

## TRAILMARKER TERMS OF USE

**Last Updated: June 17, 2024**

These Terms of Use govern your use of any website, application, or service (collectively the “Services”) owned and operated by TrailMarker LLC, a Delaware limited liability company with offices at 5309 Tuscarawas Road, Bethesda Maryland 20816, or its affiliates and subsidiaries (collectively referred to as “TrailMarker,” the “Company,” “we,” or “our” as applicable) that displays or links to these Terms of Use.

PLEASE NOTE THAT SECTION 11 OF THESE TERMS OF USE CONTAINS AN ARBITRATION AGREEMENT, A CLASS ACTION WAIVER PROVISION, AND A MASS ARBITRATION WAIVER PROVISION. PLEASE READ THE ARBITRATION PROVISION IN THIS AGREEMENT AS IT AFFECTS HOW ANY DISPUTES BETWEEN YOU AND TRAILMARKER WOULD BE RESOLVED.

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THE SERVICES. BY VISITING, VIEWING, OR USING THE SERVICES, YOU (ON BEHALF OF YOURSELF AND ANY ORGANIZATION YOU REPRESENT) ARE AGREEING TO THESE TERMS OF USE AND TO OUR PRIVACY POLICY <https://thetrailmarker.com/privacy-policy>. IF YOU DO NOT AGREE WITH THESE TERMS OF USE, PLEASE DO NOT USE THE SERVICES. YOUR CONTINUED USE OF THE SERVICES CONSTITUTES AGREEMENT WITH THESE TERMS OF USE.

### **1. Structure of the Terms and Key Points**

1.1 General. TrailMarker offers a broad spectrum of active lifestyle content, events, experiences, destinations, and social interactions curated to users. These Terms of Use apply to your use of and interaction with those Services.

1.2 Non-Continuous Updates. The information related to the Services may originate from third party sources and other users, and therefore, such information is intrinsically fluctuant and may be inaccurate, incomplete or outdated. TrailMarker does not make any representations or provide any warranties as to such information’s credibility or reliability.

1.3 Location-Based Service. Some features of the Services make use of location information, for example, in the form of GPS signals and other information sent by your mobile device on which the TrailMarker Application is installed and activated. These features cannot be provided without utilizing this technology. Please note, as described in detail in the Privacy Policy <https://thetrailmarker.com/privacy-policy>:

(i) TrailMarker uses your location information to track location related to (A) prizes on the easter egg page to confirm you have located the picture; (B) events,

experiences, or destinations to confirm attendance in order to collect points; and (C) other purposes related to the Services.

(ii) This location history is associated with your account and is retained by TrailMarker for a limited period of time and in accordance with the Privacy Policy <https://thetrailmarker.com/privacy-policy>.

(iii) If you do not want your location tracked by TrailMarker, please do not use the above features, or otherwise, please do not use the Services.

1.4 Advertisements. Third party advertisements may appear in the content associated with the Services. TrailMarker may be compensated by third parties who are advertising on TrailMarker through affiliate and/or other payment arrangements. By clicking on links associated with these third party advertisements, you may be directed to an external site operated by the third party, which TrailMarker has no control over. Data related to you clicking on a link may be transferred to the third party and TrailMarker may be compensated related to such data transfer. After clicking on the advertising link and being transferred to a third party external site, you may have an opportunity to purchase goods, services, products, tickets, or other items from the third party or other parties. TrailMarker acts only as a facilitator, and any rights or obligations under the agreement made between you and the third party shall be solely between you and the third party, and TrailMarker makes no representations or warranties with respect to any goods or services purchased in this manner. TrailMarker may be compensated as a result of you purchasing goods, services, products, tickets, or other items after clicking on an advertising link on TrailMarker. If you do not want to be taken to a third party site or have data related thereto transferred to a third party, please do not click on links associated with advertisements.

1.5 Profile. Users shall have the ability to hide the Trails they “liked” and/or attended from all other users by changing their profile into “ghost” mode. Furthermore, users agree that they are voluntarily providing profile photos, and access to their camera and/or photo library, for purposes of uploading a profile photo. If you do not want your photo(s) seen by other users, do not upload them to the Application.

## **2. Modification**

2.1 Modification of the Services. We reserve the right to modify the Services at any time in our sole and absolute discretion and with or without notice to you and without liability. For example, we may add, modify or remove functionality or features, and we may suspend or stop a particular feature or service offering altogether.

2.2 Modification of Terms. We also reserve the right to modify these Terms of Use at any time in our sole and absolute discretion. When such changes are made, we will make a copy of the new Terms of Use available to you on our Application. By continuing to use or log in to the Services after these Terms of Use have changed, you indicate your agreement to the revised Terms of Use. If you do not agree to our changes, you can stop using the Services at any time.

### **3. Accounts & Trails; Payments**

3.1 Registration. If you register to use the Services or download our Application, we may require you to create an account password or other login credentials in order to make purchases, subscribe to our Services, or use certain features on the Services. You must be at least 18 years or older to independently register as a user and create an account. If you are between the ages of 13-18, you may use some Services only with the supervision and consent of a parent or guardian. No individual under these age limits may use the Services, provide any Personal Data (as that term is defined in our PRIVACY POLICY) <https://thetrailmarker.com/privacy-policy> to TrailMarker, or otherwise submit Personal Data through the Services (e.g., a name, address, telephone number, or email address).

To create an account, you must provide truthful and accurate information. Do not impersonate anyone else when you create your account. If your registration information changes at any time, you agree to update your account to reflect those changes.

3.2 Account Security. We take commercially reasonable precautions to protect your information. When you submit information via the Application, your information is protected both online and offline. Online, we use encryption and smart server architecture to protect information. While we strive to protect your privacy and secure your information, we cannot and do not guarantee the security of information sent via your personal internet connection, and you disclose such information at your own risk. You may not share your account with anyone else. Please keep your account password confidential, and try not to use the same password on other applications or websites. You are solely responsible for all activities, including payments, that occur using your account. If you believe that your account has been compromised at any time, please contact us immediately at [weston@thetrailmarker.com](mailto:weston@thetrailmarker.com). You are responsible for maintaining the confidentiality of all actions that take place within your account. We are not responsible for any loss that results from any unauthorized use of your username and password. Only TrailMarker employees with a specific need to access your information in order to perform their job duties are provided such access to the data you provide, and they must have secure administrative rights in order to do so. The servers on which personally identifiable information is stored are kept in a restricted, secure environment, and are professionally maintained.

3.3 Account Monitoring and Suspension. We reserve the right, but have no obligation, to monitor any accounts and/or activities conducted through or related to the Services. We may also deactivate, terminate or suspend your account or access to certain Services at any time for reasons including, but not limited to, the following: (1) a violation of these Terms of Use; (2) if we determine, in our sole and absolute discretion, that you have created a risk or possible legal exposure for TrailMarker or any third party; (3) upon any discontinuation of material modification to our Services; (4) unexpected technical security issues or problems; (5) deletion of your information, files and Content associated with your account in association with a request by you; (6) nonpayment of any fees owed by you in connection with the Services; (7) your use of TrailMarker and/or the Services in a manner that we deem, in our sole and absolute discretion, to be antisocial or inconsistent

with the community norms and behavior TrailMarker is seeking to foster among its user base; or (8) extended periods of inactivity. Any termination or suspension of your account shall be at TrailMarker's sole and absolute discretion and TrailMarker shall not be liable to you or any third party for any suspension or termination of your account or access to the Services.

