

# Terms of Service

**Effective Date: September 18, 2022**

## 1. INTRODUCTION

Welcome to Orca1DI™, a network and professional digital intelligence resource for healthcare/ life science professionals.

By registering as a Orca1DI™ member or otherwise accessing or using any of our websites, digital services or mobile or other applications, including any related services (collectively the "Service" or "Services"), whether as a registered member or an unregistered visitor, you are entering into a legally binding contract with Orca1 Digital Intelligence LLC ("Orca1 Digital Intelligence", "we," "us," or "our"). The following Terms of Service (these "Terms") govern your access to and use of the Service.

We cannot provide the Services or perform the agreement described in these Terms without processing personal information about you and other Orca1DI™ members. Processing this information is essential to the Services that we provide and a necessary part of our performance of our agreement with you.

By accessing the Service, you acknowledge that you have read and understand these Terms, and that you agree to be bound them. If you do not agree to be bound by these Terms, do not access the Service.

PLEASE NOTE THAT BY AGREEING TO THESE TERMS, YOU AGREE TO RESOLVE ALL DISPUTES THROUGH BINDING INDIVIDUAL ARBITRATION, AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION AS FURTHER DESCRIBED IN SECTION 9 - GOVERNING LAW; DISPUTE RESOLUTION.

## 2. THE Orca1DI™ SERVICE

### A. Eligibility and Prohibited Activities

By accessing the Service, you agree you are currently a healthcare/ life science professional. You also agree that any information you provide to us in connection with your account registration is accurate and complete, and that Orca1DI™ may use such information to provide the Service.

Orca1DI™ is a United States company. Your information is stored within the United States.

You may use the Services only for lawful purposes and in accordance with these Terms. You agree not to use the Services:

- In any way that violates any federal, state or local law or regulation or professional rule applicable to you and your use of the Services.
- In any way that violates or conflicts with any agreement to which you are a party, including any agreement with your employer.
- To transmit any material that does not comply with the User Content Standards outlined below.
- To impersonate another person or misrepresent your identity or affiliation with any person or entity (e.g., by using an email address, username or caller ID that misrepresents your affiliation).

- In any manner that could disable, overburden, damage, or impair any component of the Service.
- To transmit any advertising or promotional materials without our prior written consent, including any "junk mail" or "junk faxes," "bulk mail" or "bulk faxes," "chain letters," "spam," or any other similar solicitation.
- To engage in any other conduct that inhibits anyone's use or enjoyment of the Service or which, as determined by us, may harm Orca1DI™ or users of the Service.

Additionally, you agree not to:

- Re-use or re-publish any content made available through the Service including, without limitation, content posted by other Orca1DI™ users, without the express written permission of Orca1DI™ or such user, as applicable.
- Copy any of the material made available through the Service for commercial purposes, including through scraping, downloading, exporting, storing or otherwise capturing any data obtained via the Service without proper written authorization by Orca1DI™.
- You will neither use the Services to compete with us nor will you use them for any purpose other than those permitted; for the avoidance of doubt, this prohibits your use of the Services for building a library of the documents and data provided to you via the Services;
- Attempt to obtain unauthorized access to or interfere with the Service, any Orca1DI™ computer system, software, or network, including through reverse engineering, decompiling, deriving source code or uploading malicious code or code snippets.
- Accessing or attempting to access any portion of the Sites to which you have not been explicitly granted access.
- Tamper with, breach or attempt to probe, scan, or test for vulnerabilities in the Service or Orca1DI™ computer systems, network, security elements, or any other protective measures associated with the Service.
- Use any software, devices, scripts, robots or any other means or process to view, access or "scrape" the Service or otherwise copy information from the Service, or to transmit any communications using the Service including, without limitation, faxes or member messages.
- Reproduce or redistribute content provided through the Services, including through "framing" or "mirroring" or through third parties, without Orca1DI™ consent.
- Reverse engineer, decompile, disassemble, decipher, or otherwise attempt to derive the source code for the Services or any related technology.
- Monitor the availability, performance, or functionality of any of the Services for any competitive purpose.
- Deep-link to any of our websites (i.e., linking to a Orca1DI™ web page other than the Orca1DI™ home page) unless solely to promote your profile or practice on the Service, or as otherwise expressly approved by Orca1DI™ in writing on a case-by-case basis.
- Infringe or use any of our brands, logos trademarks or other proprietary marks in any business name, email, URL, or other context, unless expressly approved by Orca1DI™ in writing.
- Introduce into the Service any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
- Otherwise attempt to interfere with the proper working of the Service, or any portion thereof.

