use of the foreUP APIs, including any liability or expense arising from all claims, losses, damages, liabilities, costs and fees (including reasonable attorneys' fees) of every kind and nature. Notwithstanding anything contained in the preceding sentence, (a) we will always be free to choose our own counsel if we pay for the cost of such counsel; and (b) no settlement may be entered into by you, without our express written consent (such consent not to be unreasonably withheld), if (i) the third party asserting the claim is a government agency, (ii) the settlement arguably involves the making of admissions, (iii) the settlement does not include a full release of liability, or (iv) the settlement includes terms other than a full release of liability and the payment of money.

**13. REMEDIES.** You acknowledge that your breach of these API Terms of Use may cause us irreparable harm, which you acknowledge would be difficult to ascertain. Accordingly, you agree that, in addition to any other remedies to which we may be legally entitled, we shall have the right to seek immediate injunctive relief in the event of a breach of these API Terms of Use by you or any of your officers, employees, consultants or other agents.

**14. PUBLICITY.** You grant us the right to use your company name and logo as a reference for marketing or

promotional purposes on our website and in other public and private communications with our existing or potential developers and customers, subject to your standard trademark usage guidelines as provided to us from time to time.

**15. PARTY RELATIONSHIP.** You and foreUP are independent contractors and these API Terms of Use do not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. You shall not have any authority to assume or create any obligation for or on behalf of foreUP, express or implied, and you shall not attempt to bind us to any contract without our express written consent.

**16. DISPUTE RESOLUTION.** Many concerns can be resolved by calling us at [TBD]. If a dispute cannot be resolved informally, this provision explains how claims (whether by you against us, or by us against you) will be resolved.

**16.1 Definition.** “Claim” means any current or future claim, dispute or controversy relating in any way to these foreUP Terms of Use or our Terms of Service. Claim includes (a) initial claims, counterclaims, cross-claims and third-party claims; (b) claims based upon contract, tort, fraud, statute, regulation, common law and equity; and (c) claims by or against any third party using or providing any product, service or benefit in connection with our agreement, the Site or our Services.

**16.2 Claim Notice.** Prior to beginning a lawsuit, you and foreUP agree to send a notice (a “Claim Notice”) to each party against whom a Claim is asserted. The Claim Notice will give you and us a chance to resolve our dispute informally or through non-binding mediation. The Claim Notice must describe the Claim and state the specific relief demanded. Notice to you may be sent to your current mailing address or email address on file. You must provide your name, address and phone number in your Claim Notice. Your Claim Notice must be emailed to Golf Compete, Inc. d/b/a foreUP, Subject Line: API Claim Notice, [legal@foreup.com](mailto:legal@foreup.com).

**16.3 Mediation.** In mediation, a neutral party helps parties resolve a Claim. The mediation does not decide the Claim but helps the parties reach agreement. Before beginning mediation, you or we must first send a Claim Notice. Within 30 days after sending or receiving a Claim Notice, you or we may submit the Claim for mediation. Mediation fees will be split equally, and the location for mediation shall be mutually decided between you and us. All mediation-related communications are confidential, inadmissible in court and not subject to discovery. All applicable statutes of limitations will be tolled until termination of the mediation. Either you or we may terminate the mediation at any time; the process is non-binding. The submission or failure to submit a Claim to

mediation will not affect your or our rights to elect to litigate.

**16.4 Exception.** If a Claim has an aggregate value of \$5,000 or less, or the Claim seeks injunctive relief, then either party may proceed directly to court and shall not be obligated to attend mediation as part of a dispute resolution process.

**17. SEVERABILITY.** If any provision of these API Terms of Use is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision and that the other provisions remain in full force and effect.

**18. GOVERNING LAW AND VENUE.** These API Terms of Use and the relationship between you and us will be governed by the laws of the State of Utah without regard to conflict of law provisions. You and foreUP agree to submit to the personal jurisdiction of the courts located within the city of Salt Lake City, Utah.

**19. NO WAIVER.** Our failure to exercise or enforce any right or provision of these API Terms of Use shall not constitute a waiver of such right or provision.

**20. SURVIVAL.** Sections 9, 10, 11, 12, 13, 16, 18 and 21 will survive the termination or expiration of these API Terms of Use.

**21. ENTIRE AGREEMENT.** These API Terms of Use, together with our Terms of Service and Privacy Policy, constitute the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. In the event of any inconsistency between these API Terms of Use and our Terms of Service and/or Privacy Policy, these API Terms of Use shall control.