3.4 Trails. As a registered user, you may have the option to subscribe to, or participate in, certain services, events, experiences, destinations, easter egg hunts, subscriptions, or memberships, for a fee or at no cost, available via the Services (collectively "Trails" and each a "Trail"). Your participation related to Trails is subject to these Terms of Use, including Section 4 (Limitations on Use of the Services). Trails may be fulfilled through a third party, and as such, TrailMarker has no control or management over such Trails, and TrailMarker acts only as a facilitator of such third party Trails. You are bound by these Terms of Use as well as any terms of use or other agreements necessary to participate in third party Trails. Third party Trails are governed by the specific third party associated with the Trail, and any rights or obligations related to such third party Trails are between you and the third party. TrailMarker disclaims any and all liability related to third Party Trails, and you assume the risk of participating in any activities related to the Services. You agree to indemnify and hold TrailMarker harmless with respect and related to any claims arising from third party Trails or any third party activity or program of any kind accessed by you through TrailMarker. Where applicable, the delivery of your Trail will be subject to the availability and capacity of such third party and its delivery partners. There may be variability or delays in the dates and times of delivery of such Trails.

### 3.5 Pricing.

When applicable, users agree to pay the fees listed for each paid Trail as listed on the Application.

By signing up for and pursuing a Trail, you agree to waive your 14-day right of withdrawal at the moment you subscribe, to the maximum extent permitted by applicable law, in exchange for immediate access.

If applicable to the particular Trail, you may modify your Trail type at any time. When you modify your Trail, the change will become effective at the end of the then-current Trail term, as applicable.

Trail payments are non-refundable except at our sole and absolute discretion and in accordance with the rules governing each Trail.

### 3.6 Notice of Auto Renewal; Effect of Cancellation.

To provide continuous service to paid users who purchase a Trail, unless otherwise stated, we automatically renew your Trail at TrailMarker's then-current Trail fee for such Trail. The renewal term is usually the same duration as the original Trail term (for example,

a one-month Trail will renew on a monthly basis and a one-year Trail will renew on an annual basis).

BY MAKING A TRAIL PURCHASE ON THE SERVICES, YOU ACKNOWLEDGE AND AGREE THAT YOUR ACCOUNT WILL BE SUBJECT TO THE ABOVE-DESCRIBED AUTOMATIC RENEWALS AND THAT WE (OR OUR PAYMENT PROCESSOR (AS DEFINED BELOW), AS APPLICABLE) ARE AUTHORIZED TO CHARGE YOU FOR YOUR TRAIL FOR AS LONG AS YOUR TRAIL CONTINUES. AT ANY TIME, IF YOU DO NOT WISH YOUR ACCOUNT TO RENEW AUTOMATICALLY OR IF YOU WISH TO CANCEL YOUR TRAIL, YOU CAN: (A) NAVIGATE TO YOUR MEMBERSHIP SETTINGS UNDER YOUR ACCOUNT; OR (B) EMAIL [weston@thetrailmarker.com](mailto:weston@thetrailmarker.com). IF YOU PURCHASED YOUR TRAIL THROUGH A THIRD PARTY, YOU MUST USE THE THIRD-PARTY PLATFORM OR CONTACT THE THIRD PARTY DIRECTLY TO CANCEL OR MAKE CHANGES TO YOUR TRAIL.

Cancellations are effective as of the following billing cycle. In order to avoid future charges, you must cancel your Trail prior to the end of your then-current Trail term. EXCEPT AS OTHERWISE STATED IN THESE TERMS OF USE OR AS REQUIRED BY APPLICABLE LAW, TRAIL FEES ARE NONREFUNDABLE. You will not receive a refund for the current billing cycle and will continue to have the same access and benefits for the remainder of the current Trail term. We reserve the right to issue refunds or credits at our sole discretion. If we issue a refund or credit, we are under no obligation to issue the same or similar refund in the future.

Please note that your paid Trail may be interrupted as a result of a canceled or expired payment card or other payment method. It is your responsibility to keep your payment card or payment method details up to date to continue accessing the Services. If a payment is not successfully settled and you do not edit your Payment Method information or cancel your Trail, you acknowledge that you remain responsible for any uncollected amounts and authorize us to continue billing the Payment Method, as it may be updated.

### 3.7 Promotions and Discounts.

We may occasionally offer promotions and discounts (collectively, a “Promotional Offer”). Such Promotional Offer will last for the period of time specified upon redemption. The specific terms of each Promotional Offer are stated at the time the Promotional Offer is communicated. Each Promotional Offer may be different. Promotional Offers cannot be combined with other offers or promotions, or exchanged, refunded, or redeemed for cash. The terms and conditions of a specific Promotional Offer may include additional restrictions on its use. Promotional Offer eligibility is determined at the time of the order. Active accounts are not eligible for Promotional Offer redemptions.

You are required to provide your payment details when you sign up for a Promotional Offer. Where applicable, to redeem a Promotional Offer, enter the applicable code before you make your payment. It is your responsibility to use a Promotional Offer before it expires. Promotional Offers may not be applied retroactively.

If you begin your Trail with a Promotional Offer, unless otherwise set forth in the Promotional Offer, we will begin billing your Payment Method (as defined below) for the applicable subscription fees at the end of the Promotional Offer period unless you cancel your Trail prior to the end of the Promotional Offer period in accordance with Section 3.6. Where required by law, we will notify you in advance that the Promotional Offer is about to end.

3.8 Payments. All payments related to your Trails or other purchases made from your account must be made from a payment method on which you are the named account holder (the “Payment Method”). Unless otherwise stated, all fees due for the Trail(s) are payable in advance and will be billed automatically to the Payment Method. You must provide accurate and complete information in connection with such payment processing. You agree that we will not be liable for any loss caused by any unauthorized use of your payment card or any other method of payment by a third party in connection with the Services. Any attempt to defraud TrailMarker through the use of payment cards or other payment methods will result in immediate termination of your account and civil and/or criminal prosecution. In the case of suspected or fraudulent payment, including use of stolen credentials, by anyone, or any other fraudulent activity, we reserve the right to block your account. We are entitled to inform relevant authorities or entities (including credit reference agencies) of any payment fraud or other unlawful activity and may employ collection services to recover payments.

3.9 Payment and Financial Transaction Processing. We may use third party electronic payment processors and/or financial institutions (“Payment Processors”) to process financial transactions. You irrevocably authorize us, as necessary, to instruct such Payment Processors to handle such transactions and you irrevocably agree that we may give such instructions on your behalf in accordance with your requests as submitted on the Services. You agree to be bound by the terms and conditions of each applicable Payment Processor. In the event of conflict between these Terms of Use and the Payment Processor terms and conditions, these Terms of Use shall govern.

3.10 Fee Changes. TrailMarker reserves the right to change or increase Trail fees or to institute new fees at any time with or without reasonable advance notice. If you do not wish to pay the new prices, you can cancel your Trail prior to the change becoming effective.

3.11 Restrictions on Purchases. We may offer opportunities to purchase products via the Services. Certain products may have limited quantities. We reserve the right to refuse any order you place, limit quantities purchased per person, per household, or per order, or cancel orders that you place. In the event that we make a change to or cancel your order, we may attempt to contact you using the contact information you provided when you placed your order. We reserve the right to limit or prohibit orders that, in our sole judgment, appear to be placed by resellers, distributors, dealers or other commercial entities.

