

# SMARTLEISURE USER AGREEMENT

## Introduction

This is the User Agreement (the "Agreement" or "User Agreement") for your use of web sites owned or operated by, and services offered by, SmartLeisure, an Austin, Texas limited liability company ("SmartLeisure"). This Agreement contains the terms and conditions ("T&C") applicable to your use of our online and employee-assisted services ("Service" or "Services") as described and available under or through the domain, sub-domains, and affiliated domains of [www.smartleisure.com](http://www.smartleisure.com) (collectively, the "Site") and is in conjunction with any specific terms and conditions that apply to the particular Services.

Whether you are browsing or using the site or purchasing services, if you ("You" or "User") do not agree to be bound by the terms and conditions of this Agreement, do not use or access our site or services.

You must read, agree with and accept all of the terms and conditions contained in this User Agreement, along with the Privacy Policy with is hereby incorporated by reference.

This Agreement is effective upon the earlier of: (i) your first use of the Site or Services for any reason; (ii) acceptance of this Agreement by new registering users; or (iii) the Effective Date noted on the posted version of the Agreement. SmartLeisure may elect to discontinue offering the Site or the Services, or any portion thereof, at any time for any reason, with or without advance notice. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

## Eligible Users

Use of the Site and Services is restricted to persons who: (a) are at least 18 years old, and (b) reside, or have a business address within the United States. If you are creating an account as a business entity, you represent that you have the authority to bind the entity to this Agreement. If you are not yet 18, do not have the capacity to enter into contracts, or are accessing this Site from any country where material on this Site is prohibited or illegal, you do not have permission to access the Site or the Services. If a parent or guardian wishes to permit a person under 18, and under his or her supervision, to use this Site, the parent or guardian should email SmartLeisure to make arrangements, although no such access can be guaranteed. Those who choose to access our Site from other locations does so knowingly on their own initiative and voluntarily at their own risk and is responsible for compliance with local laws.

## Modification of This Agreement

SmartLeisure may, in its sole discretion, change or modify this Agreement at any time after a reasonable notification period, usually no less than two weeks, and, unless SmartLeisure receives your written objection to the modified terms of the Agreement within the notification period, such changes shall be effective upon posting to the Site. You acknowledge and agree that (i) SmartLeisure may notify you of such changes or modifications by posting them to the Site and

(ii) your use of the Site or the Services found at the Site after the Effective Date, noted at the top of this page, shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not use (or continue to use) the Site or the Services found at the Site.

In the event that you refuse to accept such changes, SmartLeisure will have the right to terminate the Agreement. The posting date and effective date for this Agreement are noted at the top of this document. Except as provided for herein, this Agreement may not be amended or modified except in writing signed by you and SmartLeisure. SmartLeisure may occasionally notify you of changes or modifications to this Agreement by email. It is therefore very important that you keep your User account ("Account") information current. SmartLeisure assumes no liability or responsibility for your failure to receive an email notification if such failure results from an inaccurate email address.

### **User Accounts**

At all times your use of the Site and Services must be in compliance with this Agreement. If you violate the terms described herein, SmartLeisure may, in its sole discretion, with or without notice, terminate your access to the Site and Services.

You are allowed to create one (1) user account with SmartLeisure. Your right to use the Site and Services is personal to you. Post office boxes or addresses of office service providers may not be used as an address for a User Account. It is likewise not permitted to provide value-added service numbers as telephone numbers for a User Account. Furthermore, SmartLeisure reserves the right to forbid the use of freely available email addresses as the email address for a User Account.

As a condition of your use of the Site and Services, you warrant to SmartLeisure that you will not use the Site for any purpose that is unlawful or prohibited by this Agreement. Prohibited uses include, but are not limited to: competitive analysis (including copying and/or providing screen shots, which are copyrighted material owned by SmartLeisure); data mining or scraping through the use of robots, spiders, or otherwise; and/or any use with the potential to infringe the rights of any third party.

In addition, you hereby represent and warrant that: (a) you are an eligible user as defined herein; (b) you have provided accurate and complete information in connection with your registration and use of the Site and Services (all such information collectively referred to as "Your Information"), and (c) you will update your Account to ensure that Your Information remains accurate and complete.

### **SmartLeisure Fees**

Except as otherwise noted, creating a user account with SmartLeisure is free. A user account is not necessary in order to browse certain areas of the Site.

However, SmartLeisure does charge a fee in connection with certain Services based on upon purchases resulting in any way from a match made in connection with, or based upon information derived from Your use of the Site and/or our Services.

