

## MARCA-VIA.COM

### USER AGREEMENT

Effective Date: December 22, 2017

**Welcome!** Thank you for visiting Marca-Via.com. Please take some time to read this entire User Agreement carefully. If you have any questions about this User Agreement, please [contact us](#).

#### **Section 1. Your Acceptance of this User Agreement**

You are entering into a legally binding agreement with Marca Via LLC (“**we**” or “**us**” or “**our**” or “**Marca Via**”). This User Agreement sets out the terms and conditions upon which we grant you permission to access, visit, shop at, and use the website Marca-Via.com and the other websites and webpages owned and operated by Marca Via (collectively “**Website**”) and the content, information, features, functionality, applications, software, and services available through the Website (collectively “**Services**”), and establishes your rights and obligations as a user of our Services. This User Agreement governs your use of our Services.

**If you object to anything in this User Agreement (or otherwise do not understand or agree to be bound by this User Agreement), then do not use our Services. If you use our Services in any way, you acknowledge that you have read, understand, and agree to this User Agreement.**

We may change this User Agreement at any time. We will provide you with notice of any material changes and tell you the date on which such changes will be effective. We may provide this notice to you by email or by posting a notice on the Website. It is your responsibility to review any changes to this User Agreement. If you object to any of the changes to this User Agreement (or otherwise do not understand or agree to any of the changes to this User Agreement), then do not continue to use our Services. By continuing to access or use our Services following notice of any change to this User Agreement, you acknowledge that you have read, understand, and agree to this User Agreement as changed.

You may print a copy of this User Agreement by using the print button or feature in your browser. We suggest retaining a copy for future reference.

#### **Section 2. Important Notice**

Please be advised that this User Agreement affects your legal rights and contains provisions that govern how claims you and Marca Via have against each other are resolved (see Section 16 – Dispute Resolution). You should read this entire User Agreement carefully before accepting it.

#### **Section 3. Our Rules and Policies**

The following rules and policies (collectively “**Rules and Policies**”) are incorporated into and made part of this User Agreement:

- (1) **Privacy Policy.** Our Privacy Policy contains terms and conditions related

to how we collect, use, disclose, retain, and protect your personal information. By using our Services, you consent to the collection, use, and disclosure of your information (as set forth in the Privacy Policy).

(2) **DMCA Policy.** Our DMCA Policy contains terms and conditions related to the use of copyrighted materials.

#### **Section 4. Your Use of Our Services**

(1) **People Under the Age of 13.** If you are under the age of 13 (a “**Child**”), you may use our Services without providing any personal information. However, to provide personal information through the Website, a Child will need to provide their parent’s or legal guardian’s email address so that we can send the parents information about our privacy policy and ask for permission to accept content from a Child.

(2) **User Generated Content.** Users may submit or publish their own content from time-to-time, whether uploaded through a web form, submitted over email or uploaded directly to the Website’s Community pages (“**User Content**”). When you submit, publish or upload User Content, it means that you are agreeing to share your User Content with us and the rest of the Marca Via community. You hereby agree that everyone, whether visitors to the Website or otherwise, is entitled to access and utilize your User Content, and to associate it with you and/or your Child. Marca Via reserves the right to reasonably edit and revise User Content for the purposes of brevity and clarity, and you hereby indemnify Marca Via from any editorial license it employs.

(3) **License.** During the term of this User Agreement, we grant you a limited, non-exclusive, non-transferrable, and revocable license to access, visit, shop at, and use our Services for your personal and non-commercial use in accordance with this User Agreement. If you are under age 13 and have not obtained the consent of your parent or legal guardian to , the license granted to you will be revoked.

(4) **Compliance with Laws.** You agree that (a) your use of our Services will be in strict compliance with this User Agreement and with all applicable laws and regulations, and (b) your use of our Services will not infringe or misappropriate the intellectual property rights of any third party. You acknowledge and agree that we are providing our Services from our location in Bend, Oregon, USA, and we make no representation that our Services are appropriate or applicable or will be available for use in other locations. Except as otherwise specifically provided in this User Agreement, all marketing or promotional materials provided through our Services are solely directed to and intended for persons and entities located in the United States. If you use our Services from a location outside the United States, you are entirely responsible for compliance with all applicable local laws, rules, and regulations in your country, province, state, city, or other location.

