Upwind Security

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TERMS OF SERVICE

These Terms of Service, as amended from time to time, together with any other terms, agreements and policies referenced herein (which constitute an integral part hereof) (these "**Terms**"), together with its order forms, constitute a legally binding agreement between the Company (as defined below) and the customer executing or otherwise accepting such order form(s) which refer to these Terms ("**Customer**" and the "**Order Form**"). These Terms govern the manner in which the Customer and its users (each, a "**User**") may use and access the Platform and Services (as such terms are defined below). Each of the parties hereto will be referred to as a "**Party**" and together as the "**Parties**".

If the Customer has purchased a Subscription (as defined below) from or through a partner, reseller or distributor authorized by the Company ("**Partner**"), and to the extent there is any conflict between these Terms and any agreement (including any purchase order) between the Customer and the respective Partner ("**Partner Order Form**"), as between the Customer and the Company, these Terms shall prevail. Any rights granted to the Customer in such Partner Order Form, which are not contained in these Terms, apply only in connection with such Partner, and the Customer may seek redress or realization or enforcement of such rights solely with such Partner and not the Company.

1. The Platform; Subscription.

1.1. The Platform; Services. The "**Platform**" is the Company's solution offered on a Software-as-a-Service model. "**Services**" means the Support, Managed Detection & Response services and other solution-related services purchased by the Customer, as set out in an executed Order Form, as applicable. If purchased by the Customer, the Company will perform the Services in accordance with the Order Form and these Terms.

1.2. Subscription. The Platform is provided on a subscription basis for the term specified in the Customer's respective Order Form (the "**Subscription**" and the "**Subscription Term**", respectively). Subject to the terms and conditions of these Terms, the Customer may access and use the Platform, solely for the Customer's internal business operations (the "**Purpose**"). A SUBSCRIPTION DOES NOT INCLUDE ANY PROFESSIONAL SERVICES, INCLUDING BUT NOT LIMITED TO SECURITY ASSESSMENT, AUDIT, CONSULTING, PENETRATION TESTING, BREACHES INVESTIGATION, RESOLUTION OF VULNERABILITIES, INCIDENT RESPONSE, OR OTHER SIMILAR PROFESSIONAL SERVICES, AND SUCH SERVICES ARE THE SOLE RESPONSIBILITY OF THE CUSTOMER.

1.3. Additional Purchases. If the Customer has purchased the Subscription directly from the Company, unless otherwise specified in the respective Order Form, purchases of access to additional usage (e.g., additional Upwind Units or extension of the Subscription Term) or features of the Platform or the Services (collectively, "**Additional Purchases**"), may be made by a mutually signed written addendum or amendment to any applicable Order Form or by executing a new Order Form, in each case according to the pricing agreed between the Parties. If Additional Purchases take effect during an applicable Subscription Term, the Fees and the term therefor will be prorated to be coterminous with said Subscription Term.

1.4. Subscription Limitations. The right to use and access the Platform is granted solely to the Customer and its Users, and is limited, non-transferable, non-exclusive, non-assignable, non-sub-licensable, and revocable. The Platform may only be used by individuals who: (i) are legally competent under applicable law (i.e., are at least the age of majority and of sound mind) and (ii) are authorized to use the Platform pursuant to the Customer's procedures and policies (if any). If the Customer has purchased the Subscription from, or if the Platform was made available to it through, a Partner that is a cloud services provider ("**Cloud Partner**"), the Customer is not authorized to use such Cloud Partner's products(s) separately from the Platform unless otherwise agreed with such Cloud Partner.

1.5. Account. In order to access the Platform and the Services, the Customer is required to submit the information requested in the applicable Platform interface ("**Account**"), and each User may need to set up a user account (each, a "**User Account**", and references herein to the "**Account**" shall be deemed to include all such User Accounts if applicable). The Customer warrants that all information submitted during the registration process is, and will thereafter remain, complete and accurate. The Customer shall be responsible and liable for all activities that occur under or in the Account, and shall require that all Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. The Customer shall be fully responsible and liable for any act, omission, or breach of these Terms by a User. Any unauthorized access or use of the Service that the Customer or User(s) are aware of must be promptly reported to the Company.

1.6. Modification or Discontinuation. The Company may change or update the Platform at any time, including the availability of any feature, integration, content or database, and may impose limitations or restrictions on certain features and services. In case of a material adverse change, the Company will notify the Customer by posting an announcement on the Company's website, through the Platform or by email. Furthermore, the Company may offer alternative or additional features to certain Customers that may not be offered to others. The Customer acknowledges and agrees that the Company may from time to time, during the Subscription Term, develop generally-available bug fixes and/or patches ("**Updates**") which may either (i) remotely and automatically update and maintain the Platform and/or Services components (including if installed on the Customer's premises); or (ii) require manual installation by the Company (via wireless connection or on premises visit), and in such case, the Customer agrees to facilitate such installation in accordance with the Company's instructions, and the Company shall have no responsibility, obligation, or liability of any kind whatsoever regarding versions of the Platform and/or Services that are not updated per the foregoing.

