

Terms of Service

“30 Days Money Back Guarantee” – Limited Offer Terms

Client may terminate the Purchase Order within 30 days of the start date (“the **Initial Period**”) by sending Windward a written notice of termination at least one (1) week prior to the end of the Initial Period. In the event that the Purchase Order is terminated during the Initial Period, the Initial Period will be free of charge.

The Annual Fee shall be charged upon the elapse of the Initial Period.

This limited offer is valid until September 30, 2023. Windward reserves the right to extend or reduce the term of this limited offer. Windward has the right to end or modify this offering at any time and for any reason. Other restrictions may apply.

These Terms of Service (these “**ToS**”) govern the use of Windward’s Services (as defined below). These ToS are entered into by you (“**Client**” or “**You**”) and the Windward entity defined in the Purchase Order (as defined below) (“**Windward**” or “**We**”), each a “**Party**” and together, the “**Parties**”.

Your access to and use of the Services are conditioned on your acceptance of and compliance with these ToS. By executing a Purchase Order and/or by accessing or using the Services you agree to be bound by these ToS.

1. Definitions.

“Authorized Users” means those employees and contractors of the Client who are authorized by the Client to use the Services.

“User Account(s)” unique user accounts which have been provided by Windward to Authorized Users, if applicable.

“Data Providers” means all third parties from whom Windward acquires and/or licenses raw data and other materials (including, without limitations, Automatic Identification System (AIS) data, maps, etc.), which is used by Windward, including to develop Windward Data and on which Windward relies to provide the Services.

“Documentation” means materials, user guides, manuals, drawings and any documentation related to the Services or any parts thereof, provided by Windward.

“Insights” means any and all insights, conclusions, distinctions, reports, ratings, indexing and scores, including but not limited to Risk Scores and Reports, produced by Windward, which relate to any vessel, fleet, areas, entity and/or anything else within the Services.

“Support Services” means technical support and/or operational support services provided by Windward in connection with the Services.

“Purchase Order” means the written agreement, electronic agreement or other ordering form or document, through which Client places an order for Services and which may include a SoW, as applicable.

“Report(s)” means any and all reports, summaries, reviews and briefs, created by Windward and provided in any manner or form in connection with the Services, including, without limitations, to vessel, fleet or area analysis report(s).

“Risk Scores” means Windward’s risk rating score for vessels and/or fleets and any of Windward’s proprietary underlying features.

“Service(s)” means any Windward products and/or services, provided within the framework of a trial period, test, proof of concept process, commercial engagement or otherwise, whether in exchange of payment or otherwise, as further detailed in a Purchase Order and Support Services, separately and collectively.

“Services Commencement Date” means the date upon which the provision of Services to the Client is initiated, as detailed in a Purchase Order or in any other written agreement between the Client and Windward.

“Services End Date” means the date upon which the provision of Services to the Client ends, as detailed in a Purchase Order or in any other written agreement between the Client and Windward.

“Service Material” means any elements, such as text, data, software, graphics, logs, software, Documentation, and/or information of or provided through the Services.

“Windward Data” means Windward’s proprietary data (including Insights) and/or confidential data obtained by Windward and/or licensed to it from third parties, underlying its products and services.

“Windward Platform” means Windward’s proprietary maritime data analytics and AI platform.

2. Services. Windward owns, operates and/or offers proprietary maritime data analytics and AI based services, tools and solutions for the broad maritime market, based on Windward Platform and/or Windward Model, as applicable. Subject to the terms and conditions hereof and any applicable Purchase Order, (i) Windward will provide the Services set out in each Purchase Order or, in the event no Purchase Order is entered, as otherwise agreed in writing by the Parties, and (ii) Client may access and use, and may permit Authorized Users (as defined below) to access and use, the Services, on a limited, non-exclusive, non-transferable and revocable basis, for Client's own internal purposes and use only. The Services will be delivered in accordance with the delivery terms set out in the Purchase Order from the Service Commencement Date to the Services End Date, or deemed delivered when first made available for access to Client.