(5) **Prohibited Activities.** Except as otherwise specifically provided in this User Agreement, you may not engage in any of the following prohibited activities: (a) reproducing pictures, descriptions, or other aspects of the Website on any other site; (b) “framing” or “mirroring” of the Website or any material contained on or accessible from the Website on any other server or Internet-based device; (c) copying, distributing, or disclosing any part of the Website in any medium, including without limitation by any automated or non-automated “scraping”; (d) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc. to access the Website; (e) transmitting spam, chain letters, or other unsolicited email; (f) attempting to interfere with, compromise the system integrity or security, or decipher any transmissions to or from the servers running the Website; (g) taking any action that imposes or may impose (in our

determination, at our sole discretion) an unreasonable or disproportionately large load on the infrastructure of the Website; (h) uploading invalid data, viruses, worms, or other software agents through the Website; (i) collecting or harvesting any personally identifiable information from the Website; (j) using the Website for any commercial solicitation purposes; (k) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (l) interfering with the proper working of the Website; (m) accessing any content on the Website through any technology or means other than those provided or authorized by the Website; or (n) bypassing the measures we may use to prevent or restrict access to the Website, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein.

**(6) Third-Party Content.** Our Services may include links to third party websites, content, and services which are not owned or controlled by us (collectively “**Third-Party Content**”). You acknowledge and agree that (a) any Third-Party Content is provided for your convenience only, (b) we have no control over nor assume any responsibility for any Third-Party Content, and (c) we do not make any representations or warranties regarding the nature, quality, suitability, usefulness, availability, accuracy, or completeness of any Third-Party Content. Your access to and use of any Third-Party Content is at your own risk and is subject to the terms of use and privacy policies established by the Third-Party Content providers. You are responsible for taking precautions as necessary to protect yourself and your computer systems from viruses, worms, Trojan horses, and other harmful or destructive content.

**(7) Maintenance and Updates.** We reserve the right to temporarily suspend or limit access to the Services for the purpose of maintenance and updates. You acknowledge and agree that we are not responsible or liable to you for any reason in the event that all or any portion of the Services are unavailable to you for any period.

**(8) Feedback.** We encourage you to provide us with your feedback in the form of reviews, comments, concerns, suggestions, and recommendations related our Services (collectively “**Feedback**”). If you provide us with any Feedback, you grant us a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, transferrable, and sublicensable license to use your Feedback or to incorporate your Feedback into our Services without restriction and without providing any attribution or compensation to you.

## **Section 5. Intellectual Property Rights and Licenses**

**(1) Our Content.** Our Services include or otherwise contain designs, features, functionality, elements, images, photographs, logos, graphics, text, content, trademarks, service marks, logos, and other information and materials (collectively “**Our Content**”) which are (a) owned by us or licensed to us by our licensors, and (b) subject to domestic and international copyright, trademark, patent, trade secret, and other intellectual property laws and protections. We reserve all rights in Our Content which are not expressly granted to you under this User Agreement.

**(2) Using Our Content for Personal, Non-Commercial Use.** We encourage, and expressly grant you permission, to use and adapt Our Content for your specific personal and non-commercial needs, including for use regarding your own events.

**(3) Limitations on Use of Our Content.** Our Content is intended solely for your personal and non-commercial use. You may download or copy Our Content for your personal use only. No right, title, or interest in or to any of Our Content is transferred to you as a result of any such downloading or copying. Except as otherwise specifically

provided in this User Agreement, you agree to not engage in the use, copying, or distribution of any of Our Content other than as expressly permitted by this User Agreement.

## **Section 6. Communications**

If we need to communicate with you about this User Agreement or our Services, you agree that we may do so electronically, including in any of the following ways: (a) banner or other visible notice on our Website, (b) email, (c) text message, (d) or other communications sent to your computer or mobile device. You further agree that any such electronic communications satisfy any legal requirement that such communications be in writing.

By providing us with your email address, you agree that you have affirmatively requested to receive marketing and promotional material. You may opt out of receiving such materials by following the instructions in the promotional email.

## **Section 7. Website Transactions**

**(1) Orders.** You may place an order using our Services. By placing an order with us, you (a) are offering to make a purchase, (b) are representing that all information that you provide to us in connection with such order is true and accurate, (c) are authorized to use the payment method provided, (d) accept and agree to be bound by this User Agreement, and (e) agree to pay all amounts owed in connection with such order.

**(2) Acceptance of Your Order.** Your receipt of an order confirmation does not constitute our acceptance of an order. Even after your receipt of an order confirmation, we reserve the right to (a) refuse or cancel any order that you place with us, (b) limit the number or quantity of items ordered or purchased per person, per household, per order, per credit card, and per address, and (c) request verification of information.

