

## SmartPin Terms of Use

### Effective March 5, 2024

Please read these Terms of Use (“TOU”) carefully before using websites or apps created by Ace Golf Technologies, LLC, a Minnesota limited liability company DBA SmartPin (“We” or “Our”), whose mailing address and principal place of business is 3469 Lake Elmo Ave N, #219, Lake Elmo, MN 55042.

### 1. Your Acceptance

These TOU apply to your visits to internet domain and subdomains for <https://smartpingolf.com> (the “Site”) and any mobile applications created by SmartPin (“App”), but do not include other websites which are linked to/from the Site or App; those linked websites may be governed by different agreements.

By using and/or visiting the Site or App, including all Content (as defined below), and accessing associated content such as email operated by SmartPin, you signify your agreement to these TOU. You acknowledge (a) that you have read and understood these TOU; and (b) that these TOU have the same force and effect as a signed agreement.

If you are accepting this agreement on behalf of your employer, you affirm that you have the authority to accept this agreement on its behalf. You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, warranties, and indemnification set forth in these TOU, and to abide by and comply with these TOU.

ATTENTION: PLEASE READ OUR [PRIVACY POLICY](#) CAREFULLY BEFORE USING THE SITE OR APP. ACCESSING ANY PART OF THE SITE OR APP OR CONTENT INDICATES THAT YOU ACCEPT AND AGREE TO BE BOUND BY THESE TOU AND RELATED POLICIES IN FULL. IF YOU DO NOT ACCEPT THE TOU AND RELATED POLICIES, DO NOT USE, ACCESS, OR DOWNLOAD MATERIALS FROM THE SITE OR APP AND LEAVE THE SITE AND/OR APP IMMEDIATELY.

We reserve the right to modify or discontinue the Site or App (or any portion of the Site or App), temporarily or permanently, with or without notice to you, and are not obligated to support or update the Site or App. YOU AGREE THAT SMARTPIN SHALL NOT BE LIABLE TO YOU OR TO ANY THIRD PARTY IN THE EVENT THAT WE EXERCISE OUR RIGHT TO MODIFY OR DISCONTINUE THE SITE OR APP (OR ANY PORTION OF THE SITE OR APP). Unless explicitly stated otherwise, any new features that augment or enhance the current Site or App shall be subject to these TOU.

BY USING THE SITE OR APP, YOU AGREE TO BE BOUND BY THE MOST RECENT VERSION OF THE TOU. We may change these TOU at any time. Please review the TOU each time you visit the Site or App. If We have Your email address, We will notify You of material changes to the TOU via email. If we do not have your email address, We will update this page to reflect any changes to the TOU.

These TOU include a disclaimer of warranties, a disclaimer of liability, a class action waiver, as well as a

release and indemnification by you, in Sections 1, 3, 7, 8-12, and 16. Please review those sections (and all other terms) carefully.

## **2. Privacy Policy**

Our Privacy Policy describes the information SmartPin collects when you and others use the Site and App. It also describes how SmartPin uses any personal information you share with it. The Privacy Policy is part of these TOU. By agreeing to these TOU, you are also consenting to our use of your personal information in accordance with our Privacy Policy. Please click here to review our [Privacy Policy](#).

## **3. Links to and from the Site and App**

The Site and App may contain links to third-party websites and online services (such as social media sites) that are not owned or controlled by SmartPin. SmartPin has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites or online services, and you access and use these websites or online services solely at your own risk. These links are provided for your reference and convenience only, and do not necessarily imply any endorsement, sponsorship or recommendation of the material on these third-party websites or online services or any association with their operators. In addition, SmartPin will not and cannot control or edit the content of any third-party website or online service. BY USING THE SITE OR APP, YOU EXPRESSLY RELEASE SMARTPIN, ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SHAREHOLDERS, LICENSORS, LICENSEES, AND SUPPLIERS (COLLECTIVELY "THE SMARTPIN PARTIES") FROM ANY AND ALL LIABILITY ARISING FROM YOUR USE OF ANY THIRD-PARTY WEBSITE OR ONLINE SERVICES AND FROM ANY LOSS OR DAMAGE OF ANY SORT YOU MAY INCUR FROM DEALING WITH ANY THIRD-PARTY. Accordingly, we encourage you to be aware when you leave the Site or App and to read the terms and conditions of use for each other website or online service that you visit.