2. Subscription Fees.

2.1. Fees. During the Subscription Term, the Customer shall pay the Company the applicable fees set forth in the respective Order Form(s) (the "**Fees**"), which reflect a committed subscription for the duration of the Subscription Term and are not contingent on the Customer's continued use or transition from the Platform. The Customer hereby authorizes the Company, either directly or through the Company's payment processing services, to charge the Fees via the Customer's selected payment method, upon the due date. Unless expressly set forth herein, the Fees are non-cancelable and non-refundable.

2.2. Taxes. The Fees are exclusive of any and all taxes (including without limitation, value added tax, sales tax, use tax, excise, goods and services tax, etc.), levies, or duties ("**Taxes**"), except for income tax imposed on the Company. If the Customer is located in a jurisdiction which requires the Customer to deduct or withhold Taxes or other amounts from any amounts due to the Company, the Customer shall promptly notify the Company in writing and the Company shall make reasonable efforts to avoid any such Tax withholding, provided, however, that in any case, the Customer shall bear the sole responsibility and liability to pay such Tax and such Tax shall be "grossed up" and added on top of the Fees payable by the Customer.

2.3. Payment Terms. The Fees set forth in each Order Form are final. The Customer shall pay each invoice according to the payment terms set forth in the respective Order Form. Unless otherwise set forth in the respective Order Form, the Fees shall be paid annually, in advance, within thirty (30) days of an invoice. All Fees are non-cancelable and non-refundable, unless required otherwise by mandatory law. Delinquent payments may bear compounded interest, as of the payment due date and until paid in full, at a rate equal to the lower of: (i) 1.5% per month or (ii) the highest rate permitted by law. The aforesaid shall not derogate from any other right or remedy to which the Company may be entitled. The Customer will be responsible for all reasonable expenses (including reasonable attorneys' fees) incurred by the Company in collecting any payment. Payment in installments does not imply that the Customer may terminate the Subscription during the Subscription Term prior to the payment of any installment.

3. Support.

3.1. The Parties agree to comply with the Company's Service Level Agreement available at https://www.upwind.io/service-level-agreement, as may be amended by the Company from time to time ("**SLA**"), and which shall constitute an integral part of these Terms. The support and maintenance services may be performed by the Company, an affiliate, a Partner, and/or a certified third-party provider thereof. The Company shall be responsible for such service providers' performance of the support and maintenance services. The term "Subscription" shall include the services provided under the SLA.

4. Free Trial.

4.1. Trials. The Company may offer, from time to time, some or all its services on free trial versions ("**Trial Service**"). The Trial Service's term shall be as set in the Order Form, unless modified or terminated earlier by a Party, for any or no reason. The Company reserves the right to modify, cancel and/or limit each Trial Service at any time and without liability. In addition, the Company may offer, from time to time, certain services in an alpha or beta versions (the "**Pre-Released Services**") and will use best endeavors to identify the Pre-Released Services as such. Pre-Released Services are services that are still under development, and as such they may be incomplete, may contain bugs, suffer disruptions and not operate as intended and designated more than usual.

4.2. Governing Terms of Trial Services and Pre-Released Services. Notwithstanding anything in these Terms or elsewhere to the contrary, the Trial Services and Pre-Released Services are governed by these Terms and are licensed hereunder on as "As-Is" "As Available" basis, with no warranties, express or implied, of any kind,

and the indemnity undertakings set forth in Section 14.1 below shall not apply thereto. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF THE COMPANY, ITS AFFILIATES OR ITS THIRD-PARTY SERVICE PROVIDERS, UNDER, OR OTHERWISE IN CONNECTION WITH, THE TRIAL SERVICES AND PRE-RELEASED SERVICES (INCLUDING THE SITES, THE SERVICE AND THE THIRD-PARTY SERVICES), EXCEED US$1,000. The Company makes no promises that any Trial Service and/or Pre-Released Services will be made available to the Customer or generally available.

5. The Customer's Obligations.

5.1. The Customer acknowledges that the Company's ability to provide Services to the Customer in a timely manner depends on the Customer's reasonable cooperation and assistance. The Customer shall provide the Company with all reasonable cooperation and access to the Customer's materials, to the extent such access is necessary for the performance of the Services, and shall comply in a timely and efficient manner, and be responsible and liable for the Users' compliance with these Terms, Order Form(s) and all applicable laws and regulations. The Company shall not be responsible for delays or other issues caused by the Customer's failure to provide reasonable cooperation and assistance.