3.Restrictions. Client may not use the Services or any Service Material for any purpose except as expressly set forth in these ToS and the applicable Purchase Order. Client may not reproduce, sell, rent, publicly perform, display, disseminate, distribute, broadcast, retransmit or circulate the Services, or any parts thereof or provide access thereto to any third party, unless and to the extent explicitly agreed to in writing by Windward or in the applicable Purchase Order. Client shall not, and shall not permit any third party, to (a) use the Services for timesharing or service bureau purposes, (b) use the Services to develop any similar or competitive service, (c) use the Services in violation of applicable law or to evade, avoid, or circumvent any applicable sanctions; (d) reverse engineer or attempt to find the underlying code of the Services, or any parts thereof; (e) reverse engineer any data or information, including Windward Data, provided through the Services in an attempt to discover or extract any individual data elements used in producing such data, (f) attempt to modify, frame, republish, transmit or distribute the Services, or any portion thereof, including Windward Data, or create derivative works from the Services, unless and to the extent explicitly agreed to in writing by Windward or in the applicable Purchase Order; (g) circumvent any security or access control mechanism of the Services (e.g. by 'virtualization', 'multiplexing' or 'pooling'), or any part thereof; or (h) employ any hardware, software, device or technique to pool connections or reduce the number of devices or users that directly access or use the Services (sometimes referred to as 'virtualization', 'multiplexing' or 'pooling'). In addition, if a User Account is provided as part of the Services, Client (i) may not permit use of or access to the Client's User Account by a third party; and (ii) shall keep, and cause its Authorized Users to keep, in strict confidence the login initials for the User Account and shall be responsible for any activities or actions under the User Account, including without limitation, unauthorized use of the User Account by a third party.

4.Acceptable Use Policy. Client may not make any use of the Services in violation of the following Acceptable Use Policy, pursuant to which it is prohibited to: (i) download, print, copy, index or otherwise extract Service Materials, Windward Data, or portions thereof, in a systematic, regular or other manner which is deemed, at Windward's sole discretion, exceeding the normal use of the Services, or as to create a database in electronic, paper form or any other form, comprising all or part of the applicable Service(s); (ii) use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device, including without limitation, unauthorized access, interception or falsification of origin; (iii) make network abuse, including network connections to any users, hosts, or networks unless Client has permission to communicate with them, such as disruptive monitoring or crawling, avoiding system restrictions or making other intentional interference; (iv) use web crawlers, scraping, or any other data mining technics or automated tools to extract data from the Services; or (v) use the Services or any part thereof, for any purpose not reasonably anticipated by Windward or as otherwise might reasonably be expected in the course of Client's relationship with Windward; or (vi) use the Services in violation of applicable law, regulations and treaties.

5.Intellectual Property and Client Feedback. As between the Parties, all right, title and interest in and to (i) the Services, Windward Platform and Windward Data, and any part thereof, (ii) all enhancements, derivatives, versions, customizations, bug fixes or improvements to the foregoing, and (iii) any and all input data and information that is used by Windward to produce and/or develop the Services, but excluding, if applicable, Client's Confidential Information (as defined in Section 8 below) are and shall at all times remain the exclusive property of Windward. The Windward Platform, Windward Data and the Services, including the Service Material, are protected by copyright, trademarks, database rights and other local and international laws.

Any and all data, information, materials, feedback and insights Client and/or Authorized Users may share with the Windward with regards the Services or otherwise, either in tangible, electronic, oral, visual or any other form, such as comments, product comparisons, performance testing results, defects or bug reports, functional or feature requests, benchmarks, ideas, suggestions, critiques and recommendations, etc. ("**Client Feedback**") is entirely voluntary. Client agrees that: (i) Windward may freely use any Client Feedback in perpetuity and without any obligations to Client, and may further disclose, reproduce, license, distribute and otherwise commercialize and exploit all Client Feedback, in any Windward products and/or services in perpetuity and without any obligations to Client; and (ii) Windward shall be the sole owner of any improvement, modification, invention and/or development relating to its products and/or services (whether patentable or not) made on the basis of or in connection with Client Feedback.

Services rendered may contain materials for which Data Providers, e.g., VesselsValue Limited, reserve all copyrights and/or database rights.

During the Term (as defined below) and/or as long as Client is provided with any kind of product and/or service from Windward, Client agrees to: (i) serve as a reference customer for the Windward Platform and (ii) will cooperate with Windward's reasonable marketing needs to identify Client as a user of the Platform and display its logo in marketing and promotional materials.

6.Support Services and Client Support. Professional Services in connection with Client's use of the Services may be provided pursuant to the terms set forth in the applicable Purchase Order. Windward may update, upgrade or make changes to the Services, at its sole discretion, on a regular basis so long as such updates and upgrades do not materially adversely affect the functionality thereof.

