

SmartPin Terms of Use

Last Updated and Effective: July 11, 2024

1. Your Acceptance

These Terms of Use (“Terms”) are a binding agreement between you (“you” or “Player”) and Ace Golf Technologies LLC a Minnesota limited liability company DBA SmartPin, (“SmartPin,” “We,” or “Our”) and set forth the terms and conditions under which you are authorized to use our products and service, which include, but are not limited to, our website, <https://smartpingolf.com> (“Site”), mobile app (“App”), and any website, application, or service where these Terms are posted, and any subdomains and mobile versions thereof (collectively, our “Services”). These Terms do not apply to 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 Services, including all Content (as defined below), and accessing associated content such as email operated by SmartPin, you signify your agreement to these Terms. You acknowledge (a) that you have read and understood these Terms; and (b) that these Terms have the same force and effect as a signed agreement.

You affirm that you are either at least 18 years of age or the age of majority in your jurisdiction, “if older,” and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, warranties, and indemnification set forth in these Terms, and to abide by and comply with these Terms.

ATTENTION: PLEASE READ OUR [PRIVACY POLICY](#) CAREFULLY BEFORE USING THE SERVICES. ACCESSING ANY PART OF THE SERVICES OR CONTENT INDICATES THAT YOU ACCEPT AND AGREE TO THESE TERMS AND ACKNOWLEDGE THE PRIVACY POLICY IN FULL. IF YOU DO NOT ACCEPT THE TERMS AND PRIVACY POLICY, DO NOT USE, ACCESS, OR DOWNLOAD MATERIALS FROM THE SERVICES AND LEAVE THE SERVICES IMMEDIATELY.

2. Arbitration and Class Waiver Notice

PLEASE NOTE THAT THESE TERMS CONTAIN AN ARBITRATION CLAUSE AND CLASS ACTION WAIVER (SEE SECTION 0 - [DISPUTE RESOLUTION, ARBITRATION, AND CLASS WAIVER](#) BELOW). THROUGH YOUR AGREEMENT TO THESE TERMS: (I) YOU AND SMARTPIN AGREE TO RESOLVE THROUGH BINDING, INDIVIDUAL ARBITRATION, AND NOT IN COURT, ANY AND ALL DISPUTES ARISING FROM OR RELATING TO THESE TERMS, THE SERVICES, INFORMATION, OR ANY OTHER SERVICES OR PRODUCTS PROVIDED, SOLD, PURCHASED, MANAGED, OPERATED, OR FULFILLED BY SMARTPIN; AND (II) YOU AND SMARTPIN EACH EXPRESSLY WAIVE ANY RIGHTS TO ENFORCE THIS AGREEMENT IN COURT OR AS A CLASS, SUBJECT TO THE LIMITED EXCEPTIONS DESCRIBED BELOW.

These Terms also include a disclaimer of warranties, a disclaimer of liability, and a release and indemnification by you, in Sections 1, 3, 0, 7, G, and 0-0. Please review those sections (and all other terms) carefully.

3. Changes

We reserve the right to modify or discontinue the Services (or any portion of the Service), temporarily or permanently, with or without notice to you, and are not obligated to support or update the Services. 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 SERVICES (OR ANY PORTION OF THE SERVICE). Unless explicitly stated otherwise, any new features that augment or enhance the current Services shall be subject to these Terms.

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

4. Links to and from the Service

The Services 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 SERVICE, 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 Services 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 Services from your website, subject to the following: (1) you may not frame the Services or any portion of the Service; (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 Services at any time for any reason or no reason.

5. Restrictions on Use of Service

In your use of the Services, you will not:

- use the Services 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 Services in any form or medium without the prior written authorization of SmartPin;
- alter, modify or make derivative works from any part of the Services 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 Service; 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 Services 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 Services in any manner that could damage, disable, overburden, or impair the Services or interfere with any other party's use of the Service;
- obtain or attempt to obtain any content through any means not intentionally made available or provided for through the Service;
- 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 Service; or
- post or transmit any worms, viruses, Trojans, or other harmful, disruptive, or destructive files, code, or programs to the Services.

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

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 Services. If you are under 13 years of age, then please do not attempt to submit any information to or use the Services.

6. Intellectual Property

Everything you see, hear, or otherwise experience on the Services, 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 Services, and all statistical, analytical, and other data captured by or through the Services (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 Services or use of the Marks may violate copyright, trademark, and other laws.

For your personal use, you may view, copy, and print pages from the Services. Otherwise, the Services 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 Services, 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 Services or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Services or the Content therein, nor may you scrape or use any extraction methods to obtain any Content or data from the Services.

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 Terms, the Services, or any content or materials accessible through the Services, in whole or part.

