

## ONLINE SERVICES TERMS AND CONDITIONS

1. This document describes the standard Terms and Condition that apply to OceanWise's online (i.e. cloud-based) mapping, monitoring and data management Services which are available on Subscription.
2. OceanWise's online Services handle multiple types of data from a wide range of sensors and sources, thus making them extremely versatile, low risk and excellent value for money. Many large organisations trust in OceanWise for the permanent storage and dissemination of their data and its application in real-time and mission critical land, marine and maritime operations. Typical customers include government agencies, offshore energy, telecommunications and engineering companies, and ports, harbours and coastal terminals.
3. The Terms and Conditions described herein refer to the Services supplied directly by OceanWise or via an OceanWise Licensed Partner. The Terms and Conditions explain our obligations as a Service provider and your obligations as a User. Please read them fully and carefully and contact us if you have any questions.
4. These Terms and Conditions are binding for any use of our Services and apply to You from the time that OceanWise or an OceanWise Licensed Partner provides You with access to the Services. An up to date list of Licensed Partners is available on the OceanWise website.
5. A higher level **Service Level Agreement** is available for Users who require enhanced support, including 24 hour cover and cover for telemetry and/or sensor equipment supplied by OceanWise, or for existing equipment where the support has been assigned to OceanWise. For details of the higher level Service Level Agreement, how it may be of benefit to You and pricing, please contact OceanWise or an OceanWise Licensed Partner.
6. OceanWise reserves the right to change these Terms and Conditions at any time, effective upon the posting of modified text to the Website. We will make every effort to communicate these changes to You via email or notification via the Website. It is Your obligation to ensure that You have read, understood and agree to the most recent Terms and Conditions available.
7. By registering to use our Services or by accessing the Services you acknowledge that You have read and understood these Terms and Conditions and have the authority to act on behalf of any person for whom You are using the Services. You are deemed to have agreed to these Terms and Conditions on behalf of any entity for whom you use the Service.
8. These Terms and Conditions were last updated on 15 Nov 2019. Significant changes from previous versions are as follows:

Revision Date	Changes Made at Revision
2017-01-12	Clarification of OceanWise's response to Technical Support requests.
	Circumstances when OceanWise will address equipment and communications issues.
2017-02-22	Clarification of automated monitoring and alert system.
2019-11-15	Amended to include all OceanWise's online systems.
2020-03-11	Clauses updated to include results of legal review by a third party.

## Definitions

9. "Agreement" means these Terms and Conditions of Use.
10. "Authorised User" means any person or entity, other than the Subscriber, that uses the Service with the authorisation of the Subscriber from time to time.
11. "Confidential Information" includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.
12. "Data" means any data inputted by You or with Your authority onto the Services.
13. "Intellectual Property Rights" means any patent, trademark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.
14. "Licensed Partner" means any person or entity authorised by OceanWise to resell or renew subscriptions to the Service.
15. "OceanWise" means OceanWise Limited OceanWise Limited is an independent company specialising in marine environmental data acquisition, management, publishing and GIS. Registered in England No. 07206926 at address 14 South Way, Newhaven, Sussex BN9 9LL UK.
16. "Public User" means any person or entity, other than a Subscriber or an Authorised User.
17. "Services" means the online (i.e. cloud, Internet or web based) databases, software and computer systems provided by OceanWise made available (as may be changed or updated from time to time by OceanWise).
18. "Site" means a sensor, a cluster of sensors, a sample, a collection of samples or a spatial dataset for which data is telemetered or uploaded to the Service.
19. "Subscriber" means the person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.
20. "Subscription Fee" means the annual or other period fee payable by You in accordance with the fee schedule provided by OceanWise (which we may change from time to time on notice to You).
21. "Website" means the Internet site at a domain provided by OceanWise e.g. port-log.net, oceanWise.eu or any related sub-domain.
22. "You" or "Your" means the Subscriber, and where the context permits, an Authorised User.

## Use of the Services

23. OceanWise grants You the right to access and use the Services via the Website with the particular user roles available to You according to Your subscription. This right is non-exclusive, non-transferable, and limited by and subject to the Terms and Conditions of this Agreement. You acknowledge and agree that, subject to any applicable written agreement between the Subscriber and the Authorised Users, or any other applicable laws:
  - a) the Subscriber determines who is an Authorised User and what level of user role access to the relevant organisation and Service that Authorised User has
  - b) the Subscriber is responsible for all Authorised Users' use of the Service
  - c) the Subscriber controls each Authorised User's level of access to the relevant organisation and Service at all times and can revoke or change an Authorised User's access, or level of access, at

any time and for any reason, in which case that person or entity will cease to be an Authorised User or shall have that different level of access, as the case may be

- d) if there is any dispute between a Subscriber and an Authorised User regarding access to any organisation or Service, the Subscriber shall decide what access or level of access to the relevant Data or Service that Authorised User shall have, if any.