7.Fee and Payment. The Services may be provided by Windward free of charge During a limited trial period as may be set out in the applicable Purchase Order, solely for Client's internal evaluation purposes ("**Trial Period**"). The applicable fees for Client's access to the Services beyond or in excess of the Trial Period shall be set forth in the Purchase Order ("**Fee(s)**"). Windward will issue an invoice indicating the Fees that are owed in accordance with the invoicing schedule set forth in the applicable Purchase Order. All Fees will be due and payable net to Windward, as further detailed in the Purchase Order. The Fees are exclusive of all applicable transaction taxes, including sales, use and VAT taxes, and Client will be responsible for all taxes and other amounts imposed by any governmental agency on the Fee payable under these ToS (except for corporate income tax imposed on Windward in Israel). Payment shall be made in US Dollars, unless agreed differently in the Purchase Order, via wire transfer to Windward's bank account, in accordance with the details to be provided in writing by Windward. In the event the Fee is expressed in different currency than USD in the applicable Purchase Order, any conversion to USD shall be calculated using the Bank of Israel standard exchange rate, applicable for the date of payment. It is hereby agreed that Windward may revise the Fee(s) at the end of the Term or its renewal by providing the Client at least 60 days' written notice prior to the end of the Term or its renewal specifying the revised Fee(s) for the subsequent renewal term.

8.Confidential Information. The Parties acknowledge that either of the Parties (in this capacity, a "**Receiving Party**") may have access to certain non-public, proprietary, confidential and/or trade secret information, data and materials, provided or made accessible in any manner or form,

regarding the technology, business or future plans (“**Confidential Information**”) of the other Party (in this capacity, a “**Disclosing Party**”). Client’s Confidential Information shall include such non-public data and information provided to Windward for the purpose of their use in connection with Client’s use of Windward Services or any parts thereof (“**Client Material**”). The Confidential Information of Windward shall be deemed to include, all non-public information, data, materials and documents in respect of Windward’s Services. Receiving Party agrees for the Term of these ToS and for the period of five (5) years after its termination to (a) not disclose the Confidential Information of the Disclosing Party to any third Party, except its employees, shareholders, directors, officers, corporate affiliates, advisors or consultants (collectively, the “**Representatives**”), and provided that such Representatives have a need to know the Confidential Information to fulfill Receiving Party’s obligations hereunder, are subject to written agreements containing non-disclosure and non-use obligations substantially similar to those set forth herein, and the Receiving Party remains responsible for the breach of confidentiality by the Representative; (b) at all time take similar measures to keep the Confidential Information confidential that the Receiving Party makes in respect of its own Confidential Information of like importance, which efforts and measures shall be no less than reasonable; and (c) not make any use of the Confidential Information except in accordance with these ToS.

Notwithstanding anything else to the contrary in these ToS, Confidential Information shall not include information (i) already lawfully known to or independently developed by Receiving Party without access to or use of Confidential Information of the Disclosing Party, (ii) disclosed in published and publicly available materials, (iii) generally known to the public, (iv) lawfully obtained from any third party without restrictions, or (v) required to be disclosed by an order of a competent court, provided that Receiving Party shall provide Disclosing Party with prompt written notice of such requirement and cooperate with Disclosing Party as required to challenge such requirement or obtain a protective order.

In claiming the benefit of any of the exceptions set forth in this Section above, the Receiving Party shall have the burden of establishing that any such portion of the Confidential Information is subject to such exception. Upon request from the Disclosing Party or upon the termination of these ToS, all Confidential Information shall be returned to Disclosing Party or destroyed. Notwithstanding the foregoing, if a written Non-Disclosure and Confidentiality Agreement was separately entered between the parties (an “**NDA**”), it will prevail over this section of the ToS and govern the disclosure and exchange of Confidential Information. Any information exchanged between the Parties with respect to the relationship described herein will be considered Confidential Information under the NDA, and the NDA shall continue to be in effect during the term of these ToS.

9. Privacy and Data Processing. By accessing or using the Services and/or accessing these ToS, you agree to be bound by Windward’s – [Privacy Policy](#) (“**Privacy Policy**”). The Privacy Policy governs Windward’s collection, processing and transfer of any Personal Data (as such term is defined in the Privacy Policy). Client assumes sole responsibility for providing any notices to its employees or Authorized Users and obtaining any employee or Authorized User consents and taking any other actions in connection with Client’s employees or Authorized Users, that may be required under applicable privacy, data protection and other laws, in order to legitimize and permit collection and processing of Personal Data, as described in the Privacy Policy.