## **Section 8. Offers and Promotions**

We may from time to time make available special offers and promotions that provide an opportunity to receive discounts, coupons, gift cards, or other benefits (collectively "**Promotions**"). You agree that, unless otherwise specifically provided in writing in connection with such Promotion, any Promotion: (a) may only be used for the intended purpose; (b) are non-transferrable; (c) may not be combined with any other Promotions; (d) is only redeemable as long as supplies last; (e) may be canceled or discontinued (in whole or in part) at any time by us; (f) may not be redeemed for cash; and (g) may expire prior to your use. You acknowledge and agree that we may change the terms and conditions of any Promotion at any time without prior notice to you, including changing the expiration date.

## **Section 9. Product Information and Pricing**

**(1) Pricing.** All prices are in U.S. dollars. We reserve the right to change pricing at any time without prior notice to you. All advertised prices are subject to change. All products are available only as long as supplies last. In the event of an incorrect price (whether due to typographical or otherwise), we reserve the right to refuse or cancel your order for the incorrect price, even if your order has been confirmed or processed by us. If you have already made payment or if you have already been charged for the incorrect price and we refuse or cancel the order, we will credit you in the amount of the incorrect

price.

**(2) Products.** We try to be as accurate as possible with our product descriptions. However, all advertised products are subject to change, and we provide no warranty or guarantee that any product descriptions or other information are accurate or complete. If you believe that any product you purchase through our Services is not as described, you may return it in unused condition for a refund. Please see our Returns and Refund Policy for additional information.

**(3) Colors.** We try to be as accurate as possible with the colors displayed on our Website. However, we cannot guarantee the accuracy of any color displayed on your computer monitor or mobile device.

**(4) Comparative Advertising.** We may use brand names, descriptions, photos, images, and other information related to third party brands and products in connection with our Services for the purpose of comparative and compatibility advertising. You acknowledge that by doing so, we do not represent that such third party is endorsing our products.

## **Section 10. Shipping and Delivery**

**(1) Risk of Loss.** Risk of loss and title for any item you purchase through our website passes to you upon delivery of the item to the carrier, and (b) we reserve the right to restrict delivery to addresses within Oregon or the United States.

## **Section 11. Returns and Refund Policy**

**(1) Product Warranty.** If our product fails due to a defect in material or workmanship within 90 days from the date of your order, you may return the product for a full refund.

**(2) Exclusions.** The warranty provided under Section 11(1) applies only to products used within the United States and excludes any damage caused by improper use or abuse, excessive heat exposure, or the use of abrasive cleaning materials or chemicals.

**(3) Refunds and Exchanges.** Except as otherwise provided under Section 11(1):

**(A)** We hope you enjoy your Marca Via product(s), however, you may return any product for a refund within 30 days of the date of your order, to 320 SW Century Drive, Suite 405-138, Bend, OR 97702, subject to the following conditions:

- (i)** The returned product must be in new and unused condition.
- (ii)** The returned product must include a copy of your original invoice.
- (iii)** You must pay all shipping and handling charges to return the product.
- (iv)** You must pay a processing/restocking fee equal to 20% of the returned product's purchase price.

(v) If the returned product was originally purchased as part of a promotion or discount, you may be charged an additional amount if such return results in you being ineligible for the applicable promotion or discount. For example, if you purchased the product as part of a promotion where you received a 10% for buying three products, but you return one of the three products, you will be charged for the discounted 10% on each of the remaining products.

(vi) You may not return any product marked as “clearance” or “all sales final” or with any similar designation at the time of your order.

(vii) You may not return any product or other item which you received for free (excluding shipping and handling charges) as part of a promotion or giveaway

## **Section 12. Termination and Suspension**

We reserve the right to terminate, limit, or suspend (with or without notice) your use of our Services.

Any such termination will not release you from any existing obligations under this User Agreement.

This User Agreement will automatically and immediately terminate upon either party's insolvency, bankruptcy, receivership, dissolution, or liquidation.

## **Section 13. Warranty Disclaimers**

**Except as otherwise specifically provided elsewhere in this User Agreement, our Services are provided “AS IS” without any warranties of any kind.** To the fullest extent permissible under applicable law, we expressly disclaim all warranties (express and implied), including warranties of merchantability, fitness for a particular purpose, non-infringement, accuracy, freedom from errors, suitability of content, and availability.

