

TERMS OF USE

1. Introduction and Overview.

- 1.1. These Terms of Use (“**Terms**”) set forth a legally binding agreement between you and Upwind Security, Inc. (hereinafter “**Upwind**”, “**we**”, “**our**”, or “**us**”), and govern your use of this website, and all features, content, and other services that we own, control and make available through this website (collectively, the “**Website**”).
- 1.2. In some instances, separate terms will apply to your use of any services provided by Upwind (“**Additional Terms**”). To the extent there is a conflict between these Terms and any applicable Additional Terms, the Additional Terms will control unless they expressly state otherwise. In other instances, you may sign an agreement with Upwind. To the extent there is a conflict between these Terms and any applicable agreement, the agreement letter will control unless the agreement letter expressly states otherwise.
- 1.3. By using the Website, you agree to these Terms, and consent to our collection, use and disclosure practices, and other activities as described in our Privacy Policy. If you do not agree and consent, please discontinue use of the Website.

2. Consent.

- 2.1. Consent to be Contacted. By submitting information to the Website, you consent to be contacted by phone, text, or email by Upwind or its agents.

3. Website Use.

- 3.1. Content. The Website contains: (i) materials and other items relating to Upwind and its products and services, and may include similar items from our licensors and other third parties, including, if applicable, all layout, information, databases, articles, posts, text, data, files, images, scripts, designs, graphics, instructions, illustrations, photographs, sounds, pictures, videos, advertising copy, URLs, technology, software, interactive features, the “look and feel” of the Website, and the compilation, assembly, and arrangement of the materials of the Website and any and all copyrightable material; (ii) trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Upwind; and (iii) other forms of intellectual property (all of the foregoing, collectively “**Content**”). All right, title, and interest in and to the Website and the Content is the property of Upwind or our licensors or certain other third parties, and is protected by applicable copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible.
- 3.2. Limited License. Subject to your strict compliance with these Terms, Upwind grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to download, display, view, use, and play the Content on a personal computer, browser, laptop, tablet, mobile phone, or other internet-enabled device (each, a “**Device**”) for your personal, non-commercial use only. The foregoing limited license (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be suspended or terminated for any reason, in Upwind’s sole discretion, and without advance notice or liability. Your unauthorized use of the Content may violate copyright, trademark, privacy, publicity, communications, and other laws, and any such use may result in your personal liability, including potential criminal liability.

3.3. Restrictions.

- 3.3.1. You may not use the Website unless you are at least eighteen (18) years old.
- 3.3.2. You may not: (i) use the Website or Content for any political or commercial purpose; (ii) engage in any activity in connection with the Website or Content that is unlawful, harmful, offensive, sexually explicit, obscene, violent, threatening, harassing, abusive, falsely representative of your persona, invasive of someone else's privacy, or otherwise objectionable to Upwind; (iii) harvest any information from the Website or Content; (iv) reverse engineer or modify the Website or Content; (v) interfere with the proper operation of or any security measure used by the Website or Content; (vi) infringe any intellectual property or other right of any third party; (vii) use the Website or Content in a manner that suggests an unauthorized association or is beyond the scope of the limited license granted to you; or (viii) otherwise violate these Terms.
- 3.3.3. You agree to comply with all local, state, federal, national, foreign, supranational, and international laws, statutes, ordinances, regulations, treaties, directives, and agreements that apply to your use of the Website and Content.

3.4. Availability. Upwind may suspend or terminate the availability of the Website and Content, in whole or in part, to any individual user or all users, for any reason, in Upwind's sole discretion, and without advance notice or liability. Upon suspension or termination of your access to the Website, or upon notice from Upwind, all rights granted to you under these Terms will cease immediately, and you agree that you will immediately discontinue use of the Website and Content. Notwithstanding the above, you may continue to use any documents you download from or upload to the Website after suspension or termination of your access to the Website, or upon notice from Upwind.

3.5. Reservation of Rights. All rights not expressly granted to you are reserved by Upwind and its licensors and other third parties. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. Any unauthorized use of the Content or Website for any purpose is prohibited.