7. User Content

Any content, including but not limited to photos, videos, feedback, notes, messages, ideas, concepts, know-how, techniques, or other communications, uploaded, recorded, posted, submitted, or otherwise made available by individual users of the Services, including any other content which does not originate with SmartPin ("User Content") are the sole responsibility of the person who made such Player Submission available on the Services. By submitting any User Content to the Services, 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 Content. SmartPin EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY IN CONNECTION WITH USER CONTENT.

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 Services to use their likeness and/or voice, as well as all other legal rights necessary to grant the license below to SmartPin.

You also agree that immediately upon the creation by or on behalf of SmartPin of any derivative works (including, but not limited to, highlight videos) from, modifications, edits, or other changes to the User Content (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 hereby grants you a non-exclusive, royalty-free, perpetual right and license to use Modified Content solely for personal use.

SmartPin welcomes your comments and suggestions. However, except for any personal information we may collect from you pursuant to our Privacy Policy, User Content will be considered non-confidential and non-proprietary. You understand that whether or not such User Content are published or posted, SmartPin (1) does not guarantee any confidentiality with respect to any User Content (except as described in our Privacy Policy), (2) does not pay any compensation for User Content, and (3) is under no obligation to respond to or post any User Content.

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 CONTENT, 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 SERVICES.

8. Shot Videos

In order to access the App, you are required to sign up and create a user account ("Player Account"). To submit an Entry, a Shot Video must be recorded from within the SmartPin app by you on your device, or by another user using their device.

You hereby grant to SmartPin its agents, licensees and assigns a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, fully-paid, unrestricted, sublicensable (through multiple tiers), transferable right to exercise all copyrights, publicity rights, and any other rights you have in any Shot Video in any media now known or not currently known in order to market, operate, and improve upon the Service, including but not limited to the right to the following:

- Use, view, copy, adapt, modify, distribute, license, transfer, publicly display, publicly perform, transmit, stream, broadcast, access, view, and otherwise exploit such Shot Video, in whole or in part; and
- Exhibit, distribute, display, transmit, and broadcast on any and all media (including, without limitation, the internet), any Shot Video (or portion thereof) and use, reproduce, modify, or create derivative works of such Shot Video in any format and through any distribution channels.

You hereby waive any and all moral rights in connection with the Media. Each Player warrants and represents that they have the lawful authority to grant the rights set out above, and that such rights do not negatively impact any third-party rights. Each Player acknowledges that SmartPin shall not owe any Player any financial or other remuneration for this grant of right or any use of Shot Video, under any circumstance.

If you are a Player who is recorded or otherwise appears in any manner in a Shot Video, whether submitted by you or another Player), you hereby consent to the recording, use, and association of your name, image, and likeness (including without limitation photos, videos, silhouettes and other reproductions of your physical likeness, voice, or other rights of personality) (collectively, "Personality Rights") with such Shot Video. You hereby irrevocably grant SmartPin and its successors and other designees permission to edit, alter, copy, exhibit, publish, or distribute any media featuring your Personality Rights for any lawful purpose, including to operate the Platform or Service, and to advertise, market, or send promotional materials or communications promoting SmartPin, the Platform, Service, any Entry, or other aspects of SmartPin's

business (“Personality Rights License”). This Personality Rights License extends throughout the universe, to any physical, digital or other media, in any format, through all distribution channels, in each case whether now known or later invented. You understand and agree that all content derived from a Shot Video containing your likeness is owned by SmartPin or its successor or designee.

SmartPin grants each Player featured in a Shot Video a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, fully-paid, sublicensable, non-transferable right to use the Shot Video for the Player’s own personal, non-commercial purposes, including posting on social media pages or online accounts that operate on behalf of the Player.

This section 8 controls to the extent any conflict with other provisions of the Terms, including without limitation section 7 (User Content).

For information about your rights in Personal Information contained in a Shot Video, please see our [Privacy Policy](#).

9. Official Game Rules / Payments

Please review our [Official Game Rules](#) for information on participating in our Games.

A. Transactions. If You wish to use services or purchase products made available by or through the Services (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/or credit card at the price(s) set forth on the Services at the time of Your Transaction. Prices advertised on the Services are subject to increase in the amount of any tax, including excise, sales, use, or like taxes 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 Services (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 Services. You grant SmartPin the right to provide any information You submit to or through the Services 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 Services 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 Services.

C. Payment Processing. When You conduct a Transaction, processing of the Transaction and collection of payments may be handled by Authorize.net. Transactions will be processed only after Your 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 or receipt (in the form of a page, message 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, MasterCard, and Discover. All credit card transactions are processed through Authorize.net. Authorize.net will collect the Transaction amount from You, and thereafter will deduct the credit card processing fee and remit payment of the remaining 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 Services, carefully review the Services 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 Services. You will not dispute or otherwise seek a "chargeback" from the company whose credit card You used on the Services. 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 Services.