5.2. The Customer is solely responsible for all Users' acts or omissions and their use of the Platform and for responding to any claims, requests and demands by Users or any other third party related to the Customer, and the Company shall not have any liability towards Users. The Company will, to the extent allowed by law, promptly notify the Customer of its receipt of a User or such related third-party claim, request or demand and comply with the Customer's reasonable requests regarding the handling of such claim, request or demand.

6. License for Customer Data.

6.1. While using the Platform, certain data may be uploaded or transferred to the Platform to be processed by the Platform on the Customer's behalf (the "**Customer Data**"). As between the Customer and the Company, all rights in the Customer Data shall remain with the Customer. The Customer hereby grants the Company and its Sub-processors (as defined below) a non-exclusive, worldwide, royalty-free, fully paid, sub-licensable and transferable to its Affiliates (as defined below), right and license to access, use, process, copy, download, store, distribute and display the Customer Data, solely for maintaining and providing the Platform and as required to resolve technical and security problems or otherwise as permitted hereunder or in writing by the Customer.

6.2. The Customer represents and warrants that (i) the Customer owns or has all the necessary licenses, rights, consents, approvals, permissions, power and authority, necessary to grant the Company the aforementioned right and license and to authorize the Company and its Sub-processors to access, use, process, copy, download, store, distribute and display the Customer Data, without infringing or violating any copyrights, privacy rights, publicity rights, trademarks or any other contractual, intellectual property or proprietary of any third party; (ii) any Customer Data and any use thereof do not and shall not violate any applicable laws, including those related to data privacy or data transfer and export or any policies and terms governing such Customer Data; and (iii) except where the Parties expressly agreed otherwise in a separate written agreement addressing such data, no sensitive data that is protected under a special legislation and requires unique treatment (such as protected health information or credit, debit or other payment card data) will be transferred to and/or processed by the Platform and/or the Company, and the Company assumes no obligations or liability in connection therewith.

7. Intellectual Property and Right to Use.

7.1. Company Intellectual Property. As between the Parties, all right, title and interest in the Platform, the Services, and any Deliverables (as defined below), including without limitation, any content, materials, software, know-how, data files, documentation, code, SDK, API, design, text, media, methodologies, artwork, names, logos, trademarks and services marks (excluding Customer Data), any and all related or underlying technology and any updates, new versions, modifications, improvements, developments or derivatives thereof, solely belong to the Company or its Affiliates and/or its licensors, and these Terms do not convey to the Customer or the Users any interest in or to the Platform, the Services, and/or the Deliverables, except for a limited right of use as set forth herein, terminable according to these Terms. All the Deliverables produced by the Company under these Terms, if any, will not be considered to be works made for hire and will be exclusively owned by the Company, no ownership rights thereto will accrue in any manner to the Customer, and, in the unlikely and undesirable case that any rights are vested in it with respect to such Deliverables, the Customer hereby agrees that they shall be automatically assigned to the Company. However, the Company hereby grants to the Customer, at no additional charge, a limited, non-transferable, non-exclusive, non-assignable, non-sub-licensable, and revocable license to use such Deliverables during the Subscription Term, solely for the Customer's internal business operations. Except as otherwise expressly provided herein, nothing in these Terms shall be deemed to grant, directly or by implication, estoppel or otherwise, any right or license with

respect to any technology or other intellectual property rights of the Company, including the Platform, the Services, and/or the Deliverables. Tools, know-how, methods, and expertise used by the Company, that are delivered with or as part of the Deliverables and to the extent necessary to use the Deliverables, are licensed, not assigned, to the Customer, on the same terms as the Deliverables. "**Deliverables**" shall mean any reports and/or other written documentation specifically generated for the Customer in connection with the performance of the Platform and the Services during the Subscription Term.

7.2. Prohibited Use. The Customer and its Users may not, and may not permit or aid others to: (i) use the Platform other than for the Purpose; (ii) copy, modify, alter, translate, emulate, create derivative works based on, or reproduce the Platform; (iii) give, publish, sell, distribute, assign, pledge or transfer (by any means), display, sublicense, rent, lease or otherwise share the rights granted under these Terms to any third party that is not authorized by the Company, or use the Platform in any service bureau arrangement; (iv) reverse engineer, de-compile, decrypt, revise or disassemble the Platform or any part thereof, or extract source code from the object code of the Platform; (v) access or use the Platform in order to build a competing product or service or for benchmarking purposes; (vi) bypass any measures the Company may use to prevent or restrict access to the Platform, and/or take any action intended to circumvent or disable the operation of any security feature or measure of the Platform; (vii) access the Platform or the Company's systems via any means other than through the interface provided by the Company, or via automated means, including by crawling, scraping, caching or otherwise; (viii) use the Platform in any manner that is illegal or not authorized by these Terms or its documentation; (ix) take any action that imposes or may impose (as determined by the Company in its sole discretion) an unreasonable or disproportionately large load on the Company's (or the Company's service providers') infrastructure; (x) interfere or attempt to interfere with the integrity or proper working of the Platform; (xi) remove, deface, obscure, or alter the Company's or any third party's identification, attribution or copyright notices, trademarks, or other proprietary rights affixed to or provided as part of the Platform; (xii) provide any third party that authorized by the Company access to the Platform; (xiii) provide public access to results obtained by the Platform; (xiv) use the Platform in connection with the operation of any hazardous environments, emergency services or critical systems; or (xv) use the Platform in combination with other products, equipment, software, or data not provided or authorized by the Company. The Customer will be solely and fully liable for any acts, omissions, or violation of these Terms by its Users and for any losses, damages, liability and expenses incurred by the Company or a third party due to any unauthorized use of the Platform by the Customer, its Users or third party on its behalf.