## **B. User Content Standards**

You may submit content and other information in a variety of ways including through your profile, newsfeed, and our communication tools ("User Content"). You agree that you are solely responsible for your User Content, including its legality, reliability, accuracy, and appropriateness, your User Content complies with these Terms, and you have all rights in your User Content as necessary to grant the license granted herein.

You agree that your User Content will not:

- Contain any material that is offensive, abusive, defamatory, obscene, threatening or harassing.
- Promote illegal activity or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
- Contain any material that infringes or violates the rights of any person or entity including, without limitation, intellectual property, publicity, or privacy rights, or violates applicable laws, rules, or regulations.
- Violate any contractual, legal, or ethical obligations to which you are subject.
- Contain advertising or promotions that are not expressly authorized by Orca1QI™ in writing.
- Misrepresent your current or past affiliation with another person or entity, or otherwise contain fraudulent, false, deceptive, or misleading information.

If you believe that any content displayed on the Service violates your copyright, refer to Section 7 (Claims Regarding Copyright Infringement) for instructions on sending us a notice of copyright infringement.

While Orca1DI™ is not responsible for User Content, it may, but has no obligation to, monitor, review or edit User Content. In all cases, we reserve the right to remove any User Content for any or no reason, including User Content that we determine in our sole discretion violates these Terms, threatens the personal safety of our users or the public, or could create liability for Orca1DI™. We may take these actions without prior notification to you and shall have no liability as a result of any such action.

### **C. Use of the Service**

The Service is intended for use by healthcare/ life science professionals. The information made available through the Service is provided for informational purposes only and is not intended as a substitute for your professional judgment as a healthcare/ life science professional. You are solely responsible for your decision to use the Service, evaluating the information obtained through the Service, and for your decision to use such information. Your use of the information obtained through the Service is solely at your own risk, and you agree that Orca1DI™ and its licensors are not responsible or liable for any claim, loss, or damage arising from your use of such information.

Orca1DI™ does not recommend or endorse any specific products, services, procedures, or other information that may be mentioned in the Service, and we assume no responsibility for such information. If you are an employee, contractor, or other workforce member of an enterprise with whom Orca1DI™ has executed an enterprise agreement intended to cover use by the enterprise's workforce of a particular paid Service (an "Enterprise Agreement"), as specified therein, then to the

extent of a conflict between a term of the Enterprise Agreement and these Terms, the Enterprise Agreement will govern your use of the paid Service.

#### **D. Service Availability**

We make reasonable efforts to keep all of the Services fully operational, however we may encounter technical difficulties or engage in maintenance or updates to the Services that may cause temporary interruptions. We reserve the right, at any time, to modify, suspend or discontinue any Service or functions and features of a Service, without liability to you, except that if we discontinue a Service for which you have purchased a subscription, we will give you a prorated refund of your subscription fees. You understand and agree that Orca1DI™ has no obligation to provide any specific content through the Service and Orca1DI™ may, from time to time, remove any content without notice, in our sole discretion.

#### **E. Your Orca1DI™ Account**

You agree to: ( 1) choose a strong password and keep it secure and confidential; (2) not permit others to use your login credentials to access your Orca1DI™ account; and (3) refrain from accessing another Orca1DI™ member's account. You agree you are solely responsible for your account. If you believe there has been unauthorized access to your account, you must change your username and password and notify us immediately. To close your account, please contact us at [contact@orca1di.com](mailto:contact@orca1di.com). As between you and others (including your employer), your account belongs to you. However, if you use a paid Service pursuant to an Enterprise Agreement, as described above, that enterprise will have the right to control access to and obtain reports on your use of the paid Service.