### 3.12 Points and Prize Program.

(i) Overview. Users who participate in Trails may collect points for completing, participating, or attending a Trail. In order to collect points related to a Trail, you must follow the rules associated with such Trail and click on the applicable button on the Trail page at the location and time required to collect points. By way of example, users may collect points for attending an event Trail only if the user physically attends the event and clicks on applicable points button on the event page in the Application during the attendance. Points for each Trail, if any, are variable and subject to change without notice. Users may utilize points for entry into TrailMarker sponsored raffles and have a chance to win a prize (the “Prize Program”) each calendar month. The specific terms of each Prize Program, including the duration of the raffle and odds of winning, are stated at the time the Prize Program is communicated. Each Prize Giveaway may be different. Prize Programs cannot be exchanged, refunded, or redeemed for cash, and have no monetary value. The terms and conditions of a specific Prize Program may include additional restrictions on participation and eligibility. All raffles and Prize Programs are solely sponsored and operated by TrailMarker and no other party, including, without limitation, Apple, has any involvement with such raffles or Prize Programs.

(ii) Suspension or Termination of Your Participation. TrailMarker may limit, suspend, or terminate your ability to participate in a Prize Program, and may suspend or void any points or potential points you may have received or accumulated but not yet successfully redeemed, if we determine in our sole and absolute discretion that you have not complied with these Terms of Use, require an uncommon or excessive level of customer support, are participating in TrailMarker in an antisocial manner or inconsistent with the community norms and behavior TrailMarker is seeking to foster among its user base, or otherwise are not using and receiving the Prize Program benefits in a mutually satisfactory way consistent with the typical user. You agree to abide by the decisions of TrailMarker regarding any Prize Program and your participation in it. We reserve the right to change, suspend, or cancel all or a portion of a Prize Program, including any unredeemed points, at any time, without prior notice or compensation to you.

(iii) Collecting Points. You may collect points by participating in various Trails, as described under the specific Trail. Subject to the other provisions of these Terms of Use, TrailMarker will deposit any points from successfully completing a Trail under your account. Points are deemed successfully collected once you have fully and properly satisfied all of the requirements of the Trail in the manner specified under the Trail page (including any time limitations or waiting periods for acceptance or completion of the Trail) and in compliance with these Terms of Use, and TrailMarker properly validates, tracks and records that you have done so. In connection with any request to receive credit from TrailMarker for completing a Trail that has points associated therewith, that did not credit automatically, we may require you to initiate your support request from the Application or other source in order to ensure proper handling and tracking for completion via our systems. For the avoidance of doubt, TrailMarker shall not be responsible for, nor shall TrailMarker be obligated to award points to you for, any Trail that is not properly recorded, tracked,

validated and/or deemed a successfully completed Trail under TrailMarker's policies, procedures, and systems. Please be sure to review all applicable terms of Trails before deciding whether or not you would like to participate. We also reserve our right to: (A) change or limit the Trail or points available or your ability to participate in certain Trails, (B) change or limit the eligibility for or allowable frequency of Offers, and (C) change or limit the number of points you can receive for a given Trail or during a given time period, including, without limitation, the right to correct any inadvertent error in the number of points awarded and to claw-back any unearned or unqualified points deposited in your account as a result. All such changes or limitations shall apply to all past, present, or future points, unless otherwise expressly stated. The only way to redeem points is to enter a Prize Program.

(iv) **Redeeming Prize.** Subject to the Terms of Use and any other applicable terms and/or laws, upon winning a prize under a Prize Program, TrailMarker will provide the winner with a promo code to directly redeem the prize from the third party that such prize is associated with (the "Prize Company"). Upon receipt of the promo code, the winner has absolute responsibility for collecting the prize. Where applicable, the winner may need to pay for shipping, handling and/or other costs associated with the winning prize. TrailMarker disclaims any liability related to the redemption and collection of the prize from the Prize Company and TrailMarker shall not be responsible for any damage to the prize or the Prize Company's failure to deliver the prize. If the Prize Company no longer has inventory of the prize won by through a Prize Program, it is solely the responsibility of the Prize Company to provide a prize of equal or greater value to the winner. TrailMarker makes no representations and warranties with respect to any prize.

(v) **Verifying Identity and Eligibility.** TrailMarker reserves the right to verify your identity to our complete satisfaction prior to crediting or allowing redemption of any points, issuing, or delivering any prizes, or otherwise providing you with access to or any benefit associated with the Services. TrailMarker implements such verification requirements to confirm, preserve and protect the security of the Services and your account from unauthorized access and security threats. We may do so by requesting—either directly or indirectly via a third-party verification service—that you provide an image of your passport, driver's license, or state ID card, by requiring you to verify the mobile phone number associated with your account, or by such other proof of identity or eligibility as we may require. Some of our Services or prizes may have additional eligibility requirements and in that case TrailMarker also reserves the right to determine or verify your eligibility using such methods as we deem appropriate. If you are unable or unwilling to verify your identity in response to our request, or if we have other reason to suspect your account may be compromised, insecure, or a threat to the Services or your account, we reserve the right in our sole and absolute discretion to temporarily or permanently deactivate or deny or restrict access to your account, or any benefit associated with the Services.

(vi) **Points Have No Monetary Value and Are Nontransferable.** You agree and acknowledge that unredeemed points in your account have no cash, monetary, or other value, remain the sole property of TrailMarker, and are only redeemable for such prizes as



TrailMarker may elect to offer in the Prize Program from time-to-time, subject to these Terms of Use and the Prize Program redemption requirements at the time of redemption.

(vii) Points Expiration. Points expire after twelve (12) months from the last date on which you enter points for a Prize Program. We may adopt or modify our points expiration rules and policies for any past, present, or future points from time-to-time, and if your points expire pursuant to such then-current rules or policies, we may remove such points from your account, without any compensation or further obligation to you regarding the expired points. If you have any questions or concerns regarding these actions or wish to request re-crediting of the expired points to your account (subject to such terms, limitations, and requirements as we may impose from time to time), please contact us as provided in the Notice section.

(viii) Easter Egg Prize. Any prize won by a user under the easter egg page, separate from a Prize Program, shall be subject to the same terms under this Section 3.12 as applicable.

(ix) If you are unwilling or unable to abide and agree by the rules related to prizes under this Section 3.12, please do not participate in a Prize Program or any Trail that provides points or prizes associated therewith.

3.13 Personal Information. TrailMarker does not normally give your name, number, email, address or other personal information out to third parties or organizations. Notwithstanding the foregoing, TrailMarker may disclose personal information in cases in which we have reason to believe that doing so is necessary to identify, contact, restrain or bring legal action against someone who may be causing injury to or interference with TrailMarker, our property, our users, or any third party who could be harmed by such activities, and in cases in which we believe in good faith that the law requires us to do so. TrailMarker will not disclose any of your personal information, except when we have your permission or under special circumstances, such as when we believe in good faith that disclosure is reasonably necessary to cooperate with local, state and/or federal law enforcement authorities, to enforce the Terms of Use or prevent unauthorized use of the Application, to respond to claims that any content in the Application violates the rights of third parties, or to protect the rights, property, or personal safety of TrailMarker, its users, or the public. For Application activities that request personal information, you agree to provide accurate and current information about yourself. Your registration and/or participation in our Services may be canceled without notice if at any time we discover that you have provided false information or violated any term of this Privacy Policy or our Terms of Use.

#### **4. Limitations on Use of the Services**

4.1 Use Restrictions. The Services are available for your personal, noncommercial use only. Personal, noncommercial use does not include the use of the Services without prior written consent from TrailMarker in connection with the development of any software program, including, but not limited to, training a machine

learning or artificial intelligence (AI) system. By continuing to use Trailmarker you agree not to use the Services in a way that violates any laws, infringes anyone's rights, is offensive, or interferes with the Services or any features on the Services (including any technological measures we employ to enforce these Terms of Use). By continuing to use TrailMarker you agree not to attempt to gain unauthorized access to the Services or TrailMarker's associated computer systems or networks. If we (in our sole and absolute discretion) determine that you have acted inappropriately, we reserve the right to terminate your account and access to the Services (with or without refunding any payments you have made for paid access to the Services at our discretion), prohibit you from using the Services, and take appropriate legal action. Using the Services or purchasing a Trail does not give you ownership of any intellectual property rights to the content that you access or experiences or events that you participate in. You may not use content from the Services unless you obtain prior written permission from us, or unless you are otherwise permitted to do so by law. When you use the Services, you agree to comply with all laws applicable to you.

