

## TERMS OF USE AGREEMENT FOR GOLFINGMYWAY SERVICES

Welcome to the GolfingMyWay website, home to the GolfingMyWay community and services.

GolfingMyWay, Inc. (“**GolfingMyWay**”, “**us**”, or “**we**”) provides in connection with the GolfingMyWay website, located at <http://www.golfingmyway.com> (the “**Website**”), an online golfing community that offers a platform and an array of features that allows its members to share information about their favorite sport in order to get in touch and communicate with other people who are interested in golf (the “**Community**”). The services offered by us include the Community, the Website, and any other features, content, or, applications offered from time to time by us in connection with the Community and Website (collectively, the “**Services**”).

This Terms of Use Agreement (“**Agreement**”), including the GolfingMyWay privacy policy that can be found at <http://www.golfingmyway/privacy> and that is hereby incorporated into this Agreement by reference, sets forth the legally binding terms for your use of the Services. By accessing and using the Services, you agree to comply with and be bound by this Agreement, whether you are visiting the Website or you are a “**Member**” (which means that you have registered with the Community). The term “**User**” refers to visitors of the Website and Member. If you are an individual using the Services on behalf of a company, you represent and warrant that you have all necessary authority to bind your company to the terms and conditions of this Agreement.

If you sign up for additional features and services that are governed by additional terms and conditions, we will inform you accordingly when you sign up. Such additional services will be governed by the additional terms and conditions and, unless otherwise provided by such additional terms and conditions, they are hereby incorporated into this Agreement by reference.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICES OR PARTS THEREOF. THIS AGREEMENT IS A LEGALLY BINDING AGREEMENT BETWEEN YOU (THE INDIVIDUAL USING THE SERVICES, AND THE COMPANY (IF ANY) FOR WHICH THEY ARE USED) AND GOLFINGMYWAY.

### 1. YOUR GOLFINGMYWAY ACCOUNT

In order to use the Community (and to become a Member), you must create a GolfingMyWay account by registering on the Website (“**Account**”). If you apply for a Professional Account (“**Professional Account**”), we require you to provide us with sufficient proof of your status as a professional golfer and we reserve the right to refuse providing you with a Professional Account, in our sole discretion.

**1.1 Eligibility.** By using the Services, you represent and warrant that: (a) all required registration information (including your credentials as a professional golfer if you apply for a Professional Account) you submit is truthful and accurate; (b) you will maintain the accuracy of such information; (c) you are thirteen (13) years of age or older; and (d) your use of the Services does not violate any applicable law or regulation. Any Account you have been created by registering on the Website may be deleted without warning if we believe that you are younger than thirteen (13).

**1.2 Password.** When you sign up to become a Member, you will also be asked to choose a password for your Account. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the Account or password of another Member at any time. You agree to notify us immediately if you suspect any unauthorized use of

your Account or access to your password. You are solely responsible for any and all use of your Account.

**1.3 Your Network.** The Services allow you to join one or more “Networks”, which are groups of Members interested in a specific golf course. You can create “Network Profiles” with information (including personal information) about you that will be made available to other Members of the respective Network. Please make sure that you only store information in your Network Profile that you feel comfortable sharing with other Members of your Network.

**1.4 Term.** This Agreement shall remain in full force and effect while you are a User. You may delete your Account and end your membership with the Community at any time, for any or no reason by selecting the respective option in the privacy settings of your Account. We may terminate your membership for any or no reason at any time by ceasing to provide the Services to you. You understand that termination of this Agreement and the Account you have created with us may involve deletion of your Account information from our live databases. We will not have any liability whatsoever to you for any termination of your Account or related deletion of you information.

## **2. OWNERSHIP; USE OF SERVICES**

**2.1 Services - Ownership and Restrictions.** You acknowledge that all the intellectual property rights in the Services (excluding any comments, opinions, postings, messages, text, files, images, photos, video, sounds, works of authorship, feedback, e-mail, bug reports, or other materials (“**Content**”) provided by Users) are owned by GolfingMyWay, or GolfingMyWay’s licensors. You agree not to (i) reproduce, modify, publish, transmit, distribute, publicly perform or display, sell, or create derivative works based on the Services or (ii) decompile, reverse engineer, or copy the Services. Except as expressly permitted under this Agreement, you agree not to (a) rent, lease, loan, or sell access to the Services or (b) decompile, reverse engineer, or copy any part of the Services for which the source code is not provided to you.