You expressly acknowledge and agree that: (a) we make no warranty that (i) our Services will meet your requirements; (ii) our Services will be uninterrupted, timely, secure, or error-free; (iii) the results obtained from the use of our Services will be accurate, reliable, complete, or current; (iv) the quality of any products, services, information, or other material purchased or obtained by you through our Services will meet your expectations; or (v) any errors in our Services will be corrected; (b) any material downloaded or otherwise obtained through the use of our Services is done at your own risk and that you will be solely responsible for any damage to or loss of data from your computer system or mobile device that results from the download of any such material; (c) no advice or information (whether oral or written) obtained by you from us (including through or from our Services) shall create any warranty which is not otherwise expressly stated in this User Agreement; and (d) we are not responsible for incorrect or inaccurate entry of information, human error, technical malfunctions, lost/delayed data transmission, omission, interruption, deletion, defect, failures of any telephone network, computer equipment, software, or any combination thereof, or inability to access our Services.

## **Section 14. Limitation of Damages and Release of Liability**

Any release, disclaimer, or limitation stated elsewhere in this User Agreement is in addition to and shall not limit, restrict, or otherwise affect the scope or enforcement of any

release, disclaimer, or limitation stated in this section.

**This section is part of the basis of the bargain between you and Marca Via and shall apply to all Claims (as defined in Section 16 – Dispute Resolution), even if we have been advised of the possibility of any such liability or damage and even if these remedies fail their essential purpose.**

Some states or jurisdictions do not allow the types of limitations in this section, so they may not apply to you.

**(1) Limitation of Damages.**

**(A)** You agree that, to the extent permitted by applicable law, if we are found liable in any Claim (as defined in Section 16 – Dispute Resolution), our total liability to you or to any third party (whether jointly, severally, or individually) **shall not exceed the amount paid by you to us** in connecting with the transaction giving rise to such liability. If no such amount was paid by you to us, our total liability under this section **shall not exceed \$100.**

**(B)** You agree that, except as otherwise specifically provided under Section 14(1)(A), and to the extent permitted by applicable law, **we shall not under any circumstances have any liability whatsoever to you or any third party** (whether jointly, severally, or individually) for any (a) damages or losses of any kind (known or unknown, foreseen or unforeseen, direct or indirect) arising out of or in any way related to any disclaimer provided in this User Agreement (including Section 13 – Warranty Disclaimers); (b) indirect, incidental, special, consequential, or punitive damages, or (c) loss of use, data, opportunity, goodwill, reputation, profit, or revenue.

**(2) General Release of Liability.**

**(A)** You hereby unconditionally release Marca Via from any and all liability for any losses and damages (whether direct or indirect, known or unknown, foreseen or unforeseen, and including attorney fees) arising out of or in any way related to any of the following: (a) your violation of or failure to perform any obligation under this User Agreement; (b) our rejection of or refusal to accept any order (in whole or in part); (c) our cancelation or discontinuance (in whole or in part) of any Promotion; (d) any incorrect pricing; (e) any inaccurate or incomplete product information; (f) our termination or suspension of your use; (g) your cancelation of an order; and (h) your improper use of any product purchased through our Services.

**(B)** You acknowledge and agree that under this general release, you expressly waive any protections (whether statutory or otherwise) that would otherwise limit the scope of this general release to include only those claims which you may know or suspect to exist at the time you agree to this release.

**(C)** If you are a California resident, you hereby waive California Civil Code § 1542, which reads: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

**(D)** You hereby agree to pay all reasonable costs and expenses

(including court fees, attorney fees, travel expenses, and other related costs and expenses) incurred in connection with our efforts to obtain a stay or dismissal of any Claim (as defined in Section 16 – Dispute Resolution) from which you released us of liability under this Section 14(2) – General Release of Liability.

## **Section 15. Indemnification**

**(1) Nonparty Claims.** With respect to any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding (including any related appeal or review) (each a “**Proceeding**”) brought by any third party against us (or any of our affiliates, directors, officers, employees, agents, consultants, advisors, and other representatives) (collectively “**Indemnitees**”) and that arises out of (a) your use of our Services, (b) your violation of or failure to perform any obligation under this User Agreement, or (c) any untrue representation or statement made by you in this User Agreement (each a “**Nonparty Claim**”), you agree that you will indemnify and defend the Indemnitees from and against any amount (including any interest) awarded in or paid in settlement of a Proceeding (collectively “**Losses**”) and any reasonable out-of-pocket expense (including court filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements) incurred in defending a Proceeding or in any related investigation or negotiation (collectively “**Litigation Expenses**”) arising out of such Proceeding, except to the extent that such Indemnitees negligently or intentionally caused such Losses or Litigation Expenses.