4. Unsolicited Submissions.

4.1. To the extent that you submit any ideas, feedback, opinions, techniques, images, sounds, videos, or other content to us through or relating to the Website ("**Submissions**"), you grant us a non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, transferable and cost-free right and license to host, store, use, display, reproduce, modify, adapt, edit, combine with other materials, publish, distribute, create derivative works from, promote, exhibit, broadcast, syndicate, sublicense (including, without limitation, to third party media channels, platforms, and distributors), publicly perform, publicly display, and otherwise use and exploit in any manner whatsoever, or grant third parties the right to do any of the foregoing, all or any portion of your Submissions, for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. You further irrevocably grant us the right, but not the obligation, to use your name in connection with your Submissions. You also agree to waive any right of approval for our use of the rights granted herein and agree to waive any moral rights that you may have in any Submissions, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights in a manner that interferes with any exercise of the granted rights.

4.2. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to existing or future intellectual property rights relating to your Submissions.

4.3. You represent and warrant that you own or have the necessary rights, licenses, consents, and permissions to grant us the rights granted in this Section. You alone, though, retain whatever legally cognizable right, title, and interest that you have in your Submission and remain responsible for them.

5. **Information Posted on the Website.**

- 5.1. We do our best to maintain information on the Website as accurately as possible. However, we are human, and therefore we do not warrant that service offerings, pricing, or other content on the Website is complete, accurate, reliable, current, or error-free.

6. **Information You Provide.**

- 6.1. Any information or documents that you provide to Upwind in connection with the Website are subject to the Upwind Privacy Policy. You hereby consent to the collection, use and disclosure practices, and other activities as described in our Privacy Policy. If you do not agree and consent, please do not provide us with any information or documents and discontinue use of the Website.

7. **Notices.**

- 7.1. All legal notices to us must be mailed to: *legal@upwind.io*. When you communicate with us electronically, you consent to receive communications from us electronically. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

8. **Third Party Services.**

- 8.1. The Website may contain content from and hyperlinks to websites, locations, platforms, and services operated and owned by third parties (“**Third Party Services**”). We may also integrate third party technologies into our Website and host our content on Third Party Services. These Third Party Services are not owned, controlled, or operated by us, and you acknowledge and agree that we are not responsible or liable for the information, content, products, technologies, or services on or available from such Third Party Services, or for the results to be obtained from using them. If you choose to access, transact with, or otherwise interact with any such Third Party Services, you do so at your own risk.

9. **Website Features.**

- 9.1. **Location-Based Features.** If you have location-based features on your wireless Device, you acknowledge that your Device location may be tracked and shared consistent with the Privacy Policy. You can terminate location tracking by us by adjusting the permissions in your Device. Location-based features are used at your own risk and location data may not be accurate.
- 9.2. **Communications.** Emails: You can opt-out of receiving certain promotional emails from us at any time by following the instructions as provided in emails to click on the unsubscribe link. Your opt-out will not affect non-promotional emails, such as those about your case, transactions, servicing, or Upwind’s ongoing business relations. Please note that any opt-out by you is limited to the email address used and will not affect subsequent subscriptions.

10. **Applicable Law and Venue.**

- 10.1. Your use of the Website may be subject to international, European Union, United States federal, state and local, and other national laws and regulations. You are solely responsible for the compliance of your use of the Website with all such applicable laws and regulations.
- 10.2. These Terms shall be governed by and construed according to the laws of the state of Israel, exclusive of conflicts of law provisions that would permit or require the application of the laws of a different jurisdiction. The 1980 U.N. convention on contracts for the international sale of goods hereunder shall not govern the rights and obligations of the parties.
- 10.3. User agrees that any action for enforcement of these Terms or any other dispute arising hereunder shall be filed exclusively in courts located in Tel Aviv, Israel, and User hereby consents and waives any objection to the jurisdiction and venue of such courts.

- 10.4. Any action hereunder for breach of warranty or contract must be commenced not later than one year from the date on which such action accrues or be forever barred.

11. **Disclaimer of Representations and Warranties.**

- 11.1. THE WEBSITE IS PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS" BASIS. NEITHER UPWIND NOR ANY PERSON ASSOCIATED WITH UPWIND (COLLECTIVELY, THE "UPWIND PARTIES") MAKE ANY REPRESENTATIONS, WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER AS TO THE CONTENT OR OTHER SERVICES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND FREEDOM FROM COMPUTER VIRUS. BY ACCESSING OR USING THE WEBSITE YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE WEBSITE.
- 11.2. NOTWITHSTANDING THE FOREGOING, THESE DISCLAIMERS DO NOT EXCLUDE MATTERS WHICH CANNOT BE SO EXCLUDED UNDER APPLICABLE LAW OR DAMAGES RESULTING FROM UPWIND INTENTIONAL MISCONDUCT OR FRAUD.

12. **Limitations of Our Liability.**

- 12.1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE UPWIND PARTIES BE LIABLE TO YOU FOR ANY LOSS, DAMAGE OR INJURY OF ANY KIND INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, OR DAMAGES FOR SYSTEM FAILURE OR MALFUNCTION OR LOSS OF PROFITS, DATA, USE, BUSINESS OR GOOD-WILL, ARISING OUT OF OR IN CONNECTION WITH (A) THE WEBSITE, (B) THESE TERMS OR (C) YOUR USE OR MISUSE OF THE WEBSITE OR ANY CONTENT AVAILABLE ON OR THROUGH THE WEBSITE. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT, INDEMNIFICATION, TORT, STRICT LIABILITY, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY.
- 12.2. NOTWITHSTANDING THE FOREGOING, THESE DISCLAIMERS HEREIN DO NOT EXCLUDE ANY WHICH CANNOT BE SO EXCLUDED UNDER APPLICABLE LAW OR DAMAGES RESULTING FROM UPWIND INTENTIONAL MISCONDUCT OR FRAUD.

13. **Indemnification.**

- 13.1. You agree to defend, indemnify and hold harmless the Upwind Parties from and against any and all claims, liabilities, damages, losses, costs and expenses (including, reasonable attorneys' fees and costs) arising out of or in connection with any of the following: (i) your breach or alleged breach of these Terms; (ii) your Submissions; (iii) your misuse of the Website; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental or quasi-governmental authorities; (v) your violation of the rights of any third party, including any intellectual property right, publicity, confidentiality, property or privacy right; (vi) your use of a Third Party Service; or (vii) any misrepresentation made by you. Upwind reserves the right to assume, at your expense, the exclusive defense and control of any matter subject to indemnification by you. You agree to cooperate with Upwind's defense of any claim. You will not in any event settle any claim without the prior written consent of Upwind.
- 13.2. This provision does not require you to indemnify us for any unconscionable commercial practice by us or for our fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the Website.

14. **Waiver of Injunctive or other Equitable Relief.**

- 14.1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT YOU WILL NOT BE PERMITTED TO OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF OF ANY KIND, SUCH AS ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, SUBMISSIONS, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY UPWIND OR A LICENSOR OF UPWIND.

15. **Updates to Terms.**

- 15.1. We reserve the right, at any time in our sole discretion, to modify or replace any part of these Terms, without prior notice. You agree that we may notify you of any updated Terms by posting them on the Website so that they are accessible via a link from the home page, and/or to send you an email to the last email address you provided to us. All such changes are effective immediately when we post them, or such later date as may be specified in the notice of updated Terms. If you object to any such changes, your sole recourse is to cease using the Website.

16. **General Provisions.**

- 16.1. Consent or Approval. No consent or approval may be deemed to have been granted by Upwind without being in writing and signed by an officer of Upwind.
- 16.2. Survival. The provisions of these Terms, which by their nature should survive termination of your use of the Website, including sections on Website Use (except for the limited license), Unsolicited Submissions, Information Posted on the Website, Information You Provide, Customer Support, Third Party Services, Website Features, Applicable Law and Venue, Disclaimer of Representations and Warranties, Limitations of Our Liability, Indemnification, Waiver of Injunctive or Other Equitable Relief, Updates to Terms, and General Provisions, will survive.
- 16.3. Severability; Interpretation; Assignment. If any provision of these Terms is for any reason deemed invalid, unlawful, void, or unenforceable, then that provision will be deemed severable from these Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms. You hereby waive any applicable statutory and common law that may permit a contract to be construed against its drafter. The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms. Upwind may assign its rights and obligations under these Terms, in whole or in part, to any party at any time without any notice. These Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Upwind.
- 16.4. Complete Agreement; No Waiver. These Terms reflect our complete agreement regarding the Website and supersede any prior agreements, representations, warranties, assurances or discussion related to the Website. Except as expressly set forth in these Terms, (i) no failure or delay by you or Upwind in exercising any of rights, powers, or remedies will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.
- 16.5. Investigations; Cooperation with Law Enforcement. Upwind reserves the right to investigate and prosecute any suspected breaches of these Terms or the Service. Upwind may disclose any information as necessary to satisfy any law, regulation, legal process or governmental request.

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