#### **F. Paid Subscription Services Terms**

The terms of this Section do not apply to enterprise purchases of Orca1DI™ paid Services that are subject to an Enterprise Agreement. We reserve the right to require that certain purchasers enter into an Enterprise Agreement with Orca1DI™ for the purchase of the applicable paid Service.

We offer individuals the opportunity to purchase subscriptions for our paid Services. **If you purchase a subscription for a paid Service, either for yourself or for someone else, you agree that the subscription fees and applicable taxes are payable in advance, subscriptions automatically renew at the end of their subscription term, and you will be charged for the renewal subscription term using any payment method we have on record for you, unless you cancel your auto-renewal prior to the renewal date.** We will notify you by email prior to your subscription renewal so you will have time to cancel your auto-renewal, which you may do at any time by contacting Member Support at [contact@orca1di.com](mailto:contact@orca1di.com) and following the provided instructions. You may also cancel your auto-renewal by adjusting your account settings in the Subscriber Portal which is hosted by our third-party payment and subscription management platform and accessible from your subscription purchase, renewal notice, and other emails relating to your subscription.

When you cancel a paid subscription, the cancellation is effective at the end of the current subscription term and the paid Service will remain available for use until that time. While we may offer an initial cancellation period with first time purchases, we do not otherwise provide refunds or credits for subscriptions purchased, except where required by law.

We reserve the right to adjust pricing for our paid Services at any time as we may determine in our sole discretion. Any pricing change will apply to your next subscription renewal term. Before charging you for a renewal subscription term, we will notify you of the applicable fees by email sent to the email address provided in connection with the initial subscription. If you do not wish to renew your subscription, you may cancel the auto-renewal as described above. If you do not cancel your auto-renewal, you will be deemed to have agreed to renewal of your subscription including the applicable charges.

By providing a payment method for your subscription, you represent that you are authorized to use that payment method for the associated purchase, and you authorize us (or our third-party payment processor) to charge your payment method for the total amount of your purchase (including any applicable taxes and other charges). You must maintain accurate and up-to-date payment information within our Subscriber Portal or the third-party payment service you used to purchase your subscription (e.g., Apple Pay or Google Pay) in order to continue to access the Service during a renewal term. If your designated payment method cannot be verified, is invalid or is otherwise unacceptable, you are solely responsible for resolving the payment issue and may not use the Service until it is resolved. You can update your payment method within the Subscriber Portal, and by doing so you authorize us to charge that payment method for future renewal terms

We may offer paid subscription promotions to eligible users from time to time, which may be subject to additional terms presented along with the offer. We reserve the right to determine eligibility and to modify, suspend or terminate our promotional offerings at any time and for any reason in our sole discretion without prior notice or liability.

## **G. Privacy**

The [Orca1DI™ Privacy Policy](#) explains how we collect, use, and share personal information in connection with your use of the Service. We encourage you to read our Privacy Policy carefully because by accessing and using the Service in any way, you consent to the handling of your personal information as described in the [Orca1DI™ Privacy Policy](#). Note that we may update our Privacy Policy from time to time, as described therein.

## **H. Third Party Sites**

The Service includes links to third party web sites ("Third Party Sites"). You are responsible for evaluating whether you want to access or use a Third-Party Site and agree and understand that our inclusion of a link to a Third-Party Site in no way constitutes our affiliation with or endorsement of such site or its content. Third Party Sites are governed by their respective terms of service and privacy policies, and we encourage you to review the terms and policies of any Third-Party Site before using it.

### **3. COMMUNICATIONS**

#### **A. Member Communication Tools**

Members may use the Services to communicate information in a variety of ways including through their profiles, social actions (e.g., liking, sharing, or commenting on a newsfeed article), and through our member messaging. We authorize you to use these tools for non-commercial purposes, unless otherwise expressly approved by Orca1DI™. You are solely responsible for your interactions with other Orca1DI™ users. Orca1DI™ reserves the right, but has no obligation, to monitor disputes between you and other users and respond as necessary to enforce these Terms.