10. Warranties; Disclaimers. Windward warrants that it shall make commercially reasonable efforts to ensure that Windward Data provided to Client through the Services is accurate. Nonetheless, Client acknowledges and agrees that Windward does not warrant that the Services, including without limitations, Windward Data will be precise, accurate, error-free or available at all times, or that defects will be corrected. Furthermore, Client acknowledges and agrees that Insights are based on Windward’s internal processes and evaluations only and do not attest, in any manner or form, to any compliance or non-compliance with any external standard, provision, regulation or law. Client has sole responsibility for any actions or decisions taken in reliance on the Services and/or Windward Data and/or Insights in particular, and Windward will not be liable for any decision or action, including, without limitation, writing, underwriting, declining, premium, pricing, vetting or contracting related, made by Client in reliance of the Services. Except as set forth herein, the Services are provided “As-Is”, and Windward and its affiliates, members, directors, officers, employees, agents and contractors disclaim all implied or statutory warranties or representations in respect of the Services and/or any Windward Data and/or Insights provided through the Services, including without limitation any warranties of merchantability, fitness for a particular purpose and non-infringement. In addition to the foregoing, it is expressly acknowledged and agreed that Windward will not be liable or responsible in negligence or otherwise to any person not a party to these ToS for (i) any information, data (including Windward Data) or advice expressly or impliedly given by Windward, or (ii) any act, omission or inaccuracy by Windward. Nothing in these ToS will be construed to create rights in favor of any person not a party to these ToS. Client represents and warrants that it is not identified on, nor shall it provide access to the Services to any individuals or entities identified on, (a) OFAC’s list of Specially Designated Nationals (“**SDN List**”); (b) UK’s HM Treasury’s Consolidated List of Sanctions Targets; (c) EU’s Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions; (d) any other applicable sanctions lists; or (e) any entity owned by twenty five percent (25%) or more, directly or indirectly, individually or in the aggregate by individuals or entities identified in (a) through (d) above (collectively “**Trade Sanctions**”).

11. Compliance. Client may use the Services only in compliance with these ToS and all applicable local, state, national, and international laws, rules and regulations. Client shall not use the Services and shall not permit Authorized Users to use the Services for the purpose of providing services or data to any entity in violation of applicable maritime laws, export control law or to any entity that may endanger or has a history of endangering vessel safety or navigation.

12. Term and Termination. Term. The term of these ToS shall commence on the effective date of the first Purchase Order, and end upon the termination of all Purchase Orders entered between the Parties (“**Term**”). If no Purchase Order is executed by the Parties, these ToS shall commence on the date of Client’s first access to or use of the Services and continue to be in effect for the entire period of Client’s access to the Services.

Termination for convenience. Unless expressly agreed in a Purchase Order, these ToS may not be terminated for convenience by the Client. Termination by either party for cause. Either Party may terminate these ToS at any time if the other Party has committed any material breach which was not cured within fourteen (14) days of notice to the breaching party, including, without limitation, Windward’s right to terminate these ToS with immediate effect and without written notice (a) if Client uses the Services in violation of applicable law, including without limitations export controls laws and Trade Sanctions (b) Client’s failure to pay the Fee, and (c) unauthorized use of the Services by Client.

Client acknowledges and agrees that Windward may fully or partially suspend the Services (or any part thereof) or terminate these ToS altogether, if: (i) any Data Provider(s) fails or ceases to provide its services to Windward, provided that Windward shall have undertaken all reasonable efforts to solicit such Data Provider(s) to reinstate its services or remedy its failure, and/or (ii) Windward is or may be prevented by applicable law, regulation or other impediment to provide the Services. Effect of Termination. Immediately upon any termination of these ToS or an applicable Purchase Order (i) Client’s access to and use of the Services shall cease, and (ii) Client shall pay any outstanding Fees and other amounts owed to Windward hereunder. Survival. The provisions of and the Parties’ obligations under Sections 3 (Restrictions), 4 (Acceptable User Policy), 5 (Intellectual Property), 8 (Confidentiality), 9 (Privacy and Data Processing), 10 (Warranties; Disclaimer), this Section 12 (Term and Termination), 14 (Limitation of Liability), 15 (US Government Use) and 16 (Miscellaneous) shall survive the termination or expiration of these ToS for any reason.

13. Indemnification. Subject to the limitation of liability set forth below, Windward will indemnify, defend and hold harmless Client from and against any third party claim that the Services, as delivered to Client, violates any patent or copyright of such third party. Notwithstanding the foregoing, Windward shall have no obligation to the extent any claim arises from: (i) any combination of the Services with other services, data, software or system, where such claim would not have occurred but for such combination; (ii) the adaptation or modification of the Services, where such claim would not have occurred but for such adaptation or modification; (iii) the use of the Services in a manner for which it was not designed or intended or which is not permitted hereunder, where such claim would not have occurred but for such use. This section states Windward's entire liability and Client's sole and exclusive remedy for claims in respect of infringement of third party rights.