7.3. Feedback. The Customer may notify the Company of any design or functional error, anomaly, or problem, associated with the Platform discovered or brought to its attention by Users and may provide the Company suggestions, comments or other feedback regarding the Platform ("**Feedback**"). Any Feedback shall become the Company's sole property. The Company may use any Feedback at its sole discretion, without restrictions, free from any right of the Customer or any third party and without any obligation towards them. The Customer hereby assigns to the Company all rights, titles, and interest worldwide in the Feedback and any intellectual property rights related thereto, and explicitly and irrevocably waives all claims associated therewith. The Customer shall not provide the Company with any Feedback which infringes any third party's right.

7.4. Intellectual Property Infringements. If the Company believes that the Platform or any part thereof may infringe intellectual property rights of third parties, the Company may, in its sole discretion: (i) obtain (at no additional cost to the Customer) the right to continue to use the Platform; (ii) replace or modify the allegedly infringing part so it becomes non-infringing while giving substantially equivalent performance; or (iii) if the Company determines that the foregoing remedies are not reasonably available, the Company may require that use of the (allegedly) infringing Platform (or part thereof) shall cease and in such an event the Customer shall receive a prorated refund of any Fees paid for the unused portion of the Subscription Term. SECTIONS 7.4 AND 14.1 STATE THE COMPANY'S SOLE AND ENTIRE LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY, FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION BY THE COMPANY AND/OR ANY SUPPORTING SERVICES AND UNDERLYING TECHNOLOGY.

8. Privacy.

8.1. Privacy. The Customer acknowledges and agrees that the use of the Platform by the Customer and the Users is governed by the Company's then-current Privacy Policy available at https://www.upwind.io/privacy-policy ("**Privacy Policy**"). The Privacy Policy and the Data Processing Addendum available at https://www.upwind.io/data-processing-addendum (the "**DPA**") constitute an integral part of these Terms. Upon the mutual execution of the Company's Business Associate Agreement ("**BAA**"), to be provided upon request, if the Customer uses the Platform's scanners hosted in the Company's environment, it shall constitute an integral part of these Terms.

8.2. Anonymous Information. The Company may collect, monitor and freely use Anonymous Information (as defined below), including insights derived from Customer's use of the Platform and Services in anonymized form, which shall be deemed the Company's Confidential Information, *inter alia,* to provide, develop, maintain, improve, demonstrate and market the Platform and Services, and to generally enhance its products and services. "**Anonymous Information**" means information that does not reasonably enable identification of the Customer or any individual, such as aggregated data, de-identified data, anonymized data, metadata and analytic information, excluding any Customer's Confidential Information.

8.3. Security. The Company agrees, during the Subscription Term, to implement reasonable industry-standard, administrative, technical, and organizational and physical security measures to protect Customer Data.

9. Third-Party Software and Services.

9.1. Sub-processors. The Customer acknowledges that the Platform is hosted and made available by certain sub-processors of the Company (the "**Sub-processors**"). The Company may remove, add or replace its Sub-processors from time to time, at its sole discretion, in accordance with the DPA.

9.2. Free Software. The Platform may include third party "open source" or "Free Software" components that are subject to third-party terms and conditions ("**Third-Party Terms**"). If there is a conflict between any Third-Party Terms and the terms of these Terms, then the Third-Party Terms shall prevail but solely in connection with the related third-party component. The Company shall comply with the notice and attribution aspects of the Third-Party Terms. The license terms, copyright notices and available source code with respect to Third Party Terms can be found at https://www.upwind.io/third-party-terms.

9.3. Integrations. The Platform and Services include optional integration and interoperability features with third-party tools and services the Customer may separately license (the "**Third-Party Services**"). The Company provides such integration capabilities only and does not provide, control, or have any responsibility for such Third-Party Services, including for their availability, performance, or functionality, which remain subject to the Customer's separate agreements with the applicable third-party providers, and the Company does not endorse any such Third-Party Services or shall be in any way responsible or liable with respect to any such Third-Party Services. BY ACCESSING AND/OR USING THIRD-PARTY SERVICES, THE CUSTOMER ACKNOWLEDGES THAT ITS ACCESS AND USE THEREOF ARE AT ITS SOLE DISCRETION AND RISK, AND, AS BETWEEN THE PARTIES, AT THE CUSTOMER'S SOLE RESPONSIBILITY.