4.2 Interactions on the Services. The Services may function as a venue to connect users or members and may allow sharing of information in certain ways, including features such as liking, commenting, and sharing. TrailMarker is a neutral facilitator with no direct involvement in interactions on the Services or control over the truth, accuracy, quality, legality, or safety of posts made by users, and TrailMarker makes no representations or warranties with respect to the truth, accuracy, quality, legality, or safety of any user-created or provided content. As a user of the Services, exercise common sense and good judgment and refer to TrailMarker for investigation of any use that is not in compliance with these Terms of Use.

## **5. Ownership and Use of Content; User Submissions; Acceptable Use**

5.1 Definitions. As used in these Terms of Use, "Content" means any form of information, data, or creative expressions and includes, without limitation, video, films, audio, photographs, images, designs, illustrations, articles, workouts, recipes, training plans, software, features and all intellectual property embodied therein, any of which may be generated, provided or otherwise made available or accessible on or through the Services. "User Generated Content" has the meaning as stated in Section 5.3 below, "User Content" has the meaning as stated in Section 5.4 below, and "TrailMarker Content" is anything that is not User Generated Content or User Content.

5.2 TrailMarker Content License. All TrailMarker Content and all copyright, trademarks, design rights, patents and other intellectual property rights (registered and unregistered) in and to the Services belong to TrailMarker and/or its partners or applicable third parties. Subject to your compliance with these Terms of Use, we grant you a limited, revocable, personal, non-transferable and non-exclusive right and license to access and use the Services and the TrailMarker Content for your own personal, noncommercial purposes, provided that you do not (and do not allow any third party to) copy, modify, creative derivative works, reverse engineer, sell, assign, sublease, transfer or otherwise commercially exploit any right in the TrailMarker Services or Content.

5.3 User Generated Content License. We may provide solicited or unsolicited opportunities for you to post, upload, or submit content on or through the Services (collectively, “User Generated Content”), including User Content (as defined below). This is completely voluntary and you agree that you are solely responsible for any User Generated Content you submit to the Services. Such User Generated Content may also include information as to what Content you have viewed, shared or interacted with on the Services. Other than User Content, all information that you post, upload, or submit may be publicly accessible via the Services and used in TrailMarker promotional content. You waive all moral rights or rights of attribution to the User Generated Content. You grant TrailMarker, its agents, licensees, and assigns and any other third party it designates, an irrevocable, perpetual, world-wide, non-exclusive, sub-licensable, royalty-free, and transferable right and license to reproduce, encode, store, copy, transmit, publish, resell, post, broadcast, display, publicly perform, adapt, modify, create derivative works of, exhibit, and otherwise use User Generated Content. You also grant each user of the Services a perpetual, irrevocable, non-exclusive license to access the User Generated Content that you post, upload, or submit and to use, reproduce, distribute, display, and perform such content as permitted through the functionality of the Services and under these Terms of Use. User Generated Content made to the Services may also be included in our RSS feeds and APIs and made available for republishing through other formats. This license continues even if you stop using the Services.

TrailMarker reserves the right to reject the User Generated Content in its sole and absolute discretion. User Generated Content may be edited or removed at our sole and absolute discretion and you waive any rights you may have in having the material altered or changed in a manner not agreeable to you. By submitting User Generated Content, you consent to the display and publication of such content on or within the Services and for related online and offline promotional uses.

5.4 Personal User Content. We may provide opportunities for you to store your own preferences, settings, or Content for later retrieval on certain Services (“User Content”). Where we have made such opportunities available to you, we will honor the choices you make about who can see certain aspects of the User Generated Content you submit via the Services. User Content is a form of User Generated Content and subject to Section 4 of these Terms of Use. We reserve the right to remove User Content from the Services at our sole and absolute discretion, including if the User Content violates these Terms of Use. User Content may be subject to inadvertent damage, corruption, or loss. User Content that is deleted may be irretrievable. We are not liable for deletion of, correction of, destruction of, damage to, loss of, or failure to store or encrypt any User Content. We recommend that you always backup User Content.

5.5 Representations & Warranties. If you submit any User Generated Content by any means, you represent and warrant that: (a) you are not violating any law; (b) you are not impersonating another person; (c) you own the User Generated Content; (d) you have the right to post, upload, or submit the User Generated Content; (e) all User Generated Content represents your own work; (f) you did not purchase any of the User Generated

Content prior to submitting it to TrailMarker; (g) you have redacted any sensitive personal information or other personally identifiable information that you do not wish to be made publicly available; (h) by uploading User Generated Content you agree to intentionally disclose the User Generated Content to other users on the Services subject to these Terms of Use; and (i) you may not be compensated for User Generated Content submitted via the Services at TrailMarker's sole and absolute discretion.

5.6 Acceptable Use Policy. When you post, upload, or submit User Generated Content to the Services, or otherwise when you use the Services, you agree that you will not (and will not permit any third party to):

(i) Infringe any patent, trademark, trade secret, copyright, right of publicity, or other right of any other person or entity;

(ii) Violate, or intentionally or unintentionally promote any activity that would violate, applicable law;

(iii) Submit or upload content that is false, misleading, untruthful, threatening, unlawful, harassing, defamatory, discriminatory, libelous, deceptive, abusive, fraudulent, invasive of another person's privacy, tortious, obscene, pornographic, offensive, profane, or otherwise inappropriate. Hate speech of any kind is grounds for immediate and permanent suspension of access to all or part of the Services;

(iv) Use or participate in TrailMarker in an antisocial manner or inconsistent with the community norms and behavior TrailMarker is seeking to foster among its user base;

(v) Submit or upload content for any commercial purpose or for unauthorized or unsolicited advertising purposes;

(vi) Impersonate any person or entity or otherwise misrepresent your identity or affiliation;

(vii) Use robots, spiders, scripts, service, software or any manual or automatic device, tool, or process designed to data mine or scrape Content available on the Services, data or information from the Services, or otherwise use, access, or collect content, data or information from the Services using automated means;

(viii) Use automated means to submit content to the Services; or

(ix) Use the Content for the development of any software program, including, but not limited to, training a machine learning or artificial intelligence (AI) system.

5.7 Indemnification for User Generated Content. You agree to defend, indemnify, and hold harmless TrailMarker, its parent and affiliate companies, and their respective

officers, directors, employees, agents, representatives, content providers, licensors and licensees, insurers, and assigns (collectively, the “Representatives”) from any and all claims, demands, actions, causes of action, rights, suits, losses in actions, expenses, and liabilities of any kind (collectively, “Claims”) arising out of any User Generated Content.

5.8 Release Agreement. You release and discharge TrailMarker, its parent and affiliate companies, and their respective Representatives of any and all Claims arising out of your disclosure of User Generated Content, including but not limited to any use of the User Generated Content by a user of the Services for a purpose that TrailMarker prohibits in these Terms of Use.

5.9 User Generated Content Disclaimer. We are not responsible for, and do not endorse, User Generated Content. Accordingly, we may not be held liable, directly or indirectly, for any loss or damage caused to you in connection with any User Generated Content posted by another person, including as a result of your interactions with other users of the Services. You acknowledge that any reliance upon any opinion, advice, statement, or information contained in User Generated Content will be at your sole and exclusive risk.