Please note that any information you share through your newsfeed or profile (subject to certain privacy settings) will be seen by others, and may be used and re-shared by such users on and outside of Orca1DI™, so be mindful as to what you choose to share, and do not share in this manner any content or information that is confidential, that you do not want others to see or use, or that is subject to third party rights. Orca1DI™ IS NOT RESPONSIBLE FOR A USER'S USE, MISUSE OR MISAPPROPRIATION OF ANY CONTENT OR INFORMATION YOU POST, UPLOAD, OR TRANSMIT VIA THE SERVICE UNLESS OTHERWISE EXPRESSLY AGREED BY Orca1DI™ PURSUANT TO A SEPARATE WRITTEN AGREEMENT.

#### **B. Communications from Orca1DI™**

By registering as a Orca1DI™ member, you agree to receive communications from Orca1DI™ related to the Services based the contact information you provide us, including through our messaging tools and email. You acknowledge and agree that we shall have no liability associated with or arising from your failure to maintain accurate contact or other information, including, but not limited to, your failure to receive critical information about the Service. You may opt-out of receiving certain communications from Orca1DI™ as described in our [Privacy Policy](#).

### **4. OWNERSHIP AND LICENSES**

#### **A. Proprietary Rights**

Our websites, mobile apps, and their content, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by Orca1DI™, its licensors, or other providers of such materials, and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. The name Orca1DI™, the Orca1DI™ logo and other Orca1DI™ logos and product and service names are the exclusive trademarks of, and are owned by, Orca1DI™, and you may not use or display such trademarks in any manner without Orca1DI™ prior written permission. Any third-party trademarks or service marks displayed on the Services are the property of their respective owners. Your use of the Services grants you no right to reproduce, license or otherwise use any such trademarks, logos, or other proprietary marks.

#### **B. License to Use the Services**

Subject to these Terms, we grant you a limited, revocable, non-exclusive, non-assignable, non-sublicensable license to access the Service for your personal, non-commercial use, unless otherwise agreed by Orca1DI™, and only as permitted by the features of the Service. Any other use of the Service is strictly prohibited and a violation of these Terms. We reserve all rights not expressly granted in these Terms, including, without limitation, title, ownership, intellectual property rights in the Service, including any content made available through the Service, and our consent to your use of the Service does not impair those rights in any way. For the avoidance of doubt, you are not granted a right to re-use or re-publish any content made available through the Service including, without limitation, User Content submitted by other users, without the express written permission of Orca1DI™ or such user, as applicable.

### **C. Your License to Orca1DI™**

Unless otherwise agreed by you and Orca1DI™, any original content you submit to Orca1DI™, remains your property, and you may choose to make it available to others. By posting, uploading or otherwise submitting content and other information to the Service, you grant Orca1DI™, a nonexclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sublicensable, royalty-free, fully-paid up license to copy, prepare derivative works from, improve, distribute, publish, remove, retain, add, process, analyze, index, tag, use and commercialize such content and other information in any media, form or format now known or hereafter developed, in any manner that is consistent with the Orca1DI™, Privacy Policy and applicable law. By submitting ideas, suggestions, or other feedback to Orca1DI™, you agree that we can use, share, and commercialize such feedback for any purpose without restriction and without any obligation to make any compensation to you.

## **5. TERM AND TERMINATION**

You may terminate your Orca1DI™ account at any time by contacting [contact@orca1di.com](mailto:contact@orca1di.com). We reserve the right to monitor your use of the Services and to suspend or terminate your use of the Services without notice if we determine that you have breached these Terms. In no event will Orca1DI™ be liable for suspension or termination of your use of any of the Services. All sections of these Terms that by their nature should survive termination shall survive termination, including without limitation, Privacy, Ownership and Licenses, Disclaimers and Limitation of Liability, Indemnity, Choice of Law; Dispute Resolution, and Additional Terms.