Except as you have otherwise agreed with SmartPin in writing, you may link to the Site or App from your website, subject to the following: (1) you may not frame the Site or App or any portion of the Site or App; (2) you will not override or hinder the functionality of an end-user's Web browser's "back" function; (3) the link must be identified using a plain text rendering of the SmartPin name and not any SmartPin logo; (4) you may not use any SmartPin logo in any way; (5) you may not use the link in any way that suggests that SmartPin is associated with or endorses you or your website; (6) the link may not appear on any website that a reasonable person may consider obscene, defamatory, harassing, offensive or malicious, and may not be presented in any way that disparages SmartPin or damages its rights, reputation, or goodwill; and (7) we may terminate your right to link to the Site or App at any time for any reason or no reason.

## **4. Restrictions on Use of Site and App**

In your use of the Site and App, you will not:

- use the Site or App for any purpose other than for using the features we intentionally make available to you;
- upload, email, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or other form of solicitation;
- post, transmit or submit any information that SmartPin, in its sole discretion, determines is confidential (including social security or alternate national identity numbers, sensitive personal information, non-public phone numbers or non-public email addresses), false, misleading, unlawful, infringing, threatening, abusive, harassing, libelous, defamatory,

- discriminatory, obscene, offensive, inflammatory, scandalous, pornographic or profane material or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate the law;
- upload, download, post, email or otherwise transmit any material that may infringe copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights of any party;
  - copy, download or distribute any part of the Site or App in any form or medium without the prior written authorization of SmartPin;
  - alter, modify or make derivative works from any part of the Site or App without the prior written authorization of SmartPin;
  - provide false personal information of anyone other than yourself without permission;
  - use web crawlers, web robots, web scutters, ants, automatic indexers, bots, worms, and other such devices in connection with the Site or App; provided, however, that general purpose Internet search engines and non-commercial public archives that use tools to gather information for the sole purpose of displaying hyperlinks to the Site and App are granted a limited exception from the foregoing exclusion, provided that they do so from a stable IP address or range of IP addresses using an easily-identifiable agent;
  - use the Site or App in any manner that could damage, disable, overburden, or impair the Site or App or interfere with any other party's use of the Site or App;
  - obtain or attempt to obtain any content through any means not intentionally made available or provided for through the Site or App;
  - impersonate or misrepresent any person or entity or your affiliation with someone else;
  - remove, modify, disable, block, obscure or otherwise impair any advertising in connection with the Site or App; or
  - post or transmit any worms, viruses, Trojans, or other harmful, disruptive, or destructive files, code, or programs to the Site or App.

SmartPin will fully cooperate with any law enforcement authorities or court order requesting or directing SmartPin to disclose the identity of anyone violating these TOU.

We believe in children's online safety and do not wish to receive information regarding children under 13 years old. Therefore, you may not post, transmit or submit any personally-identifiable information of a child under 13 years old or information sufficient to locate such a child on or through the Site or App. If you are under 13 years of age, then please do not attempt to submit any information to or use the Site or App.

## 5. Intellectual Property

Everything you see, hear, or otherwise experience on the Site and App, including but not limited to the graphics, videos, audio recordings, text, software, photographs, scripts, software screens, design elements, artwork, templates, layout designs, interactive features and the like, the concepts and ideas underlying the Site and App, and all statistical, analytical, and other data captured by or through the Site and App (collectively, "Content") and the trademarks, service marks and logos contained therein ("Marks"), are owned by or licensed to **SmartPin**, subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. **SmartPin** owns the copyright in the selection, coordination, arrangement and enhancement of the Content. Any unauthorized use of any materials on the Site or App or use of the Marks may violate copyright, trademark, and other laws. **ACE GOLF TECHNOLOGIES** and **SMARTPIN** are trademarks of **Ace Golf Technologies, LLC**.