**(2) Notice of Nonparty Claim.** To assume the defense of a Nonparty Claim, you must notify the Indemnitee that you are doing so. Promptly thereafter, you shall retain to represent the Indemnitee in the Nonparty Claim with independent legal counsel that is reasonably acceptable to the Indemnitee.

**(3) Defense of Nonparty Claim.** An Indemnitee is entitled to participate in the defense of a Nonparty Claim. An Indemnitee may defend a Nonparty Claim with counsel of its own choosing and without you participating if (a) you notify the Indemnitee that you does not wish to defend the Nonparty Claim, (b) by midnight at the end of the 10th day after the Indemnitee notifies you of the Nonparty Claim, you fail to notify the Indemnitee that you wish to defend the Nonparty Claim, or (c) representation of you and the Indemnitee by the same counsel would, in the opinion of that counsel, constitute a conflict of interest.

**(4) Litigation Expenses.** You shall pay any Litigation Expenses that an Indemnitee incurs in connection with defense of the Nonparty Claim before you assume the defense of that Nonparty Claim, except with respect to any period during which the Indemnitee fails to timely notify you of that Nonparty Claim. You will not be liable for any Litigation Expenses that an Indemnitee incurs in connection with defense of a Nonparty Claim after you assume the defense of that Nonparty Claim, other than Litigation Expenses that the Indemnitee incurs in employing counsel in accordance with Section 15(3) – Defense of a Nonparty Claim, which Litigation Expenses you shall pay promptly as they are incurred.

**(5) Settlement.** After you assume the defense of a Nonparty Claim, you may contest, pay, or settle the Nonparty Claim without the consent of the Indemnitee only if that settlement (a) does not entail any admission on the part of the Indemnitee that it violated any law or infringed the rights of any person or entity, (b) has no effect on any other claim against the Indemnitee, (c) provides as the claimant’s sole relief monetary damages that are paid in full by you, and (d) requires that the claimant release the Indemnitee from all liability alleged in the Nonparty Claim.

(6) **Survival.** Your indemnification obligations under this section will survive any termination or expiration of this User Agreement.

## Section 16. Dispute Resolution

You and Marca Via agree that any claim, demand, controversy, dispute, or cause of action arising out of this User Agreement, your order, your relationship with us, your use of or inability to use our Services (through our Website or otherwise), or any item you purchase using our Services (collectively “**Claim**”) will be resolved in accordance with the provisions set forth in this section. **Please read this section carefully.** This section affects your rights and will have a substantial impact on how any Claim you and Marca Via may have against each other is resolved.

(1) **Limitations Periods.** Except where prohibited by applicable law, you agree that regardless of any statute or law to the contrary, **ANY CLAIM MUST BE COMMENCED WITHIN ONE YEAR AFTER THE DATE ON WHICH SUCH CLAIM ACCRUED OR BE FOREVER BARRED.** You agree that this limitations period is reasonable due to the nature of the transactions contemplated in this User Agreement.

(2) **Applicable Law.** To the extent not otherwise governed by federal law, this User Agreement and any Claim or Proceeding arising out of the negotiation, execution, or performance of this Agreement or any party’s rights and obligations under this Agreement, shall be governed by and construed in accordance with the laws of the State of Oregon, without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or of any other jurisdiction) that would cause or result in the application of the laws of any jurisdiction other than the State of Oregon.

(3) **Notice of Dispute Form.** We want to avoid litigation, and we hope you do, too. Therefore, if either party plans to pursue legal action, such party must first send (by certified or registered mail) a completed Notice of Dispute to the other party.

We will send a Notice of Dispute to you at the address associated with your order or otherwise provided by you. You should send your Notice of Dispute to us at the following address:

Rotondi Law LLC dba Craft Lawyer  
Attn: Russell R. Rotondi  
Re: Notice of Dispute  
3519 NE 15<sup>th</sup> Avenue, #104  
Portland, OR 97212

If the parties are unable to resolve the claims described in the Notice within 30 days after the Notice is sent, you or Marca Via may initiate arbitration under Section 16(4) – Agreement to Arbitrate.

(4) **Agreement to Arbitrate.** You and Marca Via agree that any Claim shall be resolved exclusively through final and binding arbitration, rather than in state or federal court. **You and Marca Via agree that each waives any right to a jury trial** under this Section 16(4) – Agreement to Arbitrate (“**Agreement to Arbitrate**”).