5.10 TrailMarker Content Disclaimer. We make no representations as to the accuracy, reliability or completeness of any TrailMarker Content that is published on or made available through the Services, and we make no commitment to update such Content.

5.11 Feedback and Unsolicited Material. Any feedback, concepts, comments, reviews, suggestions, or other materials you may provide regarding the Services or in any communication you may send to us, including responses to questionnaires or through postings to the Services (collectively, “Feedback”) is entirely voluntary and we will be free to use such Feedback in perpetuity as we see fit, for any purpose whatsoever, including but not limited to, developing, manufacturing and marketing products and creating, modifying or improving the Services, and without any compensation, acknowledgement or obligation to you. In addition, you agree not to enforce any “moral rights” in and to the Feedback, to the extent permitted by applicable law.

## **6. Trademark & Copyright Restrictions**

6.1 TrailMarker Rights. All trademarks, logos, and service marks displayed on the Services are registered and unregistered trademarks of TrailMarker and/or of third parties who have authorized their use (collectively the “Trademarks”). You may not use, copy, reproduce, republish, upload, post, transmit, distribute, or modify any of these Trademarks in any way. All of the materials on the Services are copyrighted, except where explicitly noted otherwise. We will enforce our intellectual property rights to the fullest extent of the law, including the seeking of criminal prosecution, if necessary.

6.2 Copyright Violations. If you believe any information on the Services infringes your copyrights or applicable law, please contact us with the following information:

- (i) a description of the copyrighted work that you claim has been infringed;
- (ii) a description of where the material that you claim is infringing is located;
- (iii) your email address or other contact information that is sufficient for us to contact you;
- (iv) a statement by you that you in good faith believe that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- (v) a statement by you that the above information in your notice to TrailMarker is accurate and that you are the copyright owner or authorized to act on behalf of the owner.

Notices should be directed to: weston@thetrailmarker.com or by mail at:  
TrailMarker LLC  
5309 Tuscarawas Road, Bethesda Maryland 20816  
Attention: Weston Duncan

## **7. Third Party Integrations and Features**

7.1 Additional Features. Certain features on the Services may be subject to separate terms, which will be presented in conjunction with those features. Your use of those features will be governed by those separate terms.

7.2 Third Party Links & Ads. The Services may contain links to third party websites, services and events (collectively, “Third Party Links”). That doesn’t mean that we control or endorse such Third Party Links or any goods or services sold, promoted, or offered on Third Party Links. We are not responsible for the content, policies or activities associated with any Third Party Links and you interact with Third Party Links at your own and exclusive risk. Similarly, the Services may contain ads from third parties. We do not control or endorse any products being advertised.

7.3 Third Party Software. The Services may incorporate certain third party software (“Third Party Software”), which is licensed subject to the terms and conditions of the third party licensing such Third Party Software. Nothing in these Terms of Use limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable license for such Third Party Software.

7.4 Social Network Features. The Services may include features that operate in conjunction with certain third party social networking websites that you visit, such as Facebook, Pinterest, Instagram, YouTube, LinkedIn, TikTok, and Twitter (“Social Network Features”). While your use of the Social Network Features is governed by these Terms of Use, your access to and use of third party social networking sites is governed by the terms

posted on those sites. You are responsible for ensuring that your use of those social networking sites complies with any applicable terms of service or other agreements.

**7.5 Mobile Features.** You are responsible for making all arrangements necessary to access the Services. For example, access to the Services may require the use of certain mobile devices or a wireless data service, or travel to events or experiences. You may incur charges from your wireless provider when you use the Application, or incur transportation and other charges when you travel to an event or experience. We may update the Application at our sole and absolute discretion. If you accept these updates, you agree to pay for any costs associated with receiving them. TrailMarker makes no representations that the Application will be compatible with your device or wireless data service. You are solely responsible for any costs associated with the Services, unless TrailMarker explicitly states otherwise.

## **8. Application Terms**

**8.1 Application License.** Subject to your compliance with these Terms of Use, TrailMarker grants you a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to download, access and use a copy of the TrailMarker application owned or operated by TrailMarker (the “Application” or the “App”) on any mobile device or computer that you own or control and to run such copy of the Application solely for your own personal or noncommercial use.

**8.2 Apple Store Sourced Application.** If the Application that you download, access and/or use is downloaded from the Apple App store (an “App Store Sourced Application”), the following provisions are applicable to you:

(i) you acknowledge and agree that these Terms of Use are concluded between you and TrailMarker only, and not with Apple, and that Apple is not responsible for the relevant App Store Sourced Application;

(ii) you will only use the App Store Sourced Application with an Apple device that you own or control;

(iii) you acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application;

(iv) in the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple of such failure and upon notification, Apple’s sole warranty obligation to you will be to refund to you the purchase price, if any, of the App Store Sourced Application;

(v) you acknowledge and agree that TrailMarker, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the App Store Sourced Application;

(vi) you acknowledge and agree that, in the event of any third-party claim that the App Store Sourced Application or your possession and use thereof infringes that third party's intellectual property rights, TrailMarker, and not Apple, will be responsible for the investigation, defense, settlement, and discharge of any such infringement claim to the extent required by these Terms of Use;

(vii) without limiting any other terms of these Terms of Use, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application; and

(viii) you and TrailMarker acknowledge and agree that Apple and Apple's subsidiaries are third-party beneficiaries of these Terms of Use, and that upon your acceptance of these Terms of Use, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms of Use against you as the third-party beneficiary thereof.

## **9. Warranties and Disclaimers**

To the maximum extent permitted by applicable law, you agree that TrailMarker is not providing medical advice via the Services. All content provided through the Services, whether provided by TrailMarker or others, is not intended and should not be used in the place of: (a) the advice of your physician or other medical professionals; (b) a visit, call or consultation with your physician or other medical professionals; or (c) information contained on or in any product packaging or label. To the extent permitted by applicable law, we are not responsible for any health problems that may result from training programs, dietary recommendations, consultations, products, or events that you learn about through the Services. Should you have any health-related questions, please call or visit your physician or other healthcare provider promptly. If you have an emergency, call your physician or your local emergency services immediately.

BY USING THE SERVICES, YOU EXPRESSLY AGREE THAT: (A) TRAILMARKER IS NOT PROVIDING HEALTH OR MEDICAL ADVICE VIA THE SERVICES; (B) YOU ASSUME ALL RISKS ASSOCIATED WITH YOUR ACTIVITIES VIA THE SERVICES, INCLUDING ATHLETIC AND OTHER PHYSICAL ACTIVITIES; AND (C) TRAILMARKER DOES NOT ASSUME RESPONSIBILITY FOR (I) THE INSPECTION, SUPERVISION, PREPARATION, OR CONDUCT OF ANY RACE, CONTEST, CHALLENGE, GROUP OR OTHER PHYSICAL ACTIVITY ORGANIZED OR PROMOTED ON THE SERVICES OR BY TRAILMARKER, (II) THE ACCURACY, COMPLETENESS OR SUITABILITY OF THE INFORMATION AND DATA PROVIDED THROUGH THE SERVICES, OR (III) THE MISUSE OR MISREPRESENTATION OF THE INFORMATION AND/OR DATA PROVIDED THROUGH THE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRAILMARKER IS NOT RESPONSIBLE OR LIABLE, EITHER DIRECTLY OR INDIRECTLY, FOR ANY DEATH, INJURY, ILLNESS, OR DAMAGES SUSTAINED FROM YOUR USE OF, OR INABILITY TO USE, ANY SERVICES OR FEATURES OF THE SERVICES,



INCLUDING ANY CONTENT, PROGRAMS, EVENTS, EXPERIENCES, OR ACTIVITIES YOU ACCESS OR LEARN ABOUT THROUGH THE SERVICES, EVEN IF CAUSED IN WHOLE OR PART BY THE ACTION, INACTION OR NEGLIGENCE OF TRAILMARKER OR OTHERS. IF YOU CHOOSE TO PARTICIPATE IN ANY PROGRAMS, SERVICES, EVENTS, EXPERIENCES OR ACTIVITIES ORGANIZED OR PROMOTED ON THE SERVICES, YOU REPRESENT AND WARRANT THAT YOU HAVE CONSULTED WITH YOUR PHYSICIAN BEFORE ENGAGING IN ANY PROGRAMS, SERVICES, EVENTS, EXPERIENCES, OR ACTIVITIES, OR MAKING ANY NUTRITIONAL DECISIONS BASED ON THE CONTENT OF OUR WEBSITES AND/OR APPLICATION.

OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS OF USE, TRAILMARKER DOES NOT MAKE ANY SPECIFIC PROMISES ABOUT THE SERVICES. FOR EXAMPLE, WE DO NOT MAKE ANY COMMITMENTS ABOUT THE CONTENT ON THE SERVICES, THE EXPERIENCES OR EVENTS FACILITATED THROUGH THE SERVICES, THE SERVICES, PROGRAMMING OR CONTENT PROVIDED ON THE SERVICES, THE SPECIFIC FUNCTIONS OF THE SERVICES, THAT THE SERVICES WILL BE FREE FROM ERRORS, VIRUSES, BUGS OR OTHER HARMFUL COMPONENTS, OR THE RELIABILITY, COMPLETENESS, SECURITY, QUALITY, ACCURACY, AVAILABILITY, OR APPLICABILITY TO YOU OF THE SERVICES, ANY CONTENT PROVIDED ON THE SERVICES, OR ANY SERVICES OFFERED BY TRAILMARKER VIA THE SERVICES OR ELSEWHERE ONLINE OR OFFLINE. THERE MAY BE DELAYS, OMISSIONS, INTERRUPTIONS, AND INACCURACIES IN THE CONTENT OR OTHER MATERIAL, OR EVENTS OR EXPERIENCES, MADE AVAILABLE THROUGH THE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND ALL SOFTWARE ARE DISTRIBUTED ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

#### **10. Indemnification; Limitation of Liability**

To the maximum extent permitted by applicable law, you agree to defend, indemnify, and hold harmless TrailMarker, its parent and affiliate companies, and their respective Representatives from any and all Claims arising out of or related to your breach of these Terms of Use, the User Generated Content you create or share through the Services, and any of your activities related to or in connection with the Services, including, without limitation, your participation in any third party Trails or third party activities or programs of any kind.

EXCEPT WHERE PROHIBITED, TRAILMARKER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING FROM YOUR USE OF THE SERVICES OR ANY THIRD PARTY’S USE OF THE SERVICES TO THE FULLEST EXTENT PERMITTED BY LAW. THESE EXCLUSIONS INCLUDE, WITHOUT LIMITATION, DAMAGES FOR LOST

PROFITS, LOST DATA, COMPUTER FAILURE, PHYSICAL HARM FROM PARTICIPATION IN ANY EXPERIENCES OR EVENTS, OR THE VIOLATION OF YOUR RIGHTS BY ANY THIRD PARTY, EVEN IF TRAILMARKER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED. YOU AGREE THAT ANY PARTICIPATION IN EVENTS OR EXPERIENCES RELATED TO TRAILMARKER OR THE SERVICES IS DONE AT YOUR SOLE AND EXCLUSIVE RISK, AND THAT YOU UNDERSTAND THAT THERE ARE RISKS ASSOCIATED WITH PARTICIPATION IN SUCH EXPERIENCES AND EVENTS. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF TRAILMARKER ARISING OUT OF OR RELATED TO YOUR USE OF THE SERVICES EXCEED THE GREATER OF THE AMOUNT YOU PAID TO USE THE APPLICABLE SERVICES IN THE PAST TWELVE (12) MONTHS, OR \$500.

If you are a resident of Germany: Our statutory liability for intent, gross negligence, personal injury, breaches of a guarantee (which must be expressly designated as such in order to be a guarantee in the legal sense) and under the German Product Liability Act is unlimited.

In cases other than those described in the previous paragraph, our liability for slight negligence is limited to breaches of essential contractual obligations. Essential contractual obligations are obligations that must be performed in order to achieve the purpose of a contract in the first place, and on the performance of which you may therefore generally rely. Our liability for such breaches of essential contractual obligations under this paragraph is limited to damages that are typical of the type of contract and foreseeable at the time the contract is concluded.

## **11. Dispute Resolution**

If you are a resident of the United States, please read the following paragraphs (the “Arbitration Agreement”) carefully:

11.1 You agree that any dispute, controversy or claim, whether based on past, present, or future events, arising out of your use of any of the Services or any products or Trails related to the Services, including any Dispute arising out of or relating to your relationship to TrailMarker as a user or to these Terms of Use, whether based in contract, tort, statute, fraud, misrepresentation, regulation, or any other legal or equitable theory (collectively, a “Dispute”) will be resolved by binding arbitration, rather than in court, except that any Dispute brought by either you or Outside that falls within the jurisdictional scope and limits of the small claims court where you reside must be brought in that court on an individual basis. Such Dispute must remain in small claims court and may not be removed or appealed to a court of general jurisdiction. The Federal Arbitration Act and federal arbitration law apply to this Arbitration Agreement.

11.2 You agree that only an arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve any Dispute arising out of or relating to

the interpretation, applicability, or enforceability of this Arbitration Agreement. This includes any claim that all or any part of the arbitration provisions herein are void or voidable. An arbitrator shall also have exclusive authority to resolve all threshold arbitrability issues, including issues related to whether this Arbitration Agreement is applicable, unconscionable, or illusory and any defense to arbitration, including without limitation waiver, delay, laches, or estoppel. However, only a court of competent jurisdiction, and not an arbitrator, shall have the exclusive authority to resolve any and all Disputes arising out of or relating to the class action waiver and mass arbitration waiver set forth in this Arbitration Agreement, including, but not limited to, any claim that all or part of the waivers are unenforceable, unconscionable, illegal, void, or voidable.

11.3 In the event of a Dispute, and prior to initiating arbitration for any such Dispute, both parties agree that they will provide individualized written notice of the potential claim to the opposing party setting forth: (1) the factual and legal basis for the claim; (2) contact information for the potential claimant and their counsel, if any; and (3) the remedies sought, including the amount of claimed monetary damages (the “Dispute Notice”). To provide a Dispute Notice to TrailMarker, write to [weston@thetrailmarker.com](mailto:weston@thetrailmarker.com). Any Dispute Notice sent to you will be sent by certified mail to the most recent address TrailMarker has on file or via email if we do not have any such address. The Dispute Notice may only be sent relating to you or TrailMarker’s claims, and cannot be combined with others.

Within sixty (60) calendar days upon either party receiving the Dispute Notice, the parties shall engage in a good faith informal dispute resolution conference, whether by phone, e-mail, or other channel as agreed between the parties. You and TrailMarker will work in good faith to schedule the informal dispute resolution conference at a mutually convenient time. If you are represented by counsel, your counsel may participate in the informal dispute resolution conference, but you shall also fully participate in said discussions. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in the informal dispute resolution process required by this paragraph.

Compliance with the Dispute Notice and the informal dispute resolution conference shall both be a condition precedent to initiating arbitration. This section does not apply to any Dispute involving intellectual property.