For your personal use, you may view, copy, and print pages from the Site and App. Otherwise, the Site or App may not be copied, downloaded, modified, reproduced, distributed, published, performed, streamed, transmitted, broadcasted, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners. SmartPin reserves all rights not expressly granted in and to the Site and App, the Content, and the Marks. You agree not to use, copy, download, or distribute any of the Content other than as expressly permitted herein. You may not incorporate the Content into, or stream or transmit the Content via any hardware or software application or make it available via frames or in-line links unless expressly permitted by SmartPin in writing. You may not create, recreate, advertise or distribute an index of a significant portion of the Content unless authorized in writing by us. You may not build a business using the Content, whether or not for profit. If you copy or print pages of the Content for personal use, you must retain all copyright and other proprietary notices contained therein. You agree not to circumvent, disable or otherwise interfere with security-related features of the Site or App or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Site or App or the Content therein, nor may you scrape or use any extraction methods to obtain any Content or data from the Site or App.

You shall not, and shall not permit others to, license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party, all or any part of the rights granted to you under these TOU, the Site or App, or any content or materials accessible through the Site or App, in whole or part.

## 6. Game Rules / Payments

Please review our [Game Rules](#) for information on participating in our golf shot games.

- a. **Transactions.** If You wish to use services or purchase products made available by or through the Site or App (each such activity, a "**Transaction**"), You may be asked to supply certain information applicable to Your Transaction, including, without limitation, credit card and other information. Any information that You provide to SmartPin will be handled in the manner described in our [Privacy Policy](#). You agree that all information that You provide in connection with Your Transaction will be accurate, current and complete. You agree to pay all charges incurred by You or any users of Your account(s) and credit card at the price(s) set forth on the Site or App at the time of Your Transaction; however, such prices do not include and You must pay any excise, sales, use, or like taxes associated with the Transaction. Prices advertised on the Site or App are subject to increase in the amount of any such tax that SmartPin may be required to collect or pay in connection with the Transaction. You are responsible for (and will indemnify the SmartPin Parties against) all taxes associated with Transactions entered into by You or users of Your account through the Site or App (excepting taxes based on SmartPin's income).

You agree that You will not attempt to conceal Your identity by using multiple Internet Protocol addresses or email addresses to use or to enter Transactions on the Site or App. You grant SmartPin the right to provide any information You submit to or through the Site or App to third parties for purposes of facilitating the completion of Transactions initiated by You or on Your behalf. Verification of information may be required prior to the acknowledgment or completion of any Transaction.

- b. **Pricing.** Pricing for Transactions shall be as set forth on the Site and App which pricing may be changed by SmartPin from time to time. SmartPin may choose to temporarily change pricing for promotional events or new products or services, and such changes shall be immediately effective when SmartPin posts the temporary pricing change to the Site or App.
- c. **Payment Processing.** When You conduct a Transaction, processing of the Transaction and collection of payments may be handled by STRIPE. Transactions will be processed only after a billing address, and other billing information, has been verified. If We receive incorrect billing or credit card account information, the processing of Your Transaction will be cancelled without further notice.
- d. **Transaction Confirmation.** If You do not receive a confirmation number (in the form of a confirmation page or email) after submitting payment information, or if You experience an error message or service interruption after submitting payment information, it is Your responsibility to confirm with SmartPin whether or not Your Transaction has been completed.
- e. **Payment Methods.** SmartPin accepts payment via American Express, Visa, and MasterCard. All credit card transactions are processed through STRIPE. STRIPE will collect the Transaction amount and a credit card processing fee from You, and thereafter will deduct the credit card processing fee and remit payment of the Transaction amount to SmartPin in accordance with such party's merchant card processing terms in effect from time to time.
- f. **Refunds.** Before entering a Transaction on the Site or App, carefully review the Site or App and all policies and terms. Unless otherwise agreed to in writing by SmartPin, We will not issue refunds. In the event that the provisions of this Section conflict with any mandatory refund policies imposed by a credit card company, as may be applicable to a particular Transaction, the terms of such mandatory refund policy shall prevail. Additionally, certain legislation and consumer protection laws and regulations may confer You with rights, warranties, guarantees and remedies relating to Your Transaction that cannot be excluded, restricted, or modified.
- g. **Chargebacks.** You agree that You will not attempt to circumvent any refund prohibitions with regard to Transactions on the Site or App. You will not dispute or otherwise seek a "chargeback" from the company whose credit card You used on the Site or App. Should You do so, Your subscription or access to other services may be cancelled, and SmartPin may, in its sole discretion, refuse to honor pending and future Transactions made from all credit card accounts or online accounts on which such chargebacks have been made, and may prohibit all persons in whose name the credit card accounts exist, and any person who accesses any associated online account or credit card or who otherwise breaches this provision, from using the Site or App.