(A) **Prohibition of Class and Representative Actions and Non-Individualized Relief.** YOU AND MARCA VIA AGREE THAT EACH MAY BRING

ANY CLAIM AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND MARCA VIA OTHERWISE AGREE IN WRITING, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIM AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS ACTION OR PROCEEDING. ALSO, THE ARBITRATOR MAY ONLY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM. ANY RELIEF AWARDED CANNOT AFFECT ANY OTHER PARTY.

**(B) Arbitration Procedures.** Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, and court review of an arbitration award is very limited. However, an arbitrator can award the same damages and relief on an individual basis that a court can award to an individual. An arbitrator should apply the applicable law and terms of this User Agreement as a court would.

The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute arising out of or in any way relating to the interpretation, applicability, enforceability, or formation of this Agreement to Arbitrate (or any portion thereof), or of this User Agreement (or any portion thereof), including any claim that all or any portion of the Agreement to Arbitrate or this User Agreement is unenforceable.

The arbitrator shall not be bound by rulings in prior arbitrations involving different Marca Via members, but is bound by rulings in prior arbitrations involving the same Marca Via member to the extent required by applicable law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

The arbitration of any Claim shall be held in Portland, Oregon and will be conducted and governed by the Arbitration Services of Portland ("**ASP**") under its rules and procedures (which are available on [ASP's website](#)), except as such rules and procedures are modified as follows:

**(i)** The arbitration hearing shall take place no later than 120 days after arbitration is initiated.

**(ii)** Where no party's claim exceeds \$10,000 (exclusive of interest, attorney fees, and arbitration costs), the dispute shall be resolved by submission of documents unless the arbitrator determines that an oral hearing is necessary. Within 14 days after appointment of the arbitrator, the arbitrator shall schedule a preliminary case management teleconference to establish fair and equitable procedures for the submission and review of documents. The final date for submissions (including any response and replies, if permitted) shall be no later than 120 days after arbitration is initiated.

**(iii)** Each party (or each party's representative if such party is an entity or organization) must appear in-person at the arbitration hearing.

(iv) Discovery of documents and other tangible things shall be limited to those documents and other tangible things which each party intends to rely on during the arbitration.

(v) Documents presumed admissible shall include this User Agreement and all emails sent to one party from another party.

(vi) It shall not be a requirement for a document to be presumed admissible that the party offering a document has made available, after request, to all other parties all other related documents from the same author or maker.

(vii) Legal issues (which may be resolved without need for reliance on factual issues) shall be resolved via summary disposition by the arbitrator prior to the arbitration hearing.

(viii) At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

(ix) Unless applicable law provides otherwise, the arbitration may proceed in the absence of any party who fails to appear at the arbitration hearing or fails to submit documents in a dispute to be resolved by the submission of documents. An award may be made solely on the default of a party for failure to appear.

(x) If the total and combined relief requested is \$100,000 or more (exclusive of interest, attorney fees, and arbitration costs), a party may appeal purely legal errors and manifestly erroneous factual findings.

The use of the word “arbitrator” in this provision shall not be construed to prohibit more than one arbitrator from presiding over any arbitration. Rather, the ASP rules shall determine the number of arbitrators that may preside over any given arbitration conducted under this Agreement to Arbitrate.

A form for initiating any arbitration proceeding is available on [ASP's website](#). In addition to filing such form with ASP in accordance with its rules and procedures, to initiate arbitration proceedings you must send a copy of the completed form by certified mail to Marca Via at the following address:

Rotondi Law LLC dba Craft Lawyer  
Attn: Russell R. Rotondi  
Re: Arbitration Claim  
3519 NE 15<sup>th</sup> Avenue, #104  
Portland, OR 97212

In the event that Marca Via initiates arbitration against you, Marca Via will send a copy of the completed form to the address associated with your order(s) or otherwise provided by you. Any settlement offer made by you or Marca Via shall not be disclosed to the arbitrator.

**(C) Costs of Arbitration.** Unless otherwise stated in this Agreement to Arbitrate, Payment of all filing, administration, and arbitrator fees will be governed

by the ASP's rules.