## **6. DISCLAIMERS AND LIMITATION OF LIABILITY**

### **A. Warranty Disclaimer**

WE MAKE NO REPRESENTATION OR WARRANTY ABOUT THE SERVICE, INCLUDING THAT IT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT INFORMATION YOU OBTAIN THROUGH THE SERVICE IS ACCURATE OR COMPLETE. THE SERVICE AND ALL CONTENT, INFORMATION (INCLUDING, WITHOUT LIMITATION, USER PROFILE INFORMATION), TOOLS AND FEATURES MADE AVAILABLE THROUGH THE SERVICE, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE AND OUR AFFILIATES DISCLAIM ANY AND ALL IMPLIED OR STATUTORY WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TITLE, AND NON-INFRINGEMENT.

IF YOU ARE DISSATISFIED WITH THE SERVICE, YOU AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE YOUR Orca1DI™ ACCOUNT.

## **B. Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL Orca1DI™, ITS AFFILIATES, OR THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, OR SHAREHOLDERS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF, BASED ON, OR RESULTING FROM THESE TERMS OR YOUR USE OR ACCESS, OR INABILITY TO USE OR ACCESS, THE SERVICE OR ANY COMPONENT THEREOF, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR ANY OTHER CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, Orca1DI™ AND ITS AFFILIATES ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS, MISTAKES, OR INACCURACIES OF MATERIALS MADE AVAILABLE THROUGH THE SERVICE OR AS A RESULT OF THE USE OF ANY SUCH MATERIALS, PERSONAL INJURY OF ANY NATURE WHATSOEVER RESULTING FROM A USER'S ACCESS TO OR USE OF THE SERVICE, OR ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL INFORMATION STORED THEREIN. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN YOU AND Orca1DI™ UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF OUR AGREEMENT, AND THE LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS ITS ESSENTIAL PURPOSE.

## **7. CLAIMS REGARDING COPYRIGHT INFRINGEMENT**

The Digital Millennium Copyright Act (the "DMCA") provides recourse for copyright owners who believe that material appearing on the internet infringes their rights under U.S. copyright law. If you believe in good faith that materials hosted by Orca1DI™ infringe your copyright or trademark rights, you (or your agent) may send us a notice requesting that the material be removed, or access to it blocked. The notice must include the following information:

1. Identification of the copyrighted work that you believe to be infringed. Please describe the work, and where possible include a copy or the location (e.g., URL) of an authorized version of the work.
2. Identification of the material that you believe to be infringing and its location. Please describe the material and provide us with its URL or any other pertinent information that will allow us to locate the material.
3. Your name, address, telephone number and (if available) e-mail address.
4. A statement that you have a good faith belief that the complained of use of the materials is not authorized by the copyright owner, its agent, or the law.
5. A statement that the information that you have supplied is accurate, and indicating that "under penalty of perjury," you are the copyright owner or are authorized to act on the copyright owner's behalf.
6. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.



Please be advised that Orca1DI™ will not respond to complaints that do not meet these requirements. If Orca1DI™ determines the materials alleged to infringe your copyright or trademark rights do not require removal, Orca1DI™ will remove those materials only pursuant to a court order declaring the content or use of the materials unlawful.

If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send us a counter-notice. Counter-notices must include the following information: (a) your name, address, and telephone number; (b) the source of the content that was removed; (c) a statement under penalty of perjury that you have a good faith belief that the content was removed in error; (d) a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located or, if your address is outside of the United States, for any judicial district in which Orca1DI™ may be found, and that you will accept service of process from the person who provided the original complaint; and (e) a physical or electronic signature (for example, typing your full name).

Agent to Receive Notices of Claimed Infringement:  
ATTN: Orca1DI™ Copyright Agent  
56 Newton Road  
Woodbridge, CT 06525  
contact@orca1di.com

## **8. INDEMNITY**

You agree to indemnify hold harmless Orca1DI™, its affiliates, officers, agents, employees, and licensors from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to ( 1) your failure to comply with these Terms, (2) your User Content, and (3) your use of the Service.