## 7. Advertisement Release

SmartPin takes no responsibility for advertisements or any third-party material posted on or transmitted through the Site or App, nor does it take any responsibility for the products or services provided by other service providers with Content on the Site or App ("Advertisers"). Any dealings you have with Advertisers found while using the Site or App are between you and the Advertiser, and you agree that SmartPin is not liable for any loss or claim that you may have against an Advertiser.

YOU AGREE THAT YOU BEAR ALL RISK AND YOU AGREE TO RELEASE THE SMARTPIN PARTIES FROM CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, NOW AND IN THE FUTURE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF THE SITE OR APP AND YOUR TRANSACTIONS WITH ADVERTISERS OR OTHER THIRD PARTIES. YOU FURTHER WAIVE ANY AND ALL RIGHTS AND BENEFITS OTHERWISE CONFERRED BY ANY STATUTORY OR NON-STATUTORY LAW OF ANY JURISDICTION THAT WOULD PURPORT TO LIMIT THE SCOPE OF A RELEASE OR WAIVER. YOU WAIVE AND RELINQUISH ALL RIGHTS AND BENEFITS WHICH YOU HAVE OR MAY HAVE UNDER SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA OR ANY SIMILAR PROVISION OF THE STATUTORY OR NON-STATUTORY LAW OF ANY OTHER JURISDICTION (INCLUDING WITHOUT LIMITATION THE STATES OF MISSOURI, DELAWARE AND PENNSYLVANIA) TO THE FULL EXTENT THAT YOU MAY LAWFULLY WAIVE ALL SUCH RIGHTS AND BENEFITS.

## **8. User Submissions**

You may submit feedback, notes, messages, ideas, concepts, know-how, techniques, or other communications you transmit, upload, or post to the Site or App (“User Submissions”) on the Site or App. By submitting any such materials to the Site or App, you represent and warrant that you will not submit or post material that is copyrighted, protected by trade secret or otherwise subject to third-party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to submit or post the material and to grant SmartPin all of the license rights granted herein. In addition, you agree to pay for all royalties, fees, and other payments owed to any party by reason of your posting or submitting User Submissions. SMARTPIN EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY IN CONNECTION WITH USER SUBMISSIONS.

On SmartPin’s social media sites, you further represent and warrant that you have the permission of any individuals depicted in photographs, videos or recordings that you submit to the Site or App to use their likeness and/or voice, as well as all other legal rights necessary to grant the license below to SmartPin.

If you submit any User Submissions to SmartPin, you hereby grant a non-exclusive, royalty-free, perpetual right and license to SmartPin and its affiliates to use, reproduce, distribute, display, transmit, publish, modify, edit and/or create derivative works from the User Submissions in any format, including without limitation coding or watermarking such User Submissions, on the Site and App and in related promotional materials provided in any medium, forum or format, for any purpose of SmartPin or its affiliates in their sole discretion.

You also agree that immediately upon the creation by or on behalf of SmartPin of any derivative works from, modifications, edits or other changes to the User Submissions (the “Modified Content”), the Modified Content will become the sole and exclusive property of SmartPin and that we will own the entire right, title and interest in and to the Modified Content, including the right to secure copyright registration for the Modified Content and to otherwise use the Modified Content for any purpose as determined by SmartPin in its sole discretion. You hereby grant, assign, transfer and convey any and all right, title or interest you have or may be deemed to have in and to the Modified Content to SmartPin.