**2.2 GolfingMyWay Community Content.** The Services contain Content provided by us and our licensors (“**GolfingMyWay Community Content**”). We and our licensors (including other Members) own and retain all proprietary rights in the GolfingMyWay Community Content and we own and retain all property rights in the Services. Provided you are a User, and subject to the terms and conditions of this Agreement, we hereby grant you a limited, revocable, non-sublicensable license under the intellectual property rights licensable by us to download, view, copy and print GolfingMyWay Community Content from the Services solely for your personal use in connection with using the Services.

## **3. THIRD PARTIES AND OTHER USERS**

**3.1 License Grant.** We do not claim ownership in any Content that you upload, provide, make available, or otherwise transfer (“**post**”) on the Services, but to be able to legally provide our Users with the Services, we have to have certain rights to use such Content in connection with the Services, as set forth below. In return, we also grant you certain use rights as set forth in Section 2.2 to the Content that we (or our licensors) own and use to provide the Services to you and other Users. By posting any Content on the Services, you hereby grant to us an unrestricted, irrevocable, perpetual, non-exclusive, fully-paid and royalty-free, license (with the right to sublicense through unlimited levels of sublicensees) to use, copy, perform, display, create derivative works of, and distribute such Content in any and all media (now known or later

developed) throughout the world. No compensation will be paid with respect to the Content that you submit, upload, post, transmit or otherwise make available through the Services. You should only post Content to the Services that you are comfortable sharing with others under the terms and conditions set forth herein.

**3.2 Third Party Content.** Content from other Users, advertisers, and other third parties is made available to you through the Services. Because we do not control such Content, (a) you agree that we are not responsible for any such Content, including advertising and information about third party products or service, and (b) we make no guarantees about the accuracy, currency, suitability, or quality of the information in such Content, and we assume no responsibility for unintended, objectionable, inaccurate, misleading, or unlawful Content made available by other Users, advertisers, and third parties.

**3.3 Responsibility.** Your interactions with other Users on the Services or with advertisers, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and the other User or advertiser. You agree that we are not responsible for any loss or damage incurred as the result of any such dealings or with respect to any other User's use or disclosure of information about you that you have provided to publicly available sections of the Services. If there is a dispute between you and any third party (including any User), we are under no obligation to become involved; however, we reserve the right, but have no obligation, to monitor disputes between you and other Users.

**3.4 GolfingMyWay Member Interaction.** You will not use any information obtained from the Services in order to harass, abuse, or harm another person, or in order to contact, advertise to, solicit, or sell to any User without their prior explicit consent. In order to protect our Members from such advertising or solicitation, we reserve the right to restrict the number of communications which a Member may send to other Members and the sharing of any Content in any twenty-four (24) hour period to a number and amount which we deem appropriate in our sole discretion.

#### **4. ACCEPTABLE USE AND CONDUCT**

You are solely responsible for any and all Content that is posted through your Account on the Services and for your interactions with other Users.

**4.1 Prohibited Content.** You agree that you will not post any Prohibited Content or use any Prohibited Content for your Network Profile. "**Prohibited Content**" is Content that: (i) is offensive or promotes racism, bigotry, hatred or physical harm of any kind against any group or individual, or is pornographic or sexually explicit in nature; (ii) bullies, harasses or advocates stalking, bullying, or harassment of another person; (iii) involves the transmission of "junk mail", "chain letters," or unsolicited mass mailing, or "spamming,;" (iv) is false or misleading or promotes, endorses or furthers illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous; (v) promotes, copies, performs or distributes an illegal or unauthorized copy of another person's work that is protected by copyright or trade secret law, such as providing pirated computer programs or links to them, providing information to circumvent manufacturer-installed copy-protection devices, or providing pirated music, videos, or movies, or links to such pirated music, videos, or movies; (vi) is involved in the exploitation of persons under the age of eighteen (18) in a sexual or violent manner, or solicits personal information from anyone under eighteen (18); (vii) provides instructional information about illegal activities such as making or buying illegal weapons, violating someone's privacy, or providing or creating

computer viruses and other harmful code; (viii) solicits passwords or personally identifying information for commercial or unlawful purposes from other Users; (ix) except as expressly approved by us, involves commercial activities and/or promotions such as contests, sweepstakes, barter, advertising, or pyramid schemes; (x) contains viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or similar software; or (xi) otherwise violates the terms of this Agreement or creates liability for us. You represent and warrant that: (a) you own the Content posted by you on the Service or otherwise have the right to grant the license set forth in this Agreement, and (b) your Content does not violate the privacy rights, publicity rights, copyright rights, or other rights of any person.

