

END USER LICENSE AGREEMENT (ANDROID)

THIS IS AN AGREEMENT MADE BY AND BETWEEN YOU AND THE CHARLES MACHINE WORKS, INC. AND OUR AFFILIATES AND BUSINESS UNITS WORLDWIDE ("CMW") CONCERNING YOUR ACCESS TO AND USE OF THIS APPLICATION (THE "APP"). PLEASE READ THIS AGREEMENT CAREFULLY. BY USING THE APP, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE, YOU MAY NOT ACCESS OR USE THE APP, AND YOU MUST UNINSTALL THE APP FROM ANY DEVICE OWNED OR CONTROLLED BY YOU.

THIS AGREEMENT REQUIRES BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR YOUR ACCESS TO OR USE OF THE APP, AND YOU AGREE THAT ANY SUCH DISPUTE OR CLAIM WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR ARBITRATION. PLEASE REVIEW SECTION 15 CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE RESOLUTION OF ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR YOUR ACCESS TO OR USE OF THE APP.

1. Governing Documents. This Agreement incorporates by reference: (a) the Terms of Use at <https://www.subsite.com/terms-of-use/>; (b) the Privacy Policy at <http://www.subsite.com/privacy-policy/> (the "Privacy Policy"); and (c) any usage guidelines posted by CMW (collectively, "Governing Documents"). By using the App, you agree to be bound by the Governing Documents.

2. License. Subject to your compliance in all material respects with the terms and conditions of this Agreement, CMW grants you a restricted, non-exclusive, non-transferable, revocable license to install and use the App on an Android personal mobile device that you own and control, in machine executable object code form.

3. Restrictions. You may not: (a) use, copy, print, modify, adapt, create derivative works from, market, deliver, rent, lease, sublicense, make, have made, assign, pledge, transfer, sell, offer to sell, import, reproduce, distribute, publicly perform, publicly display or otherwise grant rights to the App, or any copy thereof, in whole or in part, except as expressly permitted under this Agreement; (b) reverse engineer, disassemble, decompile or translate the App, or otherwise attempt to derive the source code, architectural framework or the data records of the App, or authorize any third party to do any of the foregoing; (c) access the App for purposes of developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the App; (d) loan, resell or distribute the App, or any part thereof, in any way; or (e) use the App in any way that does not comply with all applicable laws and regulations.

4. Ownership. CMW or its licensors and suppliers own all rights, title and interest in the App (including, but not limited, to all copyrights, patents, patent applications, trade secrets, trademarks, source code, text and any images, photographs, icons, graphics, animations, video, audio, music, and all other materials incorporated within the App), and the App is protected by U.S. and international copyright and other intellectual property laws and treaties. The App is licensed, not sold, to you for use only under the terms and conditions of this Agreement. CMW reserves all rights not expressly granted to you.

5. Open Source App. The App may include open source software components. For information about such components, please <https://www.subsite.com/wp-content/uploads/2023/03/MyUtiliguard.zip>.

6. Personal Information. You acknowledge and agree that by using the App, CMW may receive certain information about you, including personal information, and CMW may collect, use and disclose such information in accordance with the Privacy Policy.

7. NO WARRANTY. YOUR USE OF THE APP IS AT YOUR SOLE RISK. THE APP IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CMW AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS (COLLECTIVELY, "CMW PARTIES") EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING, BUT, NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CMW PARTIES MAKE NO WARRANTY THAT: (i) THE APP WILL MEET YOUR REQUIREMENTS; (ii) ACCESS TO THE APP WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR (iii) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE APP WILL BE ACCURATE OR RELIABLE.

8. LIMITATION OF LIABILITY. YOU ACKNOWLEDGE AND AGREE THAT CMW PARTIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS, EVEN IF CMW PARTIES HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL CMW'S TOTAL LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT OR YOUR ACCESS TO OR USE OF THE APP EXCEED \$50. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

9. Indemnification. You agree to indemnify and hold CMW Parties harmless from and against any claim, demand, loss, damage, cost, liability and expense, including reasonable attorneys' fees, resulting from or arising out of your: (a) access to or use of the App; (b) violation of this Agreement or any law or regulation; or (c) violation of any rights of another party.

10. Termination. This Agreement is effective until terminated by you or CMW. Your rights under this Agreement shall terminate automatically without notice from CMW if you violate any of the terms of this Agreement. Upon termination of this Agreement, all rights granted to you under this Agreement shall immediately terminate, but all other provisions shall survive termination.

11. Changes to App. CMW reserves the right to modify or discontinue, temporarily or permanently, the App or any product or service to which it connects, with or without notice and without liability to you. CMW may at its sole discretion from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the App or related products or services ("Updates"). CMW may develop Updates that require installation by you before you continue to access or use the App or related products or services. Updates may also be automatically installed without providing any additional notice to you or receiving any additional consent from you. The manner in which Updates may be automatically downloaded and installed is determined by settings on your device and its operating system.

12. Legal Compliance. You represent and warrant that you are not: (a) located in a country that is subject to a U.S. Government embargo or designated by the U.S. Government as a "terrorist supporting" country; and (b) listed on any U.S. Government list of prohibited or restricted parties, including, but not limited to, the Specially Designated Nationals List.

13. U.S. Government Entities. This section applies to access to or use of the App by a branch or agency of the United States Government. The App consists of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualifies as "commercial items" as defined in 48 C.F.R. 2.101. The App is provided to the United States Government: (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The United States Government shall acquire only those rights set forth in this Agreement with respect to the App, and any access to or use of the App by the United States Government constitutes: (i) agreement by the United States Government that that the App is "commercial computer software" and "commercial computer software documentation" as defined in this section; and (ii) acceptance of the rights and obligations herein.

14. Governing Law.

This Agreement shall be governed by and construed and enforced in accordance with the United States Federal Arbitration Act, other applicable federal laws and the laws of the State of Minnesota, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

15. BINDING ARBITRATION AND CLASS ACTION WAIVER. ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR YOUR ACCESS TO OR USE OF THE APP, INCLUDING, BUT NOT LIMITED TO, THE VALIDITY, APPLICABILITY OR INTERPRETATION OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT IF YOUR CLAIMS QUALIFY. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

The arbitration will be conducted by the American Arbitration Association (AAA) under its then-applicable rules, including (as appropriate) its Supplementary Procedures for Consumer-Related Disputes. The AAA's rules are available at <http://www.adr.org/>. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules.

The arbitration shall be conducted in the English language by a single independent and neutral arbitrator. For any hearing conducted in person as part of the arbitration, you agree that the hearing will be conducted in Bloomington, Minnesota or the city within the United States in which you reside.

The decision of the arbitrator shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.

WE EACH AGREE THAT ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR YOUR ACCESS TO OR USE OF THE APP WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR ARBITRATION. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM SHALL BE BROUGHT ONLY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA (MINNEAPOLIS) OR, IF FEDERAL JURISDICTION IS NOT AVAILABLE, A COURT OF COMPETENT JURISDICTION IN HENNEPIN COUNTY, MINNESOTA. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM *NON-CONVENIENS* OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH PROCEEDING.

Notwithstanding anything to the contrary, you and CMW may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect our intellectual property rights, whether in aid of, pending or independently of the resolution of any dispute pursuant to the arbitration procedures set forth above.

16. General. This Agreement constitutes the entire agreement between you and CMW concerning your access to and use of the App. It supersedes any prior or contemporaneous oral or written negotiations and agreements between you and CMW with respect to such subject matter. You may not assign any of your rights or obligations under this agreement to another party without the express written consent of CMW. The failure of CMW to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this Agreement.