SmartPin welcomes your comments and suggestions. However, except for any personal information we may collect from you pursuant to our Privacy Policy, User Submissions will be considered non-confidential and non-proprietary. You understand that whether or not such User Submissions are published or posted, SmartPin (1) does not guarantee any confidentiality with respect to any User Submissions (except as

described in our Privacy Policy), (2) does not pay any compensation for User Submissions, and (3) is under no obligation to respond to or post any User Submissions.

YOU AGREE TO WAIVE, AND HEREBY DO WAIVE, ANY LEGAL OR EQUITABLE RIGHTS OR REMEDIES YOU HAVE OR MAY HAVE AGAINST THE SMARTPIN PARTIES WITH RESPECT TO USER SUBMISSIONS, AND AGREE TO INDEMNIFY AND HOLD THE SMARTPIN PARTIES HARMLESS TO THE FULLEST EXTENT ALLOWED BY LAW REGARDING ALL MATTERS RELATED TO YOUR USE OF THE SITE OR APP.

## **9. Warranties**

You warrant and represent to SmartPin as set out below:

- a. The information provided to SmartPin in any registration screen, profile, email, telephone call or through other means including all personal details, contact details and all other data provided to SmartPin, is true in all respects, up-to-date and not misleading.
- b. You will keep the information referred to in paragraph (a) up to date.
- c. You will not access the Site or App under false identity or pretext and will not use it to falsify your or any other person's identity.
- d. You will use the Site and App lawfully and in good faith.

## **10. Disclaimers**

YOU AGREE THAT YOUR USE OF THE SITE OR APP SHALL BE AT YOUR SOLE RISK. SMARTPIN HAS ATTEMPTED TO MAKE THE SITE AND APP AND THE CONTENT AS TIMELY AND ACCURATE AS POSSIBLE, BUT BECAUSE ERRORS MAY OCCUR, THE SITE AND APP AND CONTENT ARE PROVIDED ON AN "AS IS" BASIS. THE SMARTPIN PARTIES GIVE NO WARRANTY AND MAKE NO REPRESENTATION IN RELATION TO THE SITE OR APP OR THE CONTENT. THE SMARTPIN PARTIES EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW AND YOU WAIVE ANY REPRESENTATION OR WARRANTY EXPRESS, IMPLIED, STATUTORY, THAT MAY BE IMPLIED BY THESE TOU, BY CUSTOM, OR BY LAW OR OTHERWISE AND WHICH IS NOT EXPRESSLY SET OUT HEREIN, INCLUDING ANY IMPLIED WARRANTIES OF AVAILABILITY OF THE SITE OR APP, NON-DISRUPTION, SECURITY, ACCURACY, THE USE OF REASONABLE CARE AND SKILL, QUALITY, MERCHANTABILITY, TITLE OR ENTITLEMENT, FITNESS FOR A PARTICULAR PURPOSE, ABILITY TO ACHIEVE A PARTICULAR RESULT OR FUNCTIONALITY AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AS WELL AS WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING, AND COURSE OF PERFORMANCE ON THE PART OF THE SMARTPIN PARTIES RELATING TO THE SITE OR APP, THE CONTENT, USER SUBMISSIONS, ANY SOFTWARE LICENSED OR PROVIDED TO YOU BY THE SMARTPIN PARTIES, AND ANY AGREEMENT WITH A THIRD-PARTY.

WITHOUT LIMITING THE FOREGOING, THE SMARTPIN PARTIES DO NOT REPRESENT OR WARRANT THAT THE INFORMATION ON THE SITE AND APP OR ON ANY WEBSITES OR APPS LINKED TO THE SITE OR APP IS ACCURATE, COMPLETE OR CURRENT; THAT THE SITE OR APP WILL OPERATE WITHOUT INTERRUPTION OR ERROR; THAT THE QUALITY, SAFETY OR LEGALITY OF ANY CONTENT, PRODUCTS, SITE OR APP, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SITE OR APP OR AGREEMENTS YOU ENTER WITH THIRD PARTIES SUCH AS ADVERTISERS WILL MEET YOUR EXPECTATIONS; THAT THE SITE OR APP WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY SMARTPIN; THAT SITE OR APP ERRORS WILL BE CORRECTED; OR THAT THE SITE OR APP IS PCI COMPLIANT. THE SMARTPIN PARTIES ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DATA LOSS OR CORRUPTION), RESULTING FROM YOUR ACCESS TO AND USE OF THE SITE OR APP, (III) UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION, CONTENT, AND/OR INFORMATION STORED THEREIN, (IV) INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE OR APP, (V) BUGS,

VIRUSES, TROJAN HORSES, DESTRUCTIVE COMPUTER CODES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SITE OR APP BY ANY THIRD-PARTY, AND/OR (VI) LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE OR APP.