**(D) Severability.** With the exception of any of the provisions in Section 16(4)(A) – Prohibition of Class and Representative Actions and Non-Individualized Relief, if an arbitrator or court decides that any portion of this Agreement to Arbitrate is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply. If an arbitrator or court decides that any of the provisions in Section 16(4)(A) – Prohibition of Class and Representative Actions and Non-Individualized Relief is invalid or unenforceable, then the entirety of this Agreement to Arbitrate shall be null and void. The remainder of this User Agreement (including all other provisions of Section 16 – Dispute Resolution) shall continue to apply.

If an arbitrator or court decides that the requirement set forth in Section 16(4)(B) – Arbitration Procedures that any arbitration under this User Agreement to Arbitration be held in Portland, Oregon is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply and any arbitration shall instead be held in the county in which you reside or at another mutually agreed location. In cases where an in-person hearing is held, you and/or Marca Via may attend by telephone, unless the arbitrator requires otherwise.

**(E) Opt-Out Procedure.** YOU MAY CHOOSE TO REJECT THIS AGREEMENT TO ARBITRATE (“**OPT-OUT**”) BY MAILING MARCA VIA A WRITTEN OPT-OUT NOTICE (“**OPT-OUT NOTICE**”). THE OPT-OUT NOTICE MUST BE POSTMARKED NOT LATER THAN 30 DAYS AFTER THE DATE ON WHICH YOU ACCEPT THIS USER AGREEMENT FOR THE FIRST TIME, AND YOU MUST MAIL THE OPT-OUT NOTICE VIA CERTIFIED OR REGISTERED MAIL, RETURN-RECEIPT REQUESTED, TO:

Rotondi Law LLC dba Craft Lawyer  
Attn: Russell R. Rotondi  
Re: Opt-Out Notice  
3519 NE 15<sup>th</sup> Avenue, #104  
Portland, OR 97212

You must complete and sign the Opt-Out Notice for it to be effective. **This procedure is the only way you can Opt-Out of the Agreement to Arbitrate.** If you Opt-Out of the Agreement to Arbitrate, all other parts of this User Agreement (including all other provisions of Section 16 – Dispute Resolution) will continue to apply to you. If you Opt-Out of this Agreement to Arbitrate, this has no effect on any previous, other, or future arbitration agreements that you may have with Marca Via.

**(F) Future Changes to the Agreement to Arbitrate.** Notwithstanding any provision in this User Agreement to the contrary, you and Marca Via agree that if Marca Via makes any change (other than a change to any notice address or website link) to this Agreement to Arbitrate, that change shall not apply to any Claim that was filed in a legal action or proceeding against Marca Via prior to the effective date of such change. The change shall apply to all other Claims governed by the Agreement to Arbitrate that have arisen or may arise between you and Marca Via. Marca Via will notify you of any change to this Agreement to Arbitrate by posting the amended terms on the Website at least 30 days before the effective date of the changes and/or by providing notice via email. **If you object to any of the changes to this Agreement to Arbitrate, or otherwise do not understand**

**or agree to be bound by the changes to this Agreement to Arbitrate, you may cease the use of website or cancel your order(s) within the 30-day period and you will not be bound by the new terms.**

Moreover, if Marca Via seeks to terminate the Agreement to Arbitrate, any such termination will not be effective until 30 days after you are given notice of such termination, and will not be effective as to any Claim that was filed or otherwise commenced prior to the effective date of such termination.

**(5) Judicial Forum for Claims.** Unless you and Marca Via otherwise agree, in the event that the Agreement to Arbitrate is found not to apply to you or to any particular Claim, either as a result of your decision to Opt-Out of the Agreement to Arbitrate or as a result of any decision by any arbitrator or court, you agree that any Claim must be resolved exclusively by the state or federal courts located in Multnomah County, Oregon. You consent to venue and personal jurisdiction of such courts for the purposes of litigating all such Claims.

**To the extent permitted by applicable law, you voluntarily and expressly agree to waive (and/or not exercise your rights under) any statute or law that provides you with the ability to revoke or otherwise invalidate this mandatory forum selection clause (or any portion thereof).**

The parties agree that nothing under this section shall prohibit any party from enforcing or otherwise seeking to collect on any judgment in any jurisdiction permitted by applicable law.

