

ORCATEC
END USER LICENSE AGREEMENT AND TERMS OF USE

This Mobile and Web Application End User License Agreement ("Agreement") is a binding agreement between you (hereinafter, "you") and Orcatec LLC ("Company"). This Agreement governs your use of the Orcatec Application, (including all related documentation and comprising both the web and mobile device versions, the "Application"). The Application is licensed, not sold, to you.

BY USING THIS APPLICATION YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE 18 YEARS OF AGE OR OLDER; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE APPLICATION AND DELETE IT FROM YOUR DEVICE.

This Agreement is effective as of January 30, 2020. Company may revise and update this Agreement from time to time in our sole discretion. All changes are effective immediately when Company posts them and apply to all access to and use of the Application thereafter. However, any changes to the dispute resolution provisions set out in Governing Law and Jurisdiction will not apply to any disputes for which the parties have actual notice before the date the change is made herein.

Your continued use of the Application following the posting of revisions means that you accept and agree to the changes. You are expected to check this page each time you access this Application so you are aware of any changes, as they are binding on you

1. LICENSE GRANT.

- 1.1. *Generally.* Subject to the terms of this Agreement, Company grants you a limited, non-exclusive, and nontransferable license to: (i) download, install, and/or use the Application for use in accordance with the service package purchased by you ("Device") strictly in accordance with the Application's documentation; and (ii) access, download, and use on such Device the Content and Services (as defined in Section 3) made available in or otherwise accessible through the Application, strictly in accordance with this Agreement.
- 1.2. *License Restrictions.* You shall not: (i) copy the Application, except as expressly permitted by this license; (ii) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Application; (iii) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Application or any part thereof; (iv) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Application, including any copy thereof; (v) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Application, or any features or functionality of the Application, to any third party for any reason, including by making the Application available on a network where it is capable of being accessed by more than one device at any time other than that which the package you purchased allows.
- 1.3. *Reservation of Rights.* You acknowledge and agree that the Application is provided under license, and not sold, to you. You do not acquire any ownership interest in the Application under this Agreement, or any other rights thereto other than to use the Application in accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. Company and its licensors and service providers reserves and shall retain their entire right, title, and interest in and to the Application, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

2. **COLLECTION AND USE OF INFORMATION.** You acknowledge that when you download, install, or use the Application, Company may use automatic means (including, for example, cookies and web beacons) to collect information about your Device and about your use of the Application. You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the Application or certain of its features or functionality, and the Application may provide you with opportunities to share

information about yourself with others. All information Company collects through or in connection with this Application is subject to our Privacy Policy (which is located here: https://orcatec.com/privacy_policy.pdf). By downloading, installing, using, and providing information to or through this Application, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

3. **WEBSITE.** The Application is also available through Company's website located at www.orcatec.com (the "Website"). Products and services accessible thereon, and certain features, functionality, and content accessible on or through the Application may be hosted on the Website (collectively, "Content and Services"). Your access to and use of such Content and Services are governed by this Agreement, which is also available on the Website at www.orcatec.com/terms_and_conditions.pdf
4. **FEES; SERVICE PACKAGES.** Company offers varied service packages, which are described here: www.orcatec.com/orcatec-services (the "Service Package Schedule"), and are subject to the fees and payment terms referenced therein. The terms articulated on the Service Package Schedule are incorporated by reference herein and are subject to change from time to time by Company. By continuing to use the services offered after Company notifies you of such change via email, you assent to such change and will pay the modified fees and/or assent to the modified scope of services provided accordingly. The Company does not offer refunds for any reason, except at its sole discretion.
 - 4.1. *Billing.* Payment will be billed by the Company on the first day of each month in accordance with the Service Package Schedule pertaining to the services provided the previous month. Should payment fail on such date, Company will allow the services to continue, however should the overdue amount remain in arrears for thirty (30) days thereafter, your account will be disabled.
5. **UPDATES.** Company may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Updates may also modify or delete in their entirety certain features and functionality. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Device settings, when your Device is connected to the internet either (as appropriate based on the applicability of this statement to the Application accessed through the Website and the Application accessed through a mobile device): (i) the Application will automatically download and install all available Updates; or (ii) you may receive notice of or be prompted to download and install available Updates. You shall promptly download and install all Updates and acknowledge and agree that the Application or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.
6. **ACCESS; ACCOUNT SECURITY.**
 - 6.1. *Access.* You are responsible for both: (i) Making all arrangements necessary for you to have access to the Application; and (ii) Ensuring that all persons who access the Application through your account are aware of this Agreement and comply with it. To access the Application or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Application that all the information you provide on the Application is correct, current, and complete. You agree that all information you provide to register with this Application or otherwise, including, but not limited to, through the use of any interactive features on the Application, is governed by our Privacy Policy located at the link provided above, and you consent to all actions Company takes with respect to your information consistent with our Privacy Policy.
 - 6.2. *Account Security.* If you choose, or are provided with, a username, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Application or portions of it using your username, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when

accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. Company has the right to disable any user name, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of this Agreement.

7. USER CONDUCT.

- 7.1. *User Content.* You will have the opportunity to create content through the Application without the Company's review or specific approval, including (but not limited to) correspondence with third parties via the Application, reviews of other companies, and articles posted in subdomains (the "User Content"). You agree that in using the Application, you shall not post any User Content that: (i) advocates for the commission of any illegal activity; (ii) advocates or professes violence or intolerance toward any specific individual, organization, or belief; (iii) is misleading or inaccurate information that was posted with the intent of misleading other users; (iv) may be deemed obscene (at the sole discretion of Company); (v) may cause a liability for Company, or may cause Company to lose (in whole or in part) the services of any ISPs or any other third party; or (vi) infringes upon the intellectual property or any other right of any third party.
- 7.2. *False Representations.* You shall not, through the Service or the Site: (i) impersonate any person or entity; (ii) harass any third parties; or (iii) state or imply that any posted User Content is endorsed by Company.
- 7.3. *Compliance With CAN-SPAM.* You agree that you will only use the Application to advertise and/or present offers to individuals who have consented in accordance with the CAN-SPAM Act and any other applicable federal or state law. You agree that you have tangible evidence of this consent and you will save it and make it available upon request to the Company. You explicitly promise that they will not use the Application to contact individuals who have not consented to said contact.
- 7.4. *Copyright Infringement.* You agree that any and all User Content you publish through the Application shall be original content that you created or content for which you have the right to duplicate, display, and/or disseminate. You acknowledge and agree that you shall be liable for any damages Company suffers pursuant to your failure to comply with this Section.

- 8. THIRD-PARTY MATERIALS.** The Application may display, include, or make available third-party content or services, including (but not limited to) telephone service through Twilio, or provide links to third-party websites or services, including through third-party advertising (collectively "Third-Party Materials"). You acknowledge and agree that Company is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. Company does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

9. TERM AND TERMINATION.

- 9.1. *Effectiveness.* The term of Agreement commences when you download, install, or use this Application and will continue in effect until terminated by you or Company as set forth in this Section.
- 9.2. *Termination.* You may terminate this Agreement by deleting the Application and all copies thereof from your Device. Company may terminate this Agreement at any time without notice if it ceases to support the Application, which Company may do in its sole discretion or elects for any reason to terminate your access to the Application, in its sole discretion, and without requiring notice therefor. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.
- 9.3. *Effect of Termination.* Upon termination: (i) all rights granted to you under this Agreement will also terminate; and (ii) you must cease all use of the Application and delete all copies of the Application from

any mobile device to which you have downloaded it . Termination will not limit any of Company's rights or remedies at law or in equity.

10. DMCA PROCEDURE FOR ALLEGEDLY INFRINGING CONTENT. To notify the Company of any copyright-infringing content, please contact us at support@orcatec.com with the following information in accordance with the Digital Millennium Copyright Act:

- Identification of the allegedly copyright-infringing material'
- Identifying of the allegedly infringed-upon work and the copyright-holder of said work;
- Information reasonably sufficient for Company to contact you;
- A statement that you have a good faith belief that use of the material in the manner complaint of is not authorized by the copyright owner, its agent, or the law;
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Your physical or electronic signature.

Our designated Copyright Agent to receive DMCA Notices is:

Rick Chapo
DMCAAgentService.com
P.O. Box 373
Pine Valley, California 91962
Phone: (800) 804-7260
Email: complaint@dmcaagentservice.com

If you fail to comply with all the requirements of Section 512(c)(3) of the DMCA including your physical or electronic signature, your DMCA notice may not be effective.