## **11. Indemnity**

YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE SMARTPIN PARTIES FROM AND AGAINST ANY CLAIM, LOSS, OBLIGATION, DEMAND, DAMAGE, COST, LIABILITY, EXPENSE, AND ATTORNEY'S FEES ARISING TO ANY OF THE SMARTPIN PARTIES AS A RESULT OF ANY CLAIM, DEMAND OR PROCEEDINGS BROUGHT OR THREATENED AGAINST THE SMARTPIN PARTIES IN CONNECTION WITH (1) YOUR USE OF, ACCESS TO, OR MISUSE OF THE SITE OR APP; (2) YOUR BREACH OF ANY OF THESE TOU; (3) YOUR VIOLATION OF ANY THIRD-PARTY RIGHT, INCLUDING WITHOUT LIMITATION ANY COPYRIGHT, PROPERTY, OR PRIVACY RIGHT; (4) ANY CLAIM THAT ANY OF YOUR USER SUBMISSIONS CAUSED DAMAGE TO AN INDEMNIFIED PARTY OR A THIRD-PARTY; (5) ANY TRANSACTION YOU CONDUCT AS A RESULT OF THE CONTACT FACILITATED BY THE SITE OR APP; OR (6) ANY ACTIVITY USING YOUR EMAIL ADDRESS BY YOU OR ANY OTHER PERSON ACCESSING THE SITE OR APP USING YOUR EMAIL ADDRESS.

IF THE SMARTPIN PARTIES TAKE ANY LEGAL ACTION AGAINST YOU AS A RESULT OF YOUR VIOLATION OF THESE TOU, THE SMARTPIN PARTIES WILL BE ENTITLED TO RECOVER FROM YOU, AND YOU AGREE TO PAY, ALL REASONABLE ATTORNEYS' FEES AND COSTS OF SUCH ACTION, IN ADDITION TO ANY OTHER RELIEF GRANTED TO SMARTPIN.

## **12. Limitations on Liability**

IN NO EVENT SHALL THE SMARTPIN PARTIES BE LIABLE TO YOU OR ANY THIRD-PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM THE SITE OR APP OR THIRD-PARTY PRODUCTS OR SERVICES, UNDER THESE TOU OR IN CONNECTION WITH THEIR PERFORMANCE OR BREACH, OR IN CONNECTION WITH ANY WARRANTIES HEREUNDER, OR IN CONNECTION WITH THE SITE OR APP, INCLUDING FOR THEIR NEGLIGENCE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING ANY LOSS OF PROFITS OR SAVINGS OR ANTICIPATED PROFITS OR SAVINGS, DATA, OPPORTUNITY, REPUTATION, GOODWILL OR BUSINESS, EVEN IF THE SMARTPIN PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

THE SMARTPIN PARTIES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITY OR LOSS THAT YOU MAY INCUR, OR FOR ANY OTHER UNDESIRABLE CONSEQUENCES, RESULTING FROM: (1) ANY SUSPENSION OR DISRUPTION OF THE SITE OR APP, INCLUDING WHERE SUCH SUSPENSION OR DISRUPTION RESULTS FROM SMARTPIN'S NEGLIGENCE, (2) ANY ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (3) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SITE OR APP, (4) UNAUTHORIZED ACCESS TO OR USE OF THE SMARTPIN PARTIES' SERVERS AND/OR ANY AND ALL INFORMATION STORED THEREIN, (5) INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE OR APP; (6) INADEQUATE OR FAULTY HARDWARE OPERATING THE SITE OR APP; (7) BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE SITE OR APP BY ANY THIRD-PARTY, (8) USER CONTENT, THIRD-PARTY WEBSITES OR APPS; (9) ERRORS OR OMISSIONS IN ANY CONTENT; OR (10) ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT WHEREIN SUCH CONTENT OR ADVERTISEMENT IS POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE OR APP, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE SMARTPIN PARTIES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.