11.4 If you and TrailMarker do not resolve the Dispute by informal negotiation, the dispute shall be resolved by binding arbitration before a neutral arbitrator whose decision will be final except for a limited right of appeal under the U.S. Federal Arbitration Act. Arbitration shall be filed with and administered by the American Arbitration Association (“AAA”), pursuant to the most-current AAA Commercial Arbitration Rules and the Consumer Arbitration Rules (the “AAA Rules”). The AAA Rules are available online at [www.adr.org](http://www.adr.org). The demand for arbitration must be personally signed by the party initiating arbitration and must certify compliance that: (1) the party has complied with the Dispute Notice and informal pre-dispute resolution process set forth herein; and (2) the requirements of claim or relief sought is neither frivolous nor brought for an improper purpose. There is no judge or jury in arbitration, and court review of an arbitration award is limited. If AAA

at the time the arbitration is filed has Minimum Standards of Procedural Fairness for Consumer Arbitrations in effect which would be applicable to the matter in dispute, we agree to provide the benefit of such Minimum Standards to you to the extent they are more favorable than the comparable arbitration provisions set forth in these Terms of Use; provided, however, that in no event may such Minimum Standards contravene or restrict the application of the provisions herein requiring individual arbitration and prohibiting class, representative or consolidated arbitration proceedings (except as to public injunctive relief if you are a resident of California or California law otherwise applies to these Terms of Use). Unless the parties agree otherwise in writing, any arbitration hearings will take place in the county, province, or other local jurisdiction in which you reside within the United States. One arbitrator, who is selected under the AAA Rules and who has expertise in consumer disputes in the internet industry, will conduct the arbitration. If no arbitrator possessing such expertise is available, then the arbitration will be conducted by a single arbitrator who is selected by the mutual written approval of the parties, or if the parties are unable to mutually approve the arbitrator, by the AAA. Except as allowed under applicable law and the AAA Rules, the decisions of the arbitrator will be binding and conclusive on all parties. The arbitrator is authorized to award any relief or impose any sanctions available under Federal Rule of Civil Procedure 11(b) or applicable federal or state law against all appropriate persons (including counsel), just as a court would. Judgment upon any award of the arbitrator may be entered by any court of competent jurisdiction. Regardless of the manner in which the arbitration is conducted, in any arbitration proceeding, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Unless otherwise provided herein, the AAA Rules will govern the payment of all arbitration fees. The arbitrator may make any determinations and resolve any Disputes as to the payment and reimbursement of arbitration fees at any time during the proceeding and within fourteen (14) days after the arbitrator's final ruling on the merits..

Arbitration will take place by phone or videoconference, unless an in-person hearing is requested by either party. You and we agree to maintain the confidential nature of the arbitration proceeding and shall not disclose the fact of the arbitration, any documents exchanged as part of any discussions or mediation, proceedings of the arbitration, the arbitrator's decision and the existence or amount of any award, except as may be necessary to prepare for or conduct the arbitration (in which case anyone becoming privy to confidential information must undertake to preserve its confidentiality), or except as may be necessary in connection with a court application for a provisional remedy in support of arbitration, a judicial challenge to an award or its enforcement, or unless otherwise required by law.

Disputes may also be referred to another arbitration organization if you and TrailMarker agree in writing, or to an arbitrator appointed pursuant to Section 5 of the Federal Arbitration Act.

We may make changes to these arbitration provisions from time to time. You may reject any material changes by sending us written objection within thirty (30) days of the change to TrailMarker LLC, 5309 Tuscarawas Road, Bethesda Maryland 20816, TrailMarker, LLC.

By rejecting any future material change, you are agreeing to arbitrate in accordance with the language of these provisions prior to such change. If you do not send written objection to any change as provided above, you are agreeing to arbitration in accordance with the changed language of these provisions. To the extent that an arbitrator determines that applying any changes to these arbitration provisions to any Disputes relating to prior events or circumstances would render this an illusory or unenforceable contract or otherwise violate your legal rights, such changes shall be applicable on a prospective basis only, with respect to events or circumstances occurring after the effective date of such changes, and in that case any Disputes relating to such prior events or circumstances shall be arbitrated in accordance with the language of these provisions prior to such changes to the extent necessary to avoid these Terms of Use being deemed illusory or unenforceable.

**11.5 YOU AND TRAILMARKER AGREE THAT EACH PARTY MAY BRING DISPUTES AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, OR PRIVATE ATTORNEY GENERAL ACTION, OR IN ANY OTHER PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY, WHETHER IN COURT OR IN ARBITRATION.** This means that by entering into these Terms of Use, independent of the agreement to arbitrate and waiver of class arbitration, you are giving up the ability to participate in or bring a class action in court for any and all claims. If a court of competent jurisdiction determines that all or part of this waiver is unenforceable, unconscionable, void or voidable, the remainder of these Terms of Use shall remain in full force and effect.

**11.6** If these arbitration provisions are found to be null and void, then all Disputes arising under the Terms of Use between us will be subject to the jurisdiction of the state and federal courts located in Wilmington, Delaware, and you and we hereby submit to the personal jurisdiction and venue of these courts. You and TrailMarker agree that if for any reason a dispute proceeds in court rather than arbitration: (1) you and TrailMarker waive any right to a jury trial; (2) the dispute will proceed solely on an individual, non-class, non-representative basis; and (3) neither you nor TrailMarker may be a class representative or class member or otherwise participate in any class, representative, consolidated, or private attorney general proceeding.

This Arbitration Agreement will not preclude you or TrailMarker from seeking provisional remedies in aid of arbitration, including without limitation orders to stay a court action, compel arbitration or confirm an arbitral award, from a court of competent jurisdiction. Furthermore, this Arbitration Agreement will not preclude you or TrailMarker from (i) applying to the appropriate court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, (ii) seeking relief in any state or federal court for disputes related to a violation or possible violation of TrailMarker's intellectual property rights; or (iii) any claims that may be brought in small claims court where the amount in controversy is properly within the jurisdiction of such court.

11.7 For purposes of this section, a “Mass Arbitration Filing” includes instances in which you or TrailMarker are represented by a law firm or collection of law firms that has filed ten (10) or more arbitration demands of a substantially similar nature against the other party within 180 days of the arbitration demand filed on you or TrailMarker’s behalf, and the law firm or collection of law firms seek to simultaneously arbitrate all arbitration demands in the aggregate.

You and TrailMarker expressly waive the right to have any dispute, claims or controversy brought, heard, administered, resolved, or arbitrated as a Mass Arbitration Filing, as defined above. Neither an arbitrator nor an arbitration provider shall have any authority to hear, arbitrate, or administer any Mass Arbitration Filing.

If this Mass Arbitration Filing is deemed invalid or unenforceable, neither you nor TrailMarker is entitled to arbitration; instead all Disputes will be resolved as noted in Section 11.8 and subject to Section 11.5.

11.8 If and only if a court finds that Section 11.7 is unenforceable, and a Mass Arbitration Filing is permitted to proceed, the parties agree that Mass Arbitration Filings will be batched into groups of no more than ten (10) demands per batch by state of residence (with any remaining demands batched into a single group).

The arbitration provider shall treat each batch of claims as one case, with each case having one demand for arbitration, one appointed arbitrator, and one set of administrative documents and administrative and filing fees per batch. The parties shall randomly assign sequential numbers to each batch, and only one batch shall proceed to arbitration at a time in the order of the random sequential numbers. Any remaining claims shall not be filed or deemed filed in arbitration, nor shall any arbitration fees be assessed or collected in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. A separate arbitrator will be appointed to, and administrative and filing fees assessed for, each batch as the batch proceeds to arbitration. You agree to cooperate in good faith with TrailMarker and the arbitration provider to implement such a batch approach to resolution and fees.