**(6) Violation of this Section.** You agree that if you file or initiate any Proceeding against Marca Via in violation of or without fully complying with this Section 16 – Dispute Resolution (including Section 16(3) – Notice of Dispute Form, Section 16(4) – Agreement to Arbitrate, and Section 16(5) – Judicial Forum for Claims), you will cause such Proceeding to be dismissed without prejudice within 15 days of the date of a written request from Marca Via. Additionally, you acknowledge and agree that any applicable limitations period will not be tolled during the pendency of any such Proceeding. In the event you fail or refuse to cause such Proceeding to be dismissed as required by this section, you hereby agree to pay all reasonable costs and expenses (including court fees, attorney fees, travel expenses, and other related costs and expenses) incurred in connection with Marca Via’s efforts to obtain a stay or dismissal of such Proceeding. The parties acknowledge and agree that the right to an award of costs and expenses (including attorney fees) under this section is limited to the specific circumstances set forth in this section and is not intended to provide any party with a general right to an award of costs and expenses (including attorney fees), even if such party is the “prevailing party” in connection with any Claim.

**(7) Attorney Fees.** Except as specifically provided under this User Agreement, the ASP rules, or by applicable law, the parties acknowledge and agree that (a) each party shall bear its own costs, expenses, and attorney fees incurred in connection with any Claim, and (b) any right to an award of costs and expenses (including attorney fees) under Section 14(2) – General Release of Liability and Section 16(6) – Violation of This Section is limited to the specific circumstances set forth under such section and is not intended to provide any party with a general right to an award of costs and expenses (including attorney fees), even if such party is the “prevailing party” in connection with any Claim.

**(8) Service of Process.** You expressly agree to accept service of process by

the certified or registered mailing of a copy of the summons and complaint to the last address provided by you to Marca Via.

## **Section 17. General Provisions**

**(1) Times is of the Essence.** Time is of the essence with respect to all dates and time periods set forth or referred to in this User Agreement.

**(2) Translations.** We may offer translated versions of our Services or this User Agreement. Any such translations are offered solely for convenience. You should not rely on any translated version of our Services or this User Agreement. If any questions arise concerning the accuracy or completeness of any translated version of our Services or this User Agreement, please refer to the English version, which is the official and authoritative version.

**(3) No Third-Party Beneficiaries.** Except as otherwise specifically provided in this User Agreement, this User Agreement creates no third-party beneficiary rights.

**(4) No Joint Venture.** No independent contractor, partnership, joint venture, employer-employee, principal-agent, or franchiser-franchisee relationship is intended or created by this User Agreement or your use of our Services.

**(5) Waiver.** Our failure to strictly or timely enforce any provision of or exercise any right under this User Agreement is not a waiver of our ability or right to do so later or of our ability or right to enforce any other provision of or exercise any right under this User Agreement. Any waiver must be in writing and signed by the waiving party.

**(6) Entire Agreement.** This User Agreement (including the Rules and Policies under Section 3 – Our Rules and Policies) constitutes the entire agreement between you and Marca Via with respect to its subject matter, and replaces and supersedes any other prior or contemporaneous agreements or terms and conditions applicable to the subject matter of this User Agreement. You acknowledge and agree that there have been no representations, warranties, or promises outside of this User Agreement.

**(7) Construction and Interpretation.** Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this User Agreement. The headings used in this User Agreement are for convenience only. All references to sections or subsections without additional identification refer to the sections or subsections of this User Agreement. The verb used to introduce a statement of fact (e.g. states, represents, warrants, etc.) in this User Agreement does not affect the remedies available for inaccuracy of that statement of fact. Wherever appropriate, the masculine may mean the feminine and the singular may mean the plural or vice versa. The words “include” or “including” are each “without limitation”. Any, all, each, or every means any and all, and each and every.

**(8) Severability.** Except as otherwise specifically provided in this User Agreement, if any provision (or portion thereof) of this User Agreement is found by a court or arbitrator of competent jurisdiction to be unenforceable, illegal, null, void, or against public policy, such provision (or portion thereof) will be modified so as to render it enforceable and effective to the maximum extent possible in order to effect the intention of the provision and this User Agreement. If a court or arbitrator finds the modified provision to be unenforceable, illegal, null, void, or against public policy, the enforceability of the remaining provisions of this User Agreement and this User Agreement in general will not be affected in any way.

**(9) Survival.** Any provision of this User Agreement which imposes an obligation after the termination or expiration this User Agreement shall survive the termination or expiration of this User Agreement.

### **Section 18. Contacting Us**

If you have questions about this User Agreement, our Privacy Policy, or our DMCA Policy, or if you have questions about our Services, or for any other reason, you can contact us by email, telephone, or mail:

Rotondi Law LLC dba Craft Lawyer  
Attn: Russell R. Rotondi  
Re: General Inquiry  
3519 NE 15<sup>th</sup> Avenue, #104  
Portland, OR 97212