Specifically, if You, or any legally authorized agent on your behalf, purchase an asset within thirty-six (36) months of a match through our Site and/or Services, You and the matched consortium of partners to the transaction agree to pay SmartLeisure a total of three percent (3%) of the total purchase price of the asset, per asset. In the event that three percent (3%) of the total purchase price of the assets is less than one thousand dollars (\$1,000.00), You and the matched consortium of partners to the transaction agree to pay SmartLeisure the sum total of one thousand dollars (\$1,000.00) in satisfaction of Your fee requirement.

You agree to immediately notify SmartLeisure of any asset purchases, including without limitation, real estate, automobiles and water vehicles, within one (1) month of closing on the purchase of such asset, when such asset is purchased within thirty-six (36) months of a match through our Site and/or Services.

In the event You purchase an asset within thirty-six (36) months of a match and fail to provide the enumerated notice and/or fail to pay the enumerated fee, You and the matched consortium of partners to the transaction agree to pay an additional twenty percent (20%) of the total purchase price of the asset(s) at issue, in addition to the three percent (3%) fee enumerated herein above, as and for a penalty for non-compliance with the terms contained herein.

SmartLeisure may, in its sole discretion, add, delete or change any of the Services provided, fees charged by SmartLeisure or payment terms. SmartLeisure's standard fees and any changes will be posted herein, and the applicable Services and fees will be binding on the effective date noted herein above at the top of this Agreement. No advance notice is required for any prospectively effective change in Services offered or fees charged therefore. Unless otherwise stated, all fees and currency amounts are quoted in U.S. Dollars.

### **Use of the Site and Services**

You acknowledge and agree that you may not use the Site or the Services to:

- (a) defame, abuse, harass, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
- (b) conduct or forward illegal contests, pyramid schemes, or chain letters;
- (c) publish, post, distribute, disseminate or link to any:
  - (i) inappropriate, profane, defamatory, infringing, obscene, adult content, nude, indecent or unlawful topic, name, material or information;
  - (ii) software or other material protected by intellectual property laws, copyright licenses, rights of privacy or publicity, or other proprietary rights, unless you own, control such rights or have received all necessary consents for your use of such software and other materials;
  - (iii) software or other material that contains viruses, corrupted files, or that may or are intended to damage the operation of another's computer (e.g., "cracks," "hacks," or other programs written to defeat the security measures of any computer, system or program(s));

(d) sell, distribute, disseminate or link to any sites for marketing, sales or distribution of: firearms, explosives, ammunition, liquor, tobacco products, food that is not packaged or does not comply with all applicable laws for sale to consumers by commercial merchants, pharmaceuticals and controlled substances, counterfeit, pirated or stolen goods, fraudulent goods, any goods or services that infringe or otherwise violate a third party's rights, registered or unregistered securities, goods or services that:

(i) you cannot legally sell,

(ii) are misrepresented, and/or

(iii) if sold, would cause SmartLeisure to violate any law, statute or regulation;

(e) harvest or otherwise collect information about third parties, including email addresses, without the express consent of such third parties;

(f) restrict or inhibit any other user from the use and enjoyment in the Services or the Site, interfering with or disrupting the Services or the Site service or servers or network connected to the Site;

(g) use a domain in connection with your use of the Site that is confusing or misleading to other Users or to the public;

(h) email or otherwise transmit, distribute, publish or disseminate any junk email, spam, chain letters, pyramid schemes, or any other form of duplicative or inappropriate solicitations or messages (commercial or otherwise);

(i) violate the rights of any third parties, including, but not limited to, trademark, copyright, naming or publicity rights, or

(j) violate any applicable government laws or regulations.

SmartLeisure does not condone or allow spam. SmartLeisure will cooperate with legal authorities and Internet service providers in releasing information about users who violate the terms of this Agreement or posted policies.

You may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any information, software, products, services or benefits obtained from the Site, except as expressly provided herein. At all times, you remain solely responsible for Your Information.

Opinions, advice, statements, offers, or other information or content made available through the Site and/or Service, but not directly by SmartLeisure, are those of their respective authors, and should not necessarily be relied upon. Such authors are solely responsible for such content.

### **User Account Certification/Limited Use of Site and/or Services**

In order to preserve a safe and secure Site and Services for our users, SmartLeisure may elect to require you to perform a user account certification process that may include, but is not limited to, confirming your billing information, verifying the accuracy of your account details, requesting a copy of government-issued identification, requiring a security deposit for high value transactions, and other account certification methods as SmartLeisure may develop in its sole discretion at any time. Failure to perform the requested user account certification methods will result in limited access to the Site and Services.

## **Violations of Acceptable Use**

Upon suspicion of violation of the acceptable use terms of the Site or Services, SmartLeisure may elect to suspend or terminate your SmartLeisure user account and/or access and use of the Site or Services, or any portion thereof, at any time with or without advance notice.