10. Advertisement Release

SmartPin takes no responsibility for advertisements or any third-party material posted on or transmitted through the Services, nor does it take any responsibility for the products or services provided by other service providers with Content on the Services ("Advertisers"). Any dealings you have with Advertisers found while using the Services 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 SERVICES 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.

11. 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 Services under false identity or pretext and will not use it to falsify your or any other person's identity.
- d. You will use the Services lawfully and in good faith.

12. Disclaimers

YOU AGREE THAT YOUR USE OF THE SERVICES SHALL BE AT YOUR SOLE RISK. SMARTPIN HAS ATTEMPTED TO MAKE THE SERVICES AND THE CONTENT AS TIMELY AND ACCURATE AS POSSIBLE, BUT BECAUSE ERRORS MAY OCCUR, THE SERVICES AND CONTENT ARE PROVIDED ON AN "AS IS" BASIS. THE SMARTPIN PARTIES GIVE NO WARRANTY AND MAKE NO REPRESENTATION IN RELATION TO THE SERVICES 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 TERMS, BY CUSTOM, OR BY LAW OR OTHERWISE AND WHICH IS NOT EXPRESSLY SET OUT HEREIN, INCLUDING ANY IMPLIED WARRANTIES OF AVAILABILITY OF THE SERVICE, 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 SERVICE, THE CONTENT, USER CONTENT, 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 SERVICES OR ON ANY WEBSITES OR APPS LINKED TO THE SERVICES IS ACCURATE, COMPLETE OR CURRENT; THAT THE SERVICES WILL OPERATE WITHOUT INTERRUPTION OR ERROR; THAT THE QUALITY, SAFETY OR LEGALITY OF ANY CONTENT, PRODUCTS, SERVICE, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES OR AGREEMENTS YOU ENTER WITH THIRD PARTIES SUCH AS ADVERTISERS WILL MEET YOUR EXPECTATIONS; THAT THE SERVICES WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY SMARTPIN; THAT SERVICES ERRORS WILL BE CORRECTED; OR THAT THE SERVICES 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 SERVICE, (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 SERVICE, (V) BUGS, VIRUSES, TROJAN HORSES, DESTRUCTIVE COMPUTER CODES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SERVICES 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 SERVICES.

13. 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 SERVICE; (2) YOUR BREACH OF ANY OF THESE TERMS; (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 CONTENT CAUSED DAMAGE TO AN INDEMNIFIED PARTY OR A THIRD-PARTY; (5) ANY TRANSACTION YOU CONDUCT AS A RESULT OF THE CONTACT FACILITATED BY THE SERVICE; OR (6) ANY ACTIVITY USING YOUR EMAIL ADDRESS BY YOU OR ANY OTHER PERSON ACCESSING THE SERVICES USING YOUR EMAIL ADDRESS.

IF THE SMARTPIN PARTIES TAKE ANY LEGAL ACTION AGAINST YOU AS A RESULT OF YOUR VIOLATION OF THESE TERMS, 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.

14. 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 SERVICES OR THIRD-PARTY PRODUCTS OR SERVICES, UNDER THESE TERMS OR IN CONNECTION WITH THEIR PERFORMANCE OR BREACH, OR IN CONNECTION WITH ANY WARRANTIES HEREUNDER, OR IN CONNECTION WITH THE SERVICE, 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 SERVICE, 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 SERVICE, (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 SERVICE; (6) INADEQUATE OR FAULTY HARDWARE OPERATING THE SERVICE; (7) BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE SERVICES 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 SERVICE, 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 TERMS INCLUDING, WITHOUT LIMITATION, ANY 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 TERMS OR IN RELATION TO THE SERVICE, EITHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, MISREPRESENTATION OR NEGLIGENCE WILL BE LIMITED TO \$50 USD.

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

15. Subpoena Fees

If SmartPin has to provide information in response to a subpoena related to your use of the Services, 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.

16. Dispute Resolution, Arbitration, Class Waiver

SUBJECT TO THE PROCESS AND LIMITED EXCEPTIONS SET OUT BELOW, YOU AND SMARTPIN EACH AGREE TO SUBMIT TO CONFIDENTIAL, BINDING ARBITRATION IN THE CITY OF, MINNEAPOLIS, MINNESOTA, USA FOR ANY DISPUTE, CLAIM, OR CONTROVERSY ARISING OUT OF OR RELATING IN ANY WAY TO: (I) THESE TERMS, (II) YOUR ACCESS TO, OR USE OR RECEIPT OF THE SERVICES OR ANY PRODUCTS, SERVICES, OR INFORMATION SOLD, PURCHASED, OR THAT YOU RECEIVE THROUGH OUR SERVICES; OR (III) ANY OTHER SERVICES OR PRODUCTS PROVIDED, MANAGED, OPERATED, SERVICED, OR FULFILLED BY SMARTPIN, IN EACH CASE, REGARDLESS WHEN THAT DISPUTE, CLAIM OR CONTROVERSY AROSE, AND REGARDLESS OF THE RELEVANT LEGAL THEORY ("DISPUTE").