THE SMARTPIN PARTIES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITY OR LOSS THAT YOU OR ANY OTHER PERSON MAY INCUR, OR FOR ANY OTHER UNDESIRABLE CONSEQUENCES, RESULTING FROM YOUR BREACH OF YOUR WARRANTIES OR OTHER OBLIGATIONS UNDER THESE TOU INCLUDING, WITHOUT LIMITATION, THE OBLIGATION TO AVOID SHARING YOUR EMAIL ACCOUNT INFORMATION WITH ANY OTHER PERSON. THE SMARTPIN PARTIES' MAXIMUM AGGREGATE LIABILITY FOR ANY SINGLE EVENT (OR A SERIES OF RELATED EVENTS) GIVING RISE TO A CLAIM IN CONNECTION WITH THESE TOU OR IN RELATION TO THE SITE OR APP, EITHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, MISREPRESENTATION OR NEGLIGENCE WILL BE LIMITED TO \$50 USD.

BY ACCESSING THE SITE OR APP, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "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."

Any claims relating to use of the Site or App must be brought within one (1) year from the date the cause of action arose. Claims brought after such period are VOID. The Site and App are controlled and offered by SmartPin from its facilities in the United States of America. Those who access or use the Site and App do so at their own volition and are responsible for compliance with local and all other applicable laws, restrictions, and regulations.

### **13. Equitable Relief**

If you violate these TOU, we may seek injunctive relief or other equitable relief.

### **14. Subpoena Fees**

If SmartPin has to provide information in response to a subpoena related to your use of the Site or App, then we may charge you for our costs. These costs may include attorney and employee time spent retrieving records, preparing documents, and participating in a deposition.

### **15. Assignment**

These TOU, and any rights and licenses granted hereunder, may be transferred or assigned by you only with SmartPin's prior written consent, but may be assigned by SmartPin without restriction and without notice to you.

### **16. Class Action Waiver**

ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A NAMED OR UNNAMED MEMBER IN A CLASS, CONSOLIDATED, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL LEGAL ACTION. YOUR ACCESS AND CONTINUED USE OF THE SITE OR APP SIGNIFIES YOUR EXPLICIT CONSENT TO THIS WAIVER.

### **17. General**

These TOU constitute the entire agreement between the parties and supersede all other agreements, statements, and other arrangements between the parties in relation to the subject matter hereof. If any provision of these TOU is held by a court or other tribunal of competent jurisdiction, to be invalid, void, or

unenforceable, such provision shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of these TOU, so that these TOU shall remain in full force and effect. Each party acknowledges that it has not relied on or been induced to enter these TOU by a representation other than those expressly set out in these TOU. SmartPin and you do not intend to confer, and these TOU will not be construed as conferring, any right, remedy, obligation or liability of any kind on any person other than SmartPin, you, and each party's successors and assigns. No modification, alteration or waiver of any of the provisions of these TOU will be effective unless in writing and signed on behalf of each of the parties. No waiver of any of these TOU shall be deemed a further or continuing waiver of such term or any other term, and SmartPin's failure to assert any right or provision under these TOU shall not constitute a waiver of such right or provision. You agree that the Site and App shall be deemed solely based in Minnesota, United States of America and the Site and App shall be deemed a passive Site and App that does not give rise to personal jurisdiction over SmartPin in jurisdictions other than Minnesota. These TOU are governed by United States and Minnesota law, without regard to conflict of law provisions, and the parties submit to the exclusive jurisdiction of the courts of Hennepin County, Minnesota in relation to any dispute between them arising out of the subject matter of these TOU.

### **How to Contact Us**

Should you have privacy questions or concerns, please send an email to [hello@smartpingolf.com](mailto:hello@smartpingolf.com), or mail to 3469 Lake Elmo Ave N, #219, Lake Elmo, MN 55042.