Please be aware that if you knowingly materially misrepresent that material or activity on the Website is infringing your copyright, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

Please find complete DMCA Policy at: <https://orcatec.com/dmca.pdf>

11. DISCLAIMER OF WARRANTIES. THE APPLICATION IS PROVIDED TO YOU "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE

APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

COMPANY DOES NOT WARRANT THE ACCURACY, COMPLETENESS, OR USEFULNESS OF INFORMATION POSTED TO THIS APPLICATION. ANY RELIANCE YOU PLACE ON SUCH INFORMATION IS STRICTLY AT YOUR OWN RISK. COMPANY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY ARISING FROM ANY RELIANCE PLACED ON SUCH MATERIALS BY YOU OR ANY OTHER VISITOR TO THE APPLICATION, OR BY ANYONE WHO MAY BE INFORMED OF ANY OF ITS CONTENTS.

THIS APPLICATION INCLUDES CONTENT PROVIDED BY THIRD PARTIES, INCLUDING MATERIALS PROVIDED BY OTHER USERS, VENDORS, AND THIRD-PARTY LICENSORS. ALL STATEMENTS AND/OR OPINIONS EXPRESSED IN THESE MATERIALS, AND RESPONSES TO QUESTIONS AND OTHER CONTENT, OTHER THAN THE CONTENT PROVIDED BY THE COMPANY, ARE SOLELY THE OPINIONS AND THE RESPONSIBILITY OF THE PERSON OR ENTITY PROVIDING THOSE MATERIALS. THESE MATERIALS DO NOT NECESSARILY REFLECT THE OPINION OF THE COMPANY. COMPANY IS NOT RESPONSIBLE, OR LIABLE TO YOU OR ANY THIRD PARTY, FOR THE CONTENT OR ACCURACY OF ANY MATERIALS PROVIDED BY ANY THIRD PARTIES.

- 12. LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APPLICATION, NOR ANY THIRD PARTY BREACH OF THE COMPANY'S SECURITY RESULTING IN: (I) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES. (II) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE APPLICATION. THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.
- 13. INDEMNIFICATION.** You agree to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to your use or misuse of the Application or your breach of this Agreement (including any of the representations and warranties included herein), including but not limited to the content you submit or make available through this Application.
- 14. EXPORT REGULATION.** The Application may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Application to, or make the Application accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Application available outside the US.
- 15. MISCELLANEOUS.**

- 15.1. *Severability.* If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.
- 15.2. *Governing Law.* This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Application shall be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in San Diego County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.
- 15.3. *Arbitration.* EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER. Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The number of arbitrators shall be one (1). The place of arbitration shall be San Diego, California. California State law shall apply. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- 15.4. *Limitation of Time to File Claims.* ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE APPLICATION MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES OTHERWISE SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.
- 15.5. *Entire Agreement.* This Agreement and our Privacy Policy constitute the entire agreement between you and Company with respect to the Application and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Application.
- 15.6. *No Waiver.* No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this agreement, or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The provisions of this paragraph may not be waived except as herein set forth. Furthermore, no waiver by either Party of any breach of or compliance with any condition or provision of this Agreement by the other Party will be considered a waiver of any other condition or provision of the same condition or provision at another time.
- 15.7. *Binding Effect.* The Parties hereto agree that this Agreement and all of its terms shall be binding upon the Parties and each of them, and, as applicable, upon their heirs, executors, administrators, dependents, predecessors, successors, subsidiaries, divisions, alter egos, affiliated corporations, parent corporations and related entities, and their agents, officers, directors, successors and assigns.
- 15.8. *Acknowledgment.* The Parties acknowledge that they have fully read and completely understand the terms, nature, and effect of this Agreement, and have had the opportunity to consult with legal counsel before executing this Agreement. The parties further acknowledge that they are executing this Agreement freely, knowingly, and voluntarily and that each party's execution of this Agreement is not the result of any fraud, duress, mistake, or undue influence whatsoever. In executing this Agreement, neither party has relied on any inducements, promises, or representations by the Company other than the terms and conditions herein.

Any feedback, comments, requests for technical support, and other communications relating to the Application should be directed to support@orcatec.com.