## **General Obligations**

24. An invoice for the annual Subscription Fee will be issued to You in advance. This invoice must be paid before You add Your first Site or Dataset to your account. Further invoices will be issued at starting One Year from when You added Your first Site to Your account.
25. OceanWise or an OceanWise Licensed Partner will continue to invoice You until this Agreement is terminated in accordance with this Agreement. This invoice must be paid within 30 days or Subscription to the Services may be terminated. Upon termination due to non-payment of an invoice any data stored by OceanWise will subject to the Terms and Conditions contained in this Agreement.
26. The one year default period for a Subscription may be varied by agreement in writing by OceanWise. There is a minimum period of three (3) months and a maximum period of five (5) years. You are responsible for payment of all taxes and duties in addition to the Subscription Fee.
27. You must only use the Services and Website for Your own lawful internal business purposes, in accordance with these Terms and Conditions and any notice or condition posted on the Website. You may use the Services and Website on behalf of others or in order to provide services to others but if You do so you must ensure that You are authorised to do so and that all persons for whom or to whom services are provided comply with and accept all Terms and Conditions of this Agreement.

## **Access Conditions**

28. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify OceanWise of any unauthorised use of Your passwords or any other breach of security and OceanWise will reset Your password. You must take all other actions that OceanWise reasonably deems necessary to maintain or enhance the security of the Website and Your access to the Services.
29. As a condition of these Terms and Conditions, when accessing and using the Services, You must:
- a) not attempt to undermine the security or integrity of Website or Services or, where the Services are hosted by a third party, that of third party's computing systems and networks
  - b) not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services, or impair the ability of any other user to use the Services or Website
  - c) not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted
  - d) not transmit, or input into the Website, any files that may damage any other person's computing devices or software, content that may be offensive, or material or data in violation of any law (including data or other material protected by copyright or trade secrets which You do not have the right to use)

- e) not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.

## Usage Limitations

- 30. Use of the Services may be subject to limitations, including but not limited to monthly transaction volumes and the number of calls You are permitted to make against Services application programming interface. Any such limitations will be advised.

## Communication Conditions

- 31. As a condition of these Terms and Conditions, if You use any communication tools available through the Website (such as any forum, chat room or message centre), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Service or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).
- 32. When You make any communication on the Website, You represent that You are permitted to make such communication. OceanWise is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Service. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. OceanWise reserves the right to remove any communication at any time at its sole discretion.

## Indemnity

- 33. You indemnify OceanWise against: all claims, costs, damage and loss arising from Your breach of any of these Terms and Conditions or any obligation You may have to the Services, including (but not limited to) any costs relating to the recovery of any Subscription Fees that are due but have not been paid by You.
- 34. OceanWise agrees to hold You harmless from and indemnify all liability for infringement of any patent, copyright or trademark rights or other intellectual property rights of third parties resulting from the use of OceanWise's Services.

## Confidentiality and Privacy

- 35. Unless the relevant party has the prior written consent of the other or unless required to do so by law:
  - a) Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms and Conditions. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms and Conditions
  - b) Each party's obligations under this clause will survive termination of these Terms and Conditions
  - c) The provisions of these clauses shall not apply to any information which:
    - i. is or becomes publicly available other than by a breach of this clause
    - ii. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure

- iii. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party
  - iv. is independently developed without access to the Confidential Information.
36. OceanWise maintains a Privacy Policy that sets out the parties' obligations in respect of personal information. You should read that policy and You will be taken to have accepted that policy when You accept these Terms and Conditions.

## Intellectual Property

37. Title to, and all Intellectual Property Rights in the Services, the Website and any documentation relating to the Services remain the property of OceanWise (or its licensors).
38. Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on full payment of the Subscription Fee when due. You grant OceanWise a licence to use, copy, transmit, store, and back-up Your Data for the purposes of enabling You to access and use the Services and for any other purpose related to provision of services to You. You may download a copy of your Data at any time using the facilities available. You may request a back-up of Your data held by OceanWise at any time. A transaction Fee in addition to Your Subscription Fee may be payable.
39. OceanWise adheres to best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. OceanWise expressly excludes liability for any loss of Data no matter how caused.
40. If You enable