The arbitration shall be conducted pursuant to the American Arbitration Association's Commercial Arbitration Rules. The arbitrator's award shall be final, confidential, and binding, and may be entered as a judgment in any court of competent jurisdiction.

This arbitration clause will survive any termination of these Terms. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to the extent permitted by law to resolve all Disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms, including, but not limited to any claim that all or any part of these Terms are void or voidable.

Notwithstanding the foregoing arbitration requirement, with regard to any actual or potential violation of our intellectual property rights, we may seek injunctive or other appropriate relief in the state and federal

courts located in Hennepin County, Minnesota, USA and you hereby consent to the exclusive jurisdiction of such courts and waive all objections thereto.

NO ARBITRATION UNDER THESE TERMS OF USE MAY BE JOINED WITH ANOTHER ARBITRATION RELATED TO THE SUBJECT MATTER HEREOF. WE EACH AGREE THAT ANY AND ALL ACTIONS AND PROCEEDINGS RELATING TO ANY DISPUTE, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. NO ARBITRATION UNDER THESE TERMS MAY BE JOINED WITH ANOTHER ARBITRATION RELATED TO THE SUBJECT MATTER OF THE DISPUTE OR ANY OTHER CLAIMS UNDER THIS TERMS. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, YOU WAIVE YOUR RIGHT TO BRING OR PARTICIPATE IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION AND WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.

The following processes shall govern the arbitration process:

- Before commencing an arbitration, you agree to inform us of the nature of the claim and the relief you seek by sending an email to legal@smartpingolf.com.
- Within 10 days, SmartPin will contact you and thereafter you and we will attempt to resolve the claim or issue in a satisfactory way.
- If, following these attempts at exploring a resolution, you intend to proceed with an arbitration claim, we will collectively seek to reach an agreement on the selection of an arbitrator to hear and decide the dispute and how it will be heard, including whether to submit the dispute to the arbitrator only in written form, by proceedings conducted via video or in-person.
- In the event that you and we cannot agree on an arbitrator, the process set forth in California Civil Code Section 1281.6 will be followed. That process allows for a court to select an arbitrator.

17. Assignment

These Terms, 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.

18. General

These Terms 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 Terms 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 Terms, so that these Terms shall remain in full force and effect. Each party acknowledges that it has not relied on or been induced to enter these Terms by a representation other than those expressly set out in these Terms. SmartPin and you do not intend to confer, and these Terms 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 Terms will be effective unless in writing and signed on behalf of each of the parties. No waiver of any of these Terms 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 Terms shall not constitute a waiver of such right or provision. You agree that the Services shall be deemed solely based in Minnesota, United States of America and the Services shall be deemed passive Services that do not give rise to personal jurisdiction over SmartPin in jurisdictions other than Minnesota. These Terms 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 Terms.

19. Supplemental Terms

A. Apple Required Terms

1. **Acknowledgement:** SmartPin and you acknowledge that the Terms are concluded between SmartPin and you only, and not with Apple, and SmartPin, not Apple, is solely responsible for the App and the content thereof.
2. **Scope of License:** The license granted to you for the App is limited to a non-transferable license to use the App on any Apple-branded products that you own or control and as permitted by the Usage Rules set forth in the App Store Terms of Use, except that the App may be accessed, acquired, and used by other accounts associated with you via Family Sharing or volume purchasing.
3. **Maintenance and Support:** As between Apple and SmartPin, SmartPin is solely responsible for providing maintenance and support, if any, with respect to the App, as specified in the Terms, or as required under applicable law. SmartPin and you acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App.
4. **Warranty:** As between Apple and SmartPin, SmartPin is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the relevant App to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be SmartPin's sole responsibility.
5. **Product Claims:** SmartPin and you acknowledge that SmartPin, not Apple, is responsible for addressing any claims by you or any third party relating to the App or your possession and/or use of that App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fail to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
6. **Intellectual Property Rights:** SmartPin and you acknowledge that, in the event of any third party claim that the App or your possession and use of the App infringe that third party's intellectual property rights, to the extent a warranty of non-infringement is not validly disclaimed, SmartPin, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
7. **Legal Compliance:** You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
8. **Developer Name and Address:** SmartPin may be contacted as follows in connection with any questions, complaints or claims with respect to the App: legal@smartpingolf.com.
9. **Third Party Terms of Agreement:** You must comply with third party terms of agreement when using the App.

10. **Third Party Beneficiary:** SmartPin and you acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of the Terms, and that, upon your acceptance of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third party beneficiary thereof.