Any relevant limitations period and filing fee or other deadlines shall be tolled subject to these batching procedures for Mass Arbitration Filings from the time the first cases are selected for a staged process until your claim is selected to proceed as part of a staged process or is settled, withdrawn, otherwise resolved, or opted out of arbitration.

A court of competent jurisdiction shall have the authority to enforce these batching procedures and, if necessary, to enjoin the mass filing, prosecution, or administration of arbitrations and the assessment and collection of arbitration fees. If these batching procedures apply to your claim, and a court of competent jurisdiction determines they are not enforceable as to your claim, then your claim shall proceed in a court of competent jurisdiction consistent with these Terms of Use.

**11.9 Thirty-Day Right to Opt Out:** You have the right to opt out from the final, binding individual arbitration procedure specified in this Arbitration Agreement by sending written notice of your decision to opt out to the following address: TrailMarker LLC, Attn: Weston Duncan, 5309 Tuscarawas Road Bethesda MD 20816. For clarity, opt-out notices submitted via email will not be effective. The notice must be sent within 30 calendar days of your initial agreement to these Terms of Use; otherwise, you shall be bound to arbitrate disputes according to these Terms of Use. The opt-out notice must specify: (1) your name; (2) your mailing address; (3) your email address you used to set up your TrailMarker account (if you have one); and (4) your request to be excluded from the final, binding individual arbitration specific in this Section. If you opt out of these arbitration provisions, TrailMarker also will not be bound by them. In addition, if you elect to opt out of these arbitration provisions, TrailMarker may terminate your use of the Services. Opting out of this Arbitration Agreement has no effect on any other Arbitration Agreements you may currently have or enter into in the future with TrailMarker. This opt out does not apply to the class action waiver in Section 11.5.

If you are a resident of the European Union:

**11.10** Notwithstanding anything to the contrary in these Terms of Use, if there is a dispute that you and TrailMarker cannot resolve, you have the right to submit a complaint through <http://ec.europa.eu/consumers/odr>. Other than as set out in these Terms of Use, we do not participate in any ADR scheme.

In addition, nothing in these Terms of Use limits your rights to bring an action against TrailMarker in the local courts of your place of domicile. All disputes arising under the Terms of Use between you and TrailMarker will be subject to the non-exclusive jurisdiction of the courts located in your place of domicile, or the courts located in Ireland, and you and we hereby submit to the personal jurisdiction and venue of these courts.

## **12. Email and Text Communications**

**12.1 Electronic Communications.** You agree that all communications related to your use of the Services will be sent electronically and that such communications satisfy any legal requirement that such communications be in writing. All notices from TrailMarker to you shall be deemed delivered and effective when sent to the e-mail address you provide to us. If you opt in to receive promotional emails, you will be able to later opt-out by following the instructions provided in those emails. You cannot however opt out of communications that are related to your use of the services available on the Services.

**12.2 Notices.** When you use the Services or send communications to us via the Services, you are communicating with us electronically. Similarly, you consent to receive, from us electronically, communications related to your use of the Services. You agree that all agreements, notices, disclosures, and other communications that TrailMarker provides to you electronically satisfy any legal requirement that such communications be in writing. All notices from TrailMarker to you will be deemed delivered and effective when sent to the e-mail address you provide to us.

### **13. United States Operations; International Disclaimer**

The Services are controlled and primarily operated by TrailMarker from its offices within the United States of America, and our policies and procedures are based primarily on United States law. If you are not a United States resident and accessing our Content or Services from outside the United States, the following provisions apply: (i) you consent to the transfer, storage, and processing of your information, including but not limited to User-Generated Content and any Personal Data, to and in the United States and/or other countries; (ii) you are not authorized to access or make use of the Services from a location embargoed by the United States, or are on the United States Treasury Department's list of "Specially Designated Nationals"; and (iii) you agree to comply with all local laws, rules, and regulations including, without limitation, all laws, rules, and regulations in effect in the location in which you reside and the location from which you access the Services. The Services are not intended for distribution to, or use by, any person or entity in any jurisdiction or location where such distribution or use would be contrary to law or regulation, or which would subject TrailMarker or its affiliates to any registration requirement within such jurisdiction or location.

### **14. Additional Terms**

14.1 No Waiver. If you do not comply with these Terms of Use, and we don't take enforcement action right away, that does not constitute a waiver, and we are not giving up any rights that we may have (such as taking enforcement action in the future).

14.2 Governing Law. These Terms of Use are governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of laws rules. For disputes that are not subject to arbitration, you expressly agree that the exclusive jurisdiction for any claim or dispute under these Terms of Use and or your use of any of the Services resides in the courts located in Wilmington, Delaware, and you further expressly agree to submit to the personal jurisdiction of such courts for the purpose of litigating any such claim or action.

If you are a user based in the European Union, then Irish law shall apply to these Terms of Use and the Irish courts shall have exclusive jurisdiction to hear disputes arising in relation to the Terms. Despite this, your local laws in your European Union Member State may allow you to take legal action against TrailMarker in your Member State and to invoke certain local laws against TrailMarker.

14.3 Miscellaneous. If it turns out that a particular provision in these Terms of Use is held to be invalid or unenforceable, the other provisions of these Terms of Use will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Headers are for convenience and do not affect the interpretation of these Terms of Use. These Terms of Use constitute the entire agreement between you and TrailMarker relating to the use of this Services and supersedes and replaces any prior agreement and communication between the parties.



14.4 California Notice. The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite N 112, Sacramento, California 95834, or by telephone at (800) 952-5210.

14.5 Compliance with FTC Guides on Endorsements and Testimonials. If you choose to promote the Services to the public, including your own personal social networks, you agree that you will comply with the FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising (16 CFR 255, as amended, available here [<https://www.ftc.gov/legal-library/browse/federal-register-notices/16-cfr-part-255-guides-concerning-use-endorsements-testimonials-advertising>]) (the “Endorsement Guides”). For example, if you have been offered, paid or provided with free or discounted products, Services or points in exchange for discussing or promoting any of the Services, or if you are an employee of a company and you decide to discuss or promote that company’s products or services through the Services, you agree to comply with the Endorsement Guides’ requirements for disclosing such relationships. You, and not TrailMarker, are solely responsible for any endorsements or testimonials you make regarding the Services or any other product or service.

14.6 Tax Matters. You acknowledge and agree that we do not have the ability, in every instance, to determine whether or not the points you received or redeemed in any Prize Program, or any prize redeemed related to the Services, are considered reportable income or taxable earnings in your jurisdiction. You are therefore responsible for any and all tax liability arising from or associated with your use of the Services, including liability arising from your accrual of points or your redemption of such points or prizes. As a condition of your continued use of the Services, we reserve the right to require you to provide necessary tax reporting information if our records show that you are or may be required to report the value of your redeemed points or prizes to an appropriate tax authority. We encourage you, and it is your responsibility, to seek the advice of a tax expert in order to determine the tax consequences of your use of the Services, and any associated points or prizes received or redeemed.

14.7 International Users. The Services are controlled, operated, and administered by TrailMarker from our offices within the United States of America. TrailMarker makes no representation that materials on the Services are appropriate or available for use at other locations outside of the United States, and we prohibit access to them from territories where the contents or products available through the Services are illegal. You may not use the Services or export any content or products in violation of U.S. export laws and regulations. If you access the Services from a location outside of the United States, you are responsible for compliance with all local laws.

14.8 Contact Us. If you have any feedback, questions or comments about the Services, please contact our Support Team at [weston@thetrailmarker.com](mailto:weston@thetrailmarker.com) or direct your communication to us by mail at: TrailMarker LLC, 5309 Tuscarawas Road Bethesda MD 20816.