10. Termination.

10.1. Termination for Cause. A breach of material obligations by either Party which is not cured within sixty (60) days from receiving notice thereof, shall entitle the non-breaching party to immediately terminate these Terms by written notice. Notwithstanding, if a Party files for petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, or makes any assignment for the benefit of creditors or takes or becomes subject to any action in furtherance of any of the foregoing, the other Party will be entitled to terminate these Terms immediately by written notice. If the Customer terminates these Terms pursuant to this Section 10.1, it shall be eligible to a pro-rated refund for the prepaid Fees for the unused portion of the Subscription Term following the effective date of termination.

10.2. Termination or Suspension by the Company. The Company may immediately terminate or suspend the Customer's use of and access to the Platform, or any part thereof, without prior notice or liability, if: (i) it believes, in its reasonable discretion, that the Customer or any third party is using the Platform in a manner that may impose a security risk, may cause harm to the Company or any third party, and/or may create any liability to the Company or any third party; (ii) it believes, in its reasonable discretion, that the Customer or any third party is using the Platform in breach of these Terms or applicable laws or at the request of a governmental entity; or (iii) it is unable to charge the Fees through the Customer's approved payment means, provided that with respect to this clause (iii) only, the Company shall provide at least five (5) days' prior written notice before suspension. The aforementioned rights are in addition to any rights and remedies that may be available to the Company according to these Terms and/or any applicable law.

10.3. Effect of Termination. Unless expressly indicated otherwise in these Terms, the termination or expiration of these Terms shall not relieve the Customer of its obligation to pay due Fees. Upon termination or expiration of these Terms, the Customer's Subscription and all rights granted to the Customer and the Users hereunder shall terminate, and the Customer shall cease to have access to the Platform and any Customer Data and shall remove any Platform components from its systems. The Customer is solely responsible for exporting all available Customer Data prior to such termination or expiration, and following termination or expiration, the Company may delete the Customer Data without retaining any copy thereof. In addition, the Customer shall

return or destroy, at the Company's choice, the Company's Confidential Information (as defined below) then in the Customer's possession and the Customer shall have no claim against the Company in this regard.

10.4. Survival. All the provisions of these Terms which by their nature should survive termination (including, without limitation, confidentiality, ownership and intellectual property, warranty disclaimers, limitations of liability and indemnification) shall remain in full force and effect following termination thereof, for any reason. Termination of these Terms shall not relieve the Customer from any obligation arising or accrued prior to such termination or limit any liability which the Customer otherwise may have to the Company.

11. Confidentiality.

11.1. Confidential Information. The term "**Confidential Information**" shall mean any and all non-public business, product, technology, financial, customers, and marketing data and/or information, whether written, oral or in any other medium disclosed or otherwise provided or made accessible by either Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), that is either identified as such or should reasonably be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information shall not include any information which the Receiving Party can prove is or was, through no act or omission of the Receiving Party in breach of these Terms: (i) publicly available at the time of disclosure or subsequently becomes publicly available (or otherwise already known to, or becomes known by, the Receiving Party); (ii) disclosed to the Receiving Party free from confidentiality obligations by a third party who is not, to the Receiving Party's knowledge, in breach of an obligation of confidentiality; or (iii) independently developed by the Receiving Party.

11.2. Confidentiality Obligations. The Receiving Party undertakes and warrants that: (i) it shall hold the Confidential Information of the Disclosing Party in confidence and shall take all reasonable steps to safeguard and protect the Confidential Information including, without limitation, those steps it takes to protect its own Confidential Information of a similar nature; (ii) it shall not disclose or otherwise provide any Confidential Information to any third party without the Disclosing Party's prior written consent, except to those of its employees who have a need to know such Confidential Information for the purpose of fulfilling these Terms and provided that such employees are bound by written confidentiality obligations which are at least as restrictive as those contained herein; (iii) it shall not copy or use the Confidential Information except to the extent required to perform its obligations, or exercise its rights, hereunder, whilst maintaining the Disclosing Party's interests; and (iv) if the Receiving Party is requested or legally compelled to disclose any Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, the Receiving Party shall make best efforts to provide the Disclosing Party prompt notice thereof, and, at the request and expense of the Disclosing Party, uses reasonable efforts to limit such disclosure to the extent requested. The Receiving Party's obligations with respect to Confidential Information shall expire five (5) years from the date of termination or expiration of the last Subscription Term, unless under applicable law a longer period of protection applies. Notwithstanding the above, the Company may access, preserve, and disclose any information obtained in connection with the Platform as it reasonably believes necessary to satisfy any applicable law, regulation, legal process, subpoena or governmental request. For the avoidance of doubt, nothing in these Terms shall restrict a Party from freely using its own business information for its business purposes.