**4.2 Enforcement by GolfingMyWay.** Any use of the Services in violation of this Agreement may result in, among other consequences, termination or suspension of your rights to use the Services. In order to cooperate with legitimate governmental requests, subpoenas or court orders, to protect our systems and other Users, or to ensure the integrity and operation of our business, systems, and the Services, we may access and disclose any information and Content we consider necessary or appropriate, including, without limitation, Account information (i.e. name, e-mail address, etc.), IP addressing and traffic information, usage history, and posted Content. We have the right (but not the obligation) to review any Content and delete (or modify) any Content that in our sole discretion violates this Agreement or which is Prohibited Content, or may otherwise violate the rights, harm, or threaten the safety of any User or any other person, or create liability for us or any User. We reserve the right (but have no obligation) to investigate and take appropriate legal action in our sole discretion against you if you violate this provision or any other provision of this Agreement, including without limitation, removing the Prohibited Content from the Services (or modifying it), terminating your membership and Account, reporting you to law enforcement authorities, and taking legal action against you. You are solely responsible for creating backup copies of and replacing any Content you post on the Services at your sole cost and expense.

**4.3 Lawful and Non-Commercial Use.** You will use the Services in a manner consistent with any and all applicable laws and regulations and solely for lawful purposes. The Services are for the personal use of Users only and may not be used in connection with any commercial endeavors except those that are specifically approved in writing by our management or in connection with Services expressly designated for commercial use; Professional Accounts may be used in connection with any professional golfing activities of the Account owner, subject to the terms and conditions of this Agreement. You will not engage in advertising to, or solicitation of, any User to buy or sell any products or services through the Services. Commercial advertisements, affiliate links, and other forms of solicitation may be removed from your Content without notice and may result in suspension or termination of your Account.

**4.4 No Disruption.** You will not: (i) cover or obscure any banner advertisements on the Services, or any GolfingMyWay page via HTML/CSS, scripting, or any other means, (ii) interfere with, disrupt, or create an undue burden on the Services or the networks or services connected to the Services; (iii) introduce software or automated agents to the Services so as to produce multiple accounts, generate automated messages, or to strip or mine data from the Services; or (iv) interfere with, disrupt, or modify any data or functionality of the Services.

**4.5 Miscellaneous.** You will not attempt to impersonate another User or person, including any of our employees. You will use the Services in a manner consistent with any and all applicable laws and regulations.

## **5. THIRD-PARTY WEBSITES AND PARTNER COMMUNITIES**

The Services may contain links to third-party websites (“**Third-Party Websites**”) (a) placed by us as a service to those interested in this information; or (b) posted by other Members. You use all such links to Third-Party Websites at your own risk. We do not monitor or have any control over, and makes no claim or representation regarding Third-Party Websites. To the extent such links are provided by us, they are provided only as a convenience, and such link to a Third-Party Website does not imply our endorsement, adoption or sponsorship of, or affiliation with, such Third-Party Website. We accept no responsibility for reviewing changes or updates to, or the quality, content, policies, nature or reliability of Third-Party Websites, or websites linking to the Website. When you leave the Website, our terms and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Website, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

## **6. COPYRIGHT POLICY**

It is our policy to terminate membership privileges of any Member who repeatedly infringes copyright upon prompt notification to us by the copyright owner or the copyright owner’s legal agent. Without limiting the foregoing, if you believe that your work has been copied and posted on the Services in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (ii) an identification of the copyrighted work that you claim has been infringed; (iii) a description of where the material that you claim is infringing is located on the Services; (iv) your address, telephone number, and e-mail address; (v) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (vi) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner’s behalf. Contact information for our Copyright Agent for notice of claims of copyright infringement is as follows:

GolfingMyWay, Inc.  
Attn: Copyright Agent  
10400 NE 2<sup>nd</sup> St Suite 101  
Bellevue, WA 98004  
e-mail: [info@golfingmyway.com](mailto:info@golfingmyway.com)