## **9. CHOICE OF LAW; DISPUTE RESOLUTION**

These Terms and the Service, as well as all related disputes, are governed by the laws of the State of Connecticut, without giving effect to its conflict of law provisions, regardless of from where you access the Service. You agree that the exclusive place of jurisdiction for all disputes or claim relating to the Service and/or these Terms is New Haven County, Connecticut, or the United States District Court for the District of Connecticut, except as otherwise agreed by the parties or as described in the Arbitration Agreement, below.

***Please read this section carefully, as it affects your legal rights, including your right to file a lawsuit in court.***

The purpose of this section is to describe what will happen if you and Orca1DI™ have a dispute that needs to be resolved. If you have an issue with the Service, we encourage you to contact Orca1DI™ Member Support at contact@orca1di.com. If your issue is not resolved by Member Support, you agree that you and Orca1DI™ will first discuss the issue informally for at least 60 days before commencing an arbitration action, as described in the arbitration agreement below (the "Arbitration Agreement"). To initiate a discussion, please send your full name and contact information to us at Orca1DI™, 56 Newton Road, Woodbridge, CT 06525, ATTN: Legal Department, and if we need to contact you we will use the

email address associated with your Orca1DI™ account. If we are unable to resolve the issue within 60 days, you and Orca1DI™ agree that any and all claims that either of us have, whether based on past, present or future events arising out of or relating to these Terms (including the scope and enforceability of this Arbitration Agreement), the Service, and any aspect of our relationship with each other, except for disputes relating to Orca1DI™ intellectual property (such as trademarks, domain names, trade secrets, copyrights, and patents), must be resolved through binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Nothing in this Arbitration Agreement shall be interpreted as limiting any non-waivable statutory rights. You agree that, by agreeing to these Terms, the U.S. Federal Arbitration Act ("FAA") governs the interpretation and enforcement of this Arbitration Agreement. Arbitration will be administered by JAMS Mediation, Arbitration, and ADR Services ("JAMS") in accordance with its provisions and procedures for consumer-related disputes, excluding any rules or procedures governing or permitting class actions. Instructions about how to initiate an arbitration and information about the JAMS Streamlined Arbitration Rules and Procedures ("JAMS Rules") are available at [www.jamsadr.com](http://www.jamsadr.com) or 1-800-352-5267. No arbitration or proceeding can be combined with another without the prior written consent of you, Orca1DI™, and any other parties to the arbitration or proceedings.

**PLEASE BE AWARE THAT YOU ARE GIVING UP THE RIGHT TO LITIGATE A DISPUTE IN COURT BEFORE A JUDGE OR JURY. YOU AND Orca1DI™ AGREE TO ARBITRATE IN EACH OF OUR INDIVIDUAL CAPACITIES ONLY, NOT AS A REPRESENTATIVE OR MEMBER OF A CLASS, AND EACH OF US EXPRESSLY WAIVES ANY RIGHT TO FILE A CLASS ACTION OR SEEK RELIEF ON A CLASS BASIS.**

Notwithstanding the foregoing, you and Orca1DI™ agree that nothing herein will be deemed to waive, preclude, or otherwise limit either of our rights, at any time, to (1) bring an individual action in a U.S. "small claims" court, but only if your claim qualifies, your claim remains in such court, and your claim remains on an individual, non-representative, and non-class basis, or (2) bring an individual action seeking only temporary or preliminary individualized injunctive relief in a court of law, pending a final ruling from the arbitrator.

For your convenience, arbitration may be conducted in-person, through the submission of documents, by phone, or online. Proceedings that cannot be conducted through the submission of documents, by phone, or online, will take place in New Haven County, Connecticut. That said, if you can demonstrate that arbitration in Connecticut would create an undue burden on you, you are free to initiate the arbitration in your home state. It is important that you understand that the arbitrator's decision will be binding and final (except for a limited right of appeal under the FAA) and may be entered as a judgment in any court of competent jurisdiction. Please note that nothing in this Section 9 shall be construed as consent by Orca1DI™ to the jurisdiction of any other court with respect to disputes not covered by these Terms.