12. Warranty and Disclaimer.

12.1. THE COMPANY WARRANTS THAT IT WILL USE COMMERCIALLY REASONABLE EFFORTS THAT THE PLATFORM WILL PERFORM MATERIALLY IN ACCORDANCE WITH ITS THEN-CURRENT PUBLISHED DOCUMENTATION AND THAT THE SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER CONSISTENT WITH INDUSTRY STANDARDS. THE COMPANY DOES NOT WARRANT OR GUARANTEE THAT (I) ALL SECURITY ATTACKS WILL BE DISCOVERED, REPORTED OR REMEDIED, (II) THERE WILL NOT BE ANY SECURITY BREACHES OR VULNERABILITIES IN THE CUSTOMER'S PRODUCTS, SYSTEMS OR SERVICES, OR (III) ALL ACTIONS OR RECOMMENDATIONS BY THE PLATFORM WILL SATISFY THE CUSTOMER'S NEEDS OR BE OPTIMAL UNDER THE CIRCUMSTANCES. THE CUSTOMER IS RESPONSIBLE TO ASSURE THE PLATFORM WILL NOT INTERFERE WITH THE OPERATION OF ITS PRODUCTS AND SERVICES, SUCH THAT THEY PROPERLY FUNCTION EVEN IF THE PLATFORM, OR ANY PART THEREOF, IS DISABLED.

12.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPLICITLY SET FORTH HEREIN, THE PLATFORM AND ANY PROFESSIONAL SERVICES ARE SUPPLIED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED

TO, REGARDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SECURITY, COMPATIBILITY OR NON-INFRINGEMENT, OR THAT THE USE OF THE PLATFORM WILL BE UNINTERRUPTED, ERROR-FREE OR WILL MEET THE CUSTOMER'S SPECIFIC REQUIREMENTS OR EXPECTATIONS. IF THE CUSTOMER HAS PURCHASED THE SUBSCRIPTION FROM, OR IF THE PLATFORM WAS MADE AVAILABLE TO IT THROUGH, A CLOUD PARTNER, SUCH CLOUD PARTNER AND OTHER APPLICABLE THIRD-PARTY SUPPLIERS ALSO DO NOT PROVIDE ANY WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, REGARDING THE PLATFORM AND THE CUSTOMER'S USE THEREOF, INCLUDING, BUT NOT LIMITED TO, REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SECURITY, COMPATIBILITY OR NON-INFRINGEMENT. SUCH CLOUD PARTNER AND OTHER APPLICABLE THIRD-PARTY SUPPLIERS ALSO DO NOT WARRANT THAT THE USE OF THE PLATFORM WILL BE UNINTERRUPTED, ERROR-FREE OR WILL MEET THE CUSTOMER'S SPECIFIC REQUIREMENTS OR EXPECTATIONS.

13. <u>Limitation of Liability</u>.

13.1. NOTWITHSTANDING ANYTHING IN THESE TERMS OR ELSEWHERE TO THE CONTRARY AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW:

13.1.1. EXCEPT TO THE EXTENT CAUSED BY THE COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL THE COMPANY, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, AFFILIATES, AGENTS, MEMBERS OR EMPLOYEES BE LIABLE UNDER ANY CONTRACT, TORT OR OTHER LEGAL OR EQUITABLE THEORY, FOR: (I) ANY SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES; (II) ANY LOSS OF OR DAMAGE TO THE CUSTOMER'S SYSTEMS, DEVICES, DATA, INFORMATION, GOODWILL, PROFITS, SAVINGS, OR PURE ECONOMIC LOSS; (III) THE FAILURE OF INDUSTRY STANDARD SECURITY MEASURES AND PROTECTIONS, PROVIDED THAT IT HAS IMPLEMENTED AND ADHERED TO SUCH MEASURES AND PROTECTIONS IN ACCORDANCE WITH APPLICABLE INDUSTRY STANDARDS; AND/OR (IV) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES; REGARDLESS OF WHETHER THE COMPANY, ITS AFFILIATES OR THIRD-PARTY PROVIDERS, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE, OR THE THEORY OR BASIS OF LIABILITY (SUCH AS, BUT NOT LIMITED TO, BREACH OF CONTRACT OR TORT).

13.1.2. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY'S AGGREGATE AND CUMULATIVE LIABILITY FOR ALL CLAIMS, DAMAGES AND LOSSES (WHETHER IN CONTRACT, TORT OR OTHERWISE), IS LIMITED TO THE FEES PAID TO THE COMPANY FOR USING THE PLATFORM IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM'S CAUSE; PROVIDED THAT THE FOREGOING CAP SHALL NOT APPLY TO: (I) DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S NEGLIGENCE; AND/OR (II) WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR FRAUD.