You are responsible for safeguarding the confidentiality of your password(s) and login name(s) issued to you by SmartLeisure, and for any use or misuse of your account or the Services or the Site resulting from any third party accessing your SmartLeisure user account or otherwise using a password or login name issued to you. You agree that you will notify SmartLeisure immediately of any known or suspected unauthorized use, breach of security, or violation of this Agreement, on or relating to the Site.

You are solely responsible for your interactions with other members. You understand that SmartLeisure currently does not conduct criminal background checks on its members. SmartLeisure also does not inquire into the backgrounds of all of its members or attempt to verify the statements of its members. SmartLeisure makes no representations or warranties as to the conduct of members or their compatibility with any current or future members. SmartLeisure reserves the right to conduct any criminal background check or other screenings at any time using available public records.

In no event shall SmartLeisure be liable for any damages whatsoever, whether direct, indirect, general, special, compensatory, consequential, and/or incidental, arising out of or relating to the conduct of You or anyone else in connection with the use of the Site and/or Service, including without limitation, bodily injury, emotional distress, and/or any other damages resulting from communications or meetings with other registered users of this Service or persons you meet through this Service. You agree to take reasonable precautions in all interactions with other members of the Service, particularly if you decide to meet offline or in person. You understand that SmartLeisure makes no guarantees, either express or implied, regarding Your ultimate compatibility with individuals you meet through the service. You should not provide your financial information, including without limitation Your credit card or bank account information, to other members.

You are solely responsible for Your interactions with other SmartLeisure members. SmartLeisure reserves the right, but has no obligation, to monitor disputes between You and other members.

## **Liability Disclaimers and Indemnification**

SmartLeisure is in no way responsible for the content of any web site owned or operated by a third party that may be linked to or from the Site or Services via hyperlink, whether such hyperlink is provided by SmartLeisure or by a third party. No judgment or warranty is made with respect to the accuracy, timeliness or suitability of the content of any web site to which the Site may link, including information on the web site regarding the SmartLeisure Site or Services. By providing access to other web sites, neither SmartLeisure nor its affiliates are recommending the

purchase or sale of any asset, nor are they endorsing products or services offered by any web site's sponsoring organization.

YOU AGREE THAT USE OF SMARTLEISURE'S SERVICES AND THE SITE IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED ON AN "AS IS" AND AN "AS AVAILABLE" BASIS. SMARTLEISURE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SMARTLEISURE MAKES NO WARRANTY TO ANY PROSPECTIVE BUYER RELATIVE TO THE ASSETS LISTED BY SELLERS ON THE SMARTLEISURE DATABASE. SMARTLEISURE MAKES NO WARRANTY THAT THE BUYER MAY ACQUIRE OR THAT THE SELLER MAY TRANSFER THE ASSET WITHOUT VIOLATING ANY RIGHTS OF A THIRD PARTY. SMARTLEISURE MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THEY WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, NOR DOES SMARTLEISURE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED FROM THE SITE. YOU UNDERSTAND AND AGREE THAT YOUR USE OF ANY MATERIAL AND/OR DATA DOWNLOADED FROM THE SITE OR ANY SERVICES OBTAINED THROUGH OR PROVIDED BY SMARTLEISURE IS AT YOUR SOLE DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM ANY SUCH DOWNLOAD OR USE OF SUCH INFORMATION OR OTHER RELATED TRANSACTION. NO ADVICE OR INFORMATION THAT YOU MAY OBTAIN FROM SMARTLEISURE OR THROUGH THE SERVICES PROVIDED BY SMARTLEISURE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED THEREIN.

You agree that, regardless of any statute or law to the contrary, except as prohibited by law, any claim or cause of action arising out of or related to this Agreement, the Site, or SmartLeisure's Services, must be commenced within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.

IN NO EVENT SHALL SMARTLEISURE, ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, OR SUPPLIERS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SITE, THE SERVICES, OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE). SMARTLEISURE'S LIABILITY, AND THE LIABILITY OF ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE GREATER OF (A) THE AMOUNT OF FEES YOU HAVE PAID TO US IN THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY, AND (B) \$100. YOU AGREE TO INDEMNIFY AND HOLD SMARTLEISURE AND (AS APPLICABLE) SMARTLEISURE'S PARENT, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY CLAIM OR DEMAND, INCLUDING REASONABLE ATTORNEYS' FEES, MADE BY A THIRD PARTY DUE TO OR ARISING OUT OF YOUR USE OF THE SITE OR THE SERVICES,

YOUR BREACH OF THIS AGREEMENT OR THE DOCUMENTS IT INCORPORATES BY REFERENCE, OR YOUR VIOLATION OF ANY LAW OR THE RIGHTS OF A THIRD PARTY.