## **7. DISCLAIMERS**

We are not responsible for any incorrect or inaccurate Content (including any information in profiles) posted on the Services, whether caused by Users or by any of the equipment or programming associated with or utilized in the Services. We are not responsible for the conduct, whether online or offline, of any User of the Services. We assume no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, any communication with other Users. We are not responsible for any problems or technical malfunction of any hardware and software due to technical problems on the Internet or at the Website or combination thereof, including any injury or damage to Users or to any person’s computer related to or resulting from participation or downloading materials in connection with the Services. Under no circumstances shall we be responsible for any loss or damage, including personal injury or death, resulting from use of the Services or from any Content posted on the Website or transmitted to Users, or any interactions between Users of the Services, whether online or offline.

THE SERVICES ARE PROVIDED “AS-IS” AND AS AVAILABLE. WE EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT: (A) THE SERVICES WILL MEET YOUR REQUIREMENTS; (B) THE SERVICES WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

## **8. LIMITATION ON LIABILITY**

IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFIT OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM YOUR USE OF THE SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO YOUR USE OF THE SERVICES (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO THE GREATER OF FIFTY U.S. DOLLARS (\$50) AND THE AMOUNTS YOU PAID TO US IN THE TWELVE (12) MONTHS PRIOR TO THE ACCRUAL OF THE CLAIM.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

## **9. MISCELLANEOUS**

**9.1 Amendments.** This Agreement may be modified by us from time to time. If we make material changes to the Agreement, we will notify you by sending an e-mail to your e-mail address, as specified in your Account. You agree that such amended Agreement will be effective thirty (30) days after being sent to you, and your continued use of the Services after that time shall constitute your acceptance of the amended Agreement.

**9.2 Force Majeure.** Any delay in the performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, war, terrorism, governmental act, failures of common carriers (including Internet service providers), acts of God, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

**9.3 Release.** To the maximum extent permitted by applicable law, you hereby release us, our officers, employees, agents and successors from claims, demands and all losses, damages, rights, claims, and actions of any kind including personal injuries, death, and property damage, that is either directly or indirectly related to or arises from (i) any interactions with other Users, or (ii) your participation in any of our offline events. **If you are a California resident, you waive your rights, whether known or unknown, 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." Residents of other states and nations similarly waive their rights under applicable and/or analogous laws, statutes, or regulations.

**9.4 Survival.** The provisions under Sections 2, 4, 3, 6, 7, 8, and 9 will survive expiration or termination of this Agreement for any reason.

**9.5 Indemnity.** You agree to defend, indemnify, and hold us, our subsidiaries, affiliates, officers, agents, and other partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorney's fees, made by any third party due to or arising out of your use of the Services and arising from your breach of any provision of this Agreement.

**9.6 U.S. Export Controls.** Software available in connection with the Services is subject to United States export controls. No software may be downloaded from the Services or otherwise exported or re-exported in violation of U.S. export laws. By downloading or using any software, you represent and warrant that such download or use is not in violation of any such law.

**9.7 Governing Law and Arbitration.** This Agreement shall be governed by the laws of the State of California without giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. You agree to submit to the personal jurisdiction of the state courts located within [County where GolfingMyWay is located] County and the federal courts in the Northern District of California for the purpose of litigating all such claims or disputes. Any claim or dispute in connection with this Agreement shall be resolved in a cost effective manner through binding non-appearance-based arbitration. The arbitration shall be initiated through an established alternative dispute resolution provider mutually agreed upon by the parties. The alternative dispute resolution provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, we may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction.

**9.8 Other.** This Agreement constitutes the entire agreement between you and us regarding the use of the Services. Our failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect; as used in the Agreement, the word "including" means "including but not limited to". Please contact us with any questions regarding this Agreement by e-mailing us at: [terms@golfingmyway.com](mailto:terms@golfingmyway.com)

**9.9 Disclosures.** Under California Civil Code Section 1789.3, Users who are residents of California are entitled to the following specific consumer rights information: the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 1020 N. Street, #501, Sacramento, CA, 95814, or by telephone at 916.445.1254.

**9.10 Copyright/Trademark Information.** Copyright © 2009, GolfingMyWay. All rights reserved. The trademarks, logos and service marks ("**Marks**") displayed on the Services are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Mark.