13.2. IF THE CUSTOMER HAS PURCHASED THE SUBSCRIPTION FROM, OR IF THE PLATFORM WAS MADE AVAILABLE TO IT THROUGH, A CLOUD PARTNER: (I) IN NO EVENT SHALL SUCH CLOUD PARTNER AND OTHER APPLICABLE THIRD-PARTY SUPPLIERS BE LIABLE UNDER ANY CONTRACT, TORT OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES; AND (II) THE COLLECTIVE LIABILITIES OF SUCH CLOUD PARTNER AND OTHER APPLICABLE THIRD-PARTY SUPPLIERS SHALL BE SUBJECT TO ALL ADDITIONAL LIMITATIONS OF LIABILITIES SET FORTH IN SECTION 13.1 ABOVE, *MUTATIS MUTANDIS*, AND IN ANY CASE, SHALL BE LIMITED TO THE FEES PAID BY THE CUSTOMER FOR USING THE PLATFORM IN THE SIX (6) MONTHS PRECEDING THE CAUSE OF THE CLAIM.

13.3. The Company shall not be liable or responsible for the Platform and/or the Services' failure if it results from or is otherwise attributable to: (i) the repair, maintenance or modification other than by the Company; (ii) an accident, negligence, abuse or misuse thereof; (iii) the use thereof other than according to their documentation or these Terms; (iv) their combination with equipment or software not authorized or provided by the Company; (v) any unavailability, suspension or termination of third-party software or cloud service provider performance issues; or (vi) any inaccuracy in Customer Data or other information the Customer provided to the Company.

14. <u>Indemnification</u>.

14.1. By the Company. The Company hereby agrees to defend and indemnify the Customer against any damages finally awarded against the Customer by a court of competent jurisdiction, or paid in settlement, in connection with a third-party claim, suit or proceeding that the grant of right to use the Platform within the scope of these Terms infringes any valid patent, copyright, or trademark of any third party. The Company shall have no obligations or liability hereunder in case (i) the Platform is used in an unlawful manner or in violation of these Terms; (ii) features are provided at the request of the Customer; (iii) the Platform is used in combination with other products, equipment, software, or data not provided by the Company; (iv) the alleged infringement is resulting from processes developed by the Customer or at the Customer's request within the Platform; (v) the alleged infringement is based on the Customer Data and any other content provided by the Customer or its Users or use of the Platform by the Customer; or (vi) the Platform shows defects that can be attributed to the Customer. SECTIONS 7.4 AND 14.1 STATE THE COMPANY'S SOLE AND ENTIRE LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY, FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION BY THE COMPANY AND/OR THE PLATFORM AND UNDERLYING TECHNOLOGY.

14.2. By the Customer. Without derogating from the Company's rights under these Terms and under applicable law, the Customer hereby agrees to defend and indemnify the Company, its Affiliates, and their respective employees, officers, directors, suppliers, and successors, and hold them harmless against any damages incurred by them in connection with (i) a third party claim, suit or proceeding that the use of Customer Data and any other content provided by the Customer and/or Users, or the use of the Platform by the Customer and/or Users infringes any intellectual property rights of a third party or violates any applicable law; or (ii) the use or misuse of the Platform by the Customer, Users or any third party using an Account.

14.3. General. The defense and indemnification obligations of the indemnifying Party under this Section 14 are subject to: (i) such Party being given prompt written notice of the claim; (ii) such Party being given immediate and complete control over the defense and/or settlement of the claim; and (iii) the indemnified party providing cooperation and assistance, at the indemnifying Party's expense, in the defense and/or settlement of such claim and not taking any action that prejudices the indemnifying Party's defense of, or response to, such claim.

15. Miscellaneous.

15.1. Contracting Entity. The "**Company**" means, if the Customer is an entity incorporated in (i) the United States or Canada, Upwind Security, Inc., a company incorporated under the laws of the State of Delaware, (ii) the United Kingdom or United Arab Emirates, Upwind Security UK Ltd., a company incorporated under the laws of England and Wales, and (iii) any other country, Upwind Security Ltd., a company incorporated under the laws of the State of Israel.

15.2. Affiliates. An "**Affiliate**" is any entity that directly or indirectly controls, is controlled by, or is under common control with, the party specified. For purposes of this definition, "control" means direct or indirect ownership of more than fifty percent (50%) of the voting interests of the subject entity. The Customer's Affiliates may use the Platform and the Services subject to these Terms. The Customer represents and warrants that it has sufficient rights and the authority to make these Terms binding upon each of its Affiliates. The Customer and each of its Affiliates will be jointly and severally liable for the acts and omissions of such Affiliate in connection with these Terms and such Affiliate's use of the Platform and Services, provided however, that only the Customer may bring any claim against the Company on its Affiliates' behalf. A Company's Affiliate may provide the Platform, Services, or a portion thereof, to the Customer and its Affiliates, as applicable, in accordance with these Terms and any applicable Order Form(s) with such Affiliate of the Company. The Company will (i) be responsible for the provision of Platform and Services by its Affiliates, and (ii) not be relieved of its obligations herein if its Affiliates provide the Platform or Services or a portion thereof.