The exclusive means of resolving any dispute or claim arising out of or relating to this Agreement (including without limitation any alleged breach thereof), the Service or the Site shall be BINDING ARBITRATION administered by the American Arbitration Association. The one exception to the exclusivity of arbitration is that You have the right to bring an individual claim against SmartLeisure in a small-claims court of competent jurisdiction, within the State of Texas. Whether you choose arbitration or small-claims court, you may not, under any circumstances, commence or maintain against SmartLeisure any class action, class arbitration, or other representative action or proceeding.

By using the Site or the Service in any manner, you agree to the above arbitration agreement. In doing so, you give up your right to go to court to assert or defend any claims between you and SmartLeisure (except for matters that may be taken to small-claims court). You also give up your right to participate in a class action or other class proceeding. Your rights will be determined by a neutral arbitrator, not a judge or jury. You are entitled to a fair hearing before the arbitrator.

Any proceeding to enforce this arbitration agreement, including any proceeding to confirm, modify, or vacate the arbitration award, may be commenced in any court of competent jurisdiction within the State of Texas. In the event that this arbitration agreement is, for any reason, held to be unenforceable, any litigation against SmartLeisure (except for small-claims court actions) may be commenced only in the federal or state courts located in the State of Texas. You hereby irrevocably consent to the jurisdiction of those courts for such purposes.

This Agreement, and any dispute between you and SmartLeisure, shall be governed by the law of the state of Texas without regard to principles of conflicts of law, provided that this arbitration agreement shall be governed by the Federal Arbitration Act.

Additionally, You agree to indemnify and hold SmartLeisure, its subsidiaries, affiliates, officers, agents and other partners and employees, harmless from any loss, liability, claim, or demand, including without limitation reasonable attorney's fees, made by any third party due to or arising out of your use of the Site or Service in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of Your representations and warranties set forth herein.

### **Intellectual Property**

All content, database information, data and services available on, and collected as a whole through this Site, are property of SmartLeisure, its affiliates, advertisers and licensors, and are protected by copyrights, trademarks, service marks, patents, trade secrets, and other proprietary rights and laws in the United States and internationally. All rights not expressly granted herein are fully reserved by SmartLeisure, its affiliates, advertisers, and licensors. SmartLeisure's licensors' or other third-party materials, services or products referenced on this Site are common law or registered trademarks or service marks of such parties.

Solely to enable SmartLeisure to use Your information, so that we are not violating any rights you might have in such information, You agree to grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, licensable right to exercise the copyright, publicity, and database rights (but no other rights) You have in your information, in any media now known or not currently known, with respect to Your Information. SmartLeisure will only use Your Information in accordance with our Privacy Policy.

All contents of the Site are: Copyright 2016 SmartLeisure and/or its suppliers. All rights reserved. "SmartLeisure" is a registered trademark of SmartLeisure. The names of other companies and products mentioned herein may be the trademarks of their respective owners. SmartLeisure reserves any rights not expressly granted herein.

### **Term and Termination**

Until and unless terminated by You or SmartLeisure, Your status as an eligible or registered User will continue indefinitely, and fees for Services will be charged as described herein. SmartLeisure may terminate this Agreement and your access to the Site and related Services at any time, with or without cause, and with or without notice. Upon termination of your right to use the Site, you will no longer have access to any data or information you had previously created, maintained, managed, or stored in the Site or SmartLeisure's systems. SmartLeisure is under no obligation to maintain any such data or information.

### **General**

SmartLeisure manages the Site from its offices in Austin, Texas. This Agreement is governed by the laws of Texas, without regard to its choice of law rules. You hereby consent to the jurisdiction of, and venue in, courts located in Austin, Texas, USA, in all disputes arising out of or relating to the Site, or Services, including any action commenced by you against SmartLeisure or its affiliates. Use of the Site or Services is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including, without limitation, this section. You agree that no joint venture, partnership, employment, or agency relationship exists between you and SmartLeisure as a result of this Agreement or use of the Site or Services. SmartLeisure's performance of this Agreement is subject to existing laws and legal processes, and nothing contained in this Agreement is in derogation of SmartLeisure's right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Site or information provided to or gathered by SmartLeisure with respect to such use.

If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement shall continue in effect. Unless otherwise specified herein, this Agreement constitutes the entire agreement between the user and SmartLeisure with respect to the Site and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between the user and SmartLeisure with respect to the Site or Services. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to



the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form, and any such printed, true, and accurate copy shall be deemed an original document for evidentiary purposes. Any failure of SmartLeisure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. You may not rent, lease, license, grant a security interest in, or otherwise transfer, assign, or sublicense your rights hereunder to any third party. At any time, SmartLeisure may, in its sole discretion and without providing notice or obtaining your consent, assign this entire Agreement or delegate some or all of its responsibilities hereunder.

### **How to Contact SmartLeisure**

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