The Party seeking indemnification under these ToS (the "**Indemnitee**") shall (i) promptly notify the indemnifying Party (the "**Indemnifying Party**") of any claim for which it is seeking indemnification, (ii) provide the Indemnifying Party with information, assistance and cooperation in defending the claim in Indemnifying Party cost, and (iii) grant the Indemnifying Party sole control of any such claim; provided, however, that the Indemnifying Party may not settle the claim without the consent of the other Party (such consent not to be unreasonably conditioned, withheld or delayed). Either Party may be represented in any such proceeding by counsel of its own choosing at its own expense.

14. Limitation of Liability. In no event shall either Party or their agents, principals or licensors be liable to the other Party for incidental, indirect, special or consequential damages (however arising) including, but not limited to, loss of profit, loss of use, loss of data, loss of revenues, damages for lost information, lost savings, lost profits or business interruption, or damages to business or reputation arising out of the performance or non-performance of any aspect of these ToS and the exhibits and schedules thereto, whether or not the damaged party shall have been made aware of the possibility of such loss. The liability of either Party under these ToS shall not exceed amounts paid and payable by Client to Windward under the applicable Purchase Order. The foregoing limitations of liability shall not apply to the breach of a Party's confidentiality obligations pursuant to Section 8 of these ToS, to the Client's violation of applicable law, to the use of the Services in breach of Sections 3 (Restrictions) and Section 5 (Intellectual Property) of these ToS, and to claims of third parties against Windward, arising from, in connection with, or related to Client's use of the Services in breach of these ToS. Client expressly agrees that neither Windward nor its agents or principals shall have any liability or responsibility in respect of actions or decisions of Client in reliance or based on the Services and/or any Windward Data and/or Insights provided through the Services. Further, Windward shall have no liability for any act, omission or inaccuracy of a Data Provider.

15. US Government Use. U.S. Government as Licensee. This Section 15 applies whenever the Client is the U.S. federal government, or any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the U.S. federal government. In such case, the terms and conditions of this Section shall pertain to Client's use and disclosure of the Services and shall supersede any conflicting contractual terms or conditions. Commercial Computer Software. The Services are "Commercial computer software" and documentation within the meaning of the applicable acquisition regulations (e.g., FAR 2.101). The Services are works with all rights reserved to Windward under the copyright laws of the United States. Exceptions for U.S. Government. The section titled Law and Jurisdiction in Section 16 of these ToS shall not apply to the U.S. federal government, but shall continue to apply to prime contractors and subcontractors of the U.S. federal government. Disputes with the U.S. federal government shall be subject to resolution to the Contract Disputes Act of 1978, as amended. All other provisions of these ToS remain in effect as written.

16. Miscellaneous. Entire Agreement: These ToS, and thereby related Purchase Order and the NDA is the entire agreement between Client and Windward regarding the provision of the Services and Client's use thereof, and supersedes any and all other earlier agreements between the Parties, whether written or oral, regarding the Services. Any advertising, descriptive material or sample provided or issued by Windward in connection with the Services, either in its website, marketing material etc. are provided for approximate illustrative purpose, and shall not form part of the ToS or have any binding force. All exhibits and addendums to these ToS, if any, are an integral part thereof. No other person or entity will be third party beneficiary to these ToS. Non-disparagement: Each Party shall not disparage the other Party or any of its respective members, directors, officers, shareholders, agents or employees or otherwise take any action that could reasonably be expected to adversely affect the business, personal or professional reputation of any of the aforementioned entities and individuals. No waiver: A waiver of any default hereunder or of any of the terms and conditions of these ToS shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. Assignment: These ToS, and any related Purchase Order, may not be assigned by either party to any other entity without the express written consent of the other party; *provided, however*, that Windward shall have the right to assign these ToS, and any related Purchase Order, to its affiliates or subsidiaries or any corporation or other entity owning or acquiring all or substantially all the assets and business of Windward whether by operation of law or otherwise; Assignments in violation of the foregoing shall be void. Severability: If any part of these ToS shall be deemed invalid, illegal or unenforceable by a court or arbitral body of competent jurisdiction, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. Law and Jurisdiction: These ToS shall be governed by the laws of the State of Israel, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Israel to the rights and duties of the Parties. Any dispute arising out of or in connection with these ToS, including any question regarding their existence, validity or termination, shall be referred to and finally resolved by Israeli courts, located in Tel Aviv. Each Party waives any objection that it may have with respect to such venue based on the claim of *forum non conveniens* or otherwise. Notwithstanding the foregoing, either Party may seek an injunction or other equitable relief to enforce any provision of these ToS in any court of competent jurisdiction. Application of the U.N. Convention on Contracts for the International Sale of Goods is specifically excluded from these ToS.

Last Updated: May 30, 2023