15.3. Export Control. The Platform may be subject to Israeli, U.S. or foreign export controls, laws and regulations (the "**Export Controls**"), and the Customer agrees and confirms that it: (i) does not uses, exports, re-exports or imports the Platform (or any portion thereof) in or to, any person, entity, organization, jurisdiction or otherwise, in violation of the Export Controls; (ii) is solely responsible for complying with applicable Export Controls which may impose additional restrictions, prohibitions or requirements on the use of the Platform.

15.4. Customer's Reference. The Customer acknowledges and agrees that the Company may use the Customer's name and logo for marketing purposes, including on the Company's website, marketing materials or otherwise by public announcements. The Customer may revoke such right, at any time, by contacting the Company at privacy@upwind.io. The publication of any additional content related to the Customer's use of the Platform (other than mere reference to the Customer as set forth above) shall require the Customer's prior approval. The

Company may request the Customer's participation in a case study regarding its use of the Platform, subject to the Customer's prior written approval of the content thereof.

15.5. Force Majeure. Neither Party will be liable for a failure or delay in performance due to events beyond its reasonable control (e.g., strikes, shortages, riots, fires, acts of God, war, pandemic, terrorism, governmental actions, DDoS attacks, or interruption or failure of infrastructures, such as the Internet or hosting services).

15.6. Governing Law; Jurisdiction. These Terms and their performance shall be governed by the laws of (i) the State of Delaware, if the Company is Upwind Security Inc., (ii) England and Wales, if the Company is Upwind Security UK Ltd., or (iii) the State of Israel, if the Company is Upwind Security Ltd.; in each case, without regard to conflict of laws' provisions that would result in the application of the laws of any other jurisdiction. The Parties submit the exclusive jurisdiction to the competent courts of (a) the State of Delaware, if the Company is Upwind Security Inc., (b) London, England, if the Company is Upwind Security UK Ltd., or (c) Tel Aviv, Israel, if the Company is Upwind Security Ltd.

15.7. Class Action Waiver. WHERE LEGALLY PERMISSIBLE, THE PARTIES AGREE THAT EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER PARTY ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION. Unless both the Customer and the Company agree, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding.

15.8. Relationship of the Parties; No Third-Party Beneficiaries. The Parties are independent contractors. These Terms do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. There are no third-party beneficiaries to these Terms.

15.9. Assignment. The Company may assign any of its rights and/or obligations hereunder to any third party without the Customer's consent at any time. The Customer may not assign any of its rights or delegate any obligations hereunder, in whole or in part, without the Company's prior written consent, except in connection with a merger, acquisition, or sale of all or substantially all of the Customer's assets to a non-competitor of the Company, provided the assignee agrees in writing to be bound by these Terms, and any attempt by the Customer to do so shall be deemed null and void.

15.10. Notice. All notices, approvals and requests required hereunder, shall, except where specifically provided otherwise, be sent in writing to the Party to whom notice is to be given. Notices shall be sent to the emails provided below. The date of receipt shall be deemed to be the day of such notice. Either Party may designate a different address by notice to the other given in accordance herewith.

15.11. Severability; No Waiver. If a competent court finds any provision of these Terms to be invalid, unenforceable, or illegal, the remaining provisions will remain in full force and effect, and such provision shall be reformed as necessary to make it valid, enforceable and legal. The Company's failure to enforce any right or provision herein will not constitute a waiver of such right or provision unless acknowledged and agreed by it in writing.

15.12. General. These Terms, and the other terms, agreements and policies referenced herein, constitute the entire agreement between the Parties regarding the Customer's use of the Platform and supersede all prior or contemporaneous understandings regarding such subject matters, including confidentiality and non-disclosure. The exhibits attached hereto are incorporated herein by reference. The headings herein are for convenience only and shall not be considered in construing these Terms. The Company may, at its sole discretion, change these Terms from time to time, including any other documents incorporated hereto, so please revisit this page (https://www.upwind.io/terms-of-service) frequently. In case of any material change, the Company will make reasonable efforts to post a clear notice on its website and/or send the Customer an email (to the extent that it provided such email address to the Company) regarding such change. Such material changes will take effect seven (7) days after such notice was first provided. Otherwise, all other changes to these Terms are effective as of the stated "*Last Updated*" date, and the use of the Platform and Services on or after such date will constitute acceptance of those changes. If these Terms should be amended to comply with any legal requirements, the amendments may take effect immediately, or as required by the law and without prior notice.

Last Updated: September 2026