In accordance with the JAMS Rules, the party initiating the arbitration (either you or Orca1DI™) is responsible for paying the filing fee. However, if the arbitrator issues you an award of damages and (i) that award is greater than the amount of our last written settlement offer, or (ii) if we did not make a settlement offer, then in addition to paying for any JAMS Case Management Fees and all professional fees for the arbitrator's services, we will reimburse you the filing fees you incurred.

You have the right to opt out and not be bound by this Arbitration Agreement and class-action-waiver set forth in this section by sending written notice of your decision to opt out to the following address: Orca1DI™, LLC., Attn: Legal Department, 56 Newton Road, Woodbridge, CT 06525. The notice must be sent within 30 days of after first becoming subject to a version of these Terms containing the Arbitration Agreement and waiver; otherwise, you shall be bound to arbitrate disputes in accordance with these Terms. If you opt out of arbitration, all other parts of these Terms will continue to apply to you.

If any portion of this Arbitration Agreement is found to be unenforceable or unlawful for any reason, (1) the unenforceable or unlawful provision shall be severed from these Terms; (2) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of the Arbitration Agreement or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement; and (3) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

In the interest of promptly resolving issues between us, you and Orca1DI™ agree to bring any claim arising out of or relating to these Terms, any policy governing your use of the Service, our relationship, or the use of the Service within one year after a claim arises, otherwise, the claim is waived. This limitation applies regardless of the venue in which such claim is or could otherwise be asserted.

## **10.ADDITIONAL TERMS**

### **A. Severability**

If any provision of these Terms is found by a court of competent jurisdiction or arbitrator to be illegal, void, or unenforceable, the unenforceable provision will be modified so as to render these Terms enforceable and effective to the maximum extent possible in order to effect the intention of the provision; and if a court or arbitrator finds the modified provision invalid, illegal, void or unenforceable, the validity, legality and enforceability of the remaining provisions of these Terms will not be affected in any way.

### **B. No Waiver**

Failure to enforce any part of these Terms is not a waiver of the right to later enforce that or any other part of these Terms.

### **C. Relationship of the Parties**

You agree that no joint venture, partnership, joint controllership, employment, or agency relationship exists between you and Orca1DI™ as a result of these Terms or your use of the Services.

### **D. Notice**

Orca1DI™ notice to you via email, regular mail or notices, posts, or links on the Services shall constitute acceptable notice to you under these Terms. You must provide any notice to us in writing and send via overnight courier.

#### **E. Assignment**

You may not assign, delegate, or otherwise transfer your account or your obligations under these Terms without the prior written consent of Orca1DI™. Orca1DI™ has the right, in our sole discretion, to transfer or assign all or any part of its rights under these Terms and will have the right to delegate or use third parties to fulfill its duties and obligations under these Terms and in connection with the Service.

#### **F. Changes to these Terms**

We reserve the right to modify these Terms and any policies applicable to your use of the Service at any time in our sole discretion. When we make a change, we will post the updated Terms to the Service with a new "Effective Date." We may, and if required by law will, also provide notification of changes in another way that we believe is reasonably likely to reach you, such as by e-mail (if you have an account where we have your contact information) or another manner through the Service. Any modifications to these Terms will be effective upon posting or as otherwise indicated at the time of posting. In all cases, by continuing to use the Service after posting of the updated Terms, you are consenting to the changes. If you object to any changes, you may close your account by contacting [contact@orca1di.com](mailto:contact@orca1di.com).

#### **G. Entire Agreement**

These Terms constitute the entire, complete, and exclusive agreement between you and us regarding your use of the Service and supersede all prior agreements and understandings, whether written or oral, or whether established by custom, practice, policy or precedent, with respect to the subject matter of these Terms. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect.