



Terms of Service

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, GOLFHITS and the Club agree as follows:

Handicap Committee Services. GolfHITS will provide The Club with access to its web based software for sending and tracking Handicap Infractions, Notices, and Player Communications to its Club Members (the "Subscription").

1. GolfHITS will maintain a web based interface in which the Club may retain a paid subscription to access.
2. GOLFHITS may provide the associated State Golf Association and the United States Golf Association (USGA) with access to the GolfHITS system including the Club's information as a read only capacity to aid in assisting the Club, or auditing the Club.

Service Fees. Subscription fees will be an annually paid service to GolfHITS ("Service Fee") at the current published market rate. The Club shall be invoiced accordingly.

Term and Termination. The term of this Agreement will commence upon the Effective Date and continue for a period of 365 days (the "Initial Term"). Unless the Club gives written notice to GolfHITS of its intent not to renew this Agreement at least 30 days prior to the end of the then-current term, this Agreement will automatically renew for an additional 365 days (one calendar year) period after the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). Either party may terminate this Agreement if the other party materially breaches this Agreement and fails to cure that breach within 30 days after receiving written notice of such breach.

Ownership of Intellectual Property. The GolfHITS System, Interface, training materials, any other written or electronic materials related to any of the foregoing, patents, copyrights, trademarks, trade secrets, source code and any other proprietary rights or Confidential Information (as defined below) of GolfHITS, whether registered or unregistered and whether or not specifically recognized or perfected under the laws of the jurisdiction in which they are being used, are and remain the exclusive property of GolfHITS (the "Intellectual Property"). The Club agrees that it will not take any action that jeopardizes, infringes upon or otherwise compromises GolfHITS Intellectual Property, and agrees that neither the Club nor its members, directors, employees, or agents will allow any third party to have access to the Intellectual Property without GolfHITS prior written consent. This Agreement shall not include the right for the Club to sublicense all or any portion of the GolfHITS System and does not include the right to create derivative works from any portion of the Intellectual Property. Any improvements made to the GolfHITS System during the term of the Agreement shall be the exclusive property of GolfHITS. The Agreement shall not grant the Club any rights to or license under any patents, copyrights, trademarks, trade secrets, or any other intellectual property rights of GolfHITS.

Limitation of Liability. GolfHITS does not warrant the accuracy, completeness, merchantability, or fitness for a particular purpose of any of the information or use of GolfHITS. In no event shall GolfHITS be held liable for any special, consequential, or indirect damages arising from any use of GolfHITS. GolfHITS liability shall in no event exceed the total amounts paid to GolfHITS by the Club. The GolfHITS System will generally be accessible seven days a week, twenty-four hours each day; provided, however, that GolfHITS reserves the right to schedule downtime for the purpose of maintaining and repairing the GolfHITS Database, the Interface and its servers and related technology and will use its best efforts to provide the Club with five (5) days advance of any scheduled downtime. In the event that GolfHITS must make emergency or other critical repairs to the GolfHITS Database, the Interface or its servers and related technology, or in the event of power outages or other acts of nature outside of the control of GolfHITS, GolfHITS will use its commercially reasonable efforts to notify and keep the Club apprised of the status of such event.

Confidentiality. Neither party shall disclose to any third party any information relating to the products, services or business affairs of the parties which is of a proprietary or confidential nature, whether communicated orally or in writing, including, but not limited to, the terms of this Agreement, intellectual property, designs, concepts, techniques, processes, procedures, systems, flow-charts, diagrams, marketing or strategic plans, business opportunities, research, development, cost data, client or customer information, programs and other know-how (the "Confidential Information") disclosed by the disclosing party to the receiving party whether directly or through observation or examination of the disclosing party's facilities or procedures. Confidential Information shall also include any information of a proprietary or confidential nature concerning the disclosing party's financial affairs or business and any information the disclosing party has received from others which the disclosing party is obligated to treat as confidential or proprietary data. GolfHITS shall not share, disseminate, disclose, nor market to any club members listed under the the Club's system profile.

Entire Agreement. This Agreement expresses the whole agreement between the parties with respect to this subject matter, there being no representations, warranties or other agreements (oral or written) not expressly set forth or provided for herein.

Authority. Each party represents and warrants to the other that each has the full right, power and authority to execute this Agreement and perform their respective obligations under this Agreement.

Compliance with Laws. GolfHITS warrants and covenants that it is in the business of providing the services described above and that it has obtained and currently holds all material licenses or permits necessary for the conduct of its business. GolfHITS warrants that it is now in material compliance with, and will continue to comply with, any federal or state laws, rules or regulations applicable to the operation of its business.

Amendments and Waivers. No amendment of any provision of this Agreement will be valid unless the same is in writing and signed by both parties. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant under this Agreement or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. GolfHITS retains the right to amend or replace in part or whole these Terms of Use with or without notice.

Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

Relationship. Each party to this Agreement is an independent contractor and nothing contained in this Agreement shall be construed to constitute a partnership, joint venture, franchise or employment relationship between the parties. These Terms of Service shall apply to the Club and it's current or former members.

Counterparts and Facsimile Signatures. This Agreement may be executed by electronic acceptance, facsimile, and in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

Governing Law and Jurisdiction. With respect to any dispute, controversy or claim arising out of or relating to this Agreement, the parties consent to jurisdiction of and exclusive venue in the state and federal courts located in Ft. Myers, Florida. In any such claim or controversy, this Agreement will be governed by, construed and interpreted in accordance with the laws of the State of Florida.