

TERMS OF USE

INTRODUCTION

These Terms of Use (the “**Terms**”) are a legal agreement between you and Apryse Software Corp. (“**we**”, “**our**”, or “**us**”) governing your access to and use of the Windward Studios’ website (the “**Site**”). BY ACCESSING THE SITE YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS YOU MAY NOT ACCESS OR USE THE SITE.

1. WEBSITE.

1.1 Service. The Site provides information about Windward’s products and services.

1.2 Site License. Subject to these Terms, Windward Studios grants you a personal, limited, revocable, non-exclusive and non-transferable license to access and use the Site for informational purposes only. This license is exclusive to you and you may not sublicense the use of the Sites. Windward Studios expressly retains all ownership rights, title and interest in and to all aspects of the Site and all intellectual property rights therein, including, but not limited to, all current and future patents, copyrights, trademarks, trade secrets, know-how, and other proprietary rights included or embodied in the Sites.

1.3 Restrictions. You may not modify the Sites, create derivative works of the Sites, or reverse engineer, reverse compile, reverse assemble or do any other operation with the Sites that would reveal any source code, trade secrets, know-how or other proprietary information. You may not remove or modify any notice of confidentiality, trade secret, trademark or copyright encoded or embodied in the Sites or displayed by, on, or in the Sites. You may use the Sites only while these Terms remain in effect. Under no circumstances shall you have any rights of any kind in or to the Sites after any termination or expiration of your agreement to these Terms for any reason. In no event may you use the Site for commercial endeavors without our prior written consent.

1.4 User Data. You may be provided the opportunity to provide us with information about yourself. You agree that the information that you provide to Windward Studios about yourself (“**User Data**”) will be true, accurate, current and complete, and you further agree that you will maintain and promptly update the User Data to ensure that it remains true, accurate, current and complete].

2. THIRD PARTY SOFTWARE AND LINKING. Windward Studios makes no warranty with regard to products or websites of any other entity linked to on the Site. Windward Studios has no control over the content or availability of any third-party software or website. In particular, (a) Windward Studios makes no warranty that any third-party software you download or web site you visit will be free of any contaminating or destructive code, such as viruses, worms or Trojan horses and (b) it is your responsibility to become familiar with any web site’s privacy and other policies and terms of service, and to contact that site’s webmaster or site administrator with any concerns.

3. DISCLAIMER OF WARRANTY. THE SITE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND WITHOUT WARRANTIES OF ANY KIND. WINDWARD STUDIOS EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

4. LIMITATION OF LIABILITY. YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL WINDWARD STUDIOS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, IMAGES, DATA OR OTHER INTANGIBLES, EVEN IF WINDWARD STUDIOS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THAT ARISE IN CONNECTION WITH THE SITE. IF YOU ARE DISSATISFIED WITH THE SITE OR WITH ANY OF THESE TERMS, OR FEEL WINDWARD STUDIOS HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITE. IT IS THE INTENTION OF YOU AND WINDWARD STUDIOS THAT THIS PROVISION BE CONSTRUED BY A COURT AS BEING THE BROADEST LIMITATION OF LIABILITY CONSISTENT WITH APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

5. GENERAL.

5.1 Modification. Windward Studios may modify these Terms at any time. Modifications become effective immediately upon your first access to or use of the Site after the “Last Revised” date at the top of these Terms. Your continued access to or use of the Site after the modifications have become effective will be deemed your conclusive acceptance of the modified Terms. If you do not agree with the modifications, do not access or use the Site.

5.2 Applicable Law and Dispute Resolution. These Terms shall be governed by the laws of the State of Colorado without giving effect to any conflict of laws principles that may require the application of the law of another jurisdiction. If you believe that Windward Studios has not adhered to these Terms, please contact us by e-mail at contracts@windward.net. We will do our best to address your concerns. If you and Windward Studios are unable to reach a resolution to the dispute, you and Windward Studios will settle the dispute exclusively under the rules of the American Arbitration Association (www.adr.org) at its Denver, Colorado office. Any election to arbitrate by one party will be final and binding on the other. YOU UNDERSTAND THAT IF EITHER PARTY ELECTS TO ARBITRATE, NEITHER PARTY WILL HAVE THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL. You and Windward Studios agree that any arbitration will be limited to the dispute between Windward Studios and you individually. YOU ACKNOWLEDGE AND AGREE THAT YOU AND WINDWARD STUDIOS ARE EACH WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. Further, unless both you and Windward Studios otherwise agree in writing, an arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of any class or representative proceeding. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Site or these Terms must be brought, if at all, within one year from the accrual of the claim or cause of action or be forever barred.

5.3 Independent Contractors. No joint venture, partnership, employment, or agency relationship exists between you and Windward Studios as a result of these Terms or use of the Site.

5.4 Enforcement. If any legal action is brought to enforce these Terms, the prevailing party will be entitled to reimbursement of its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive from the other party.

5.5 Force Majeure. Windward Studios will not be liable by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond Windward Studios' reasonable control.

5.6 Waiver. The failure of Windward Studios to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by Windward Studios in writing.

5.7 Construction. The headings of Sections of these Terms are for convenience and are not to be used in interpretation.

5.8 Contact. Windward Studios is located in Northglenn, CO, United States. Any questions, comments or suggestions, including any report of violation of these Terms should be provided to the Administrator as follows:

By E-mail: contracts@windward.net

By Postal Mail: 11990 Grant Street, Suite 550
Northglenn, CO 80233

5.9 Entire Agreement. These Terms constitute the entire agreement between you and Windward Studios and govern your use of the Site, superseding any prior agreements between you and Windward Studios. The failure of Windward Studios to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, you and Windward Studios nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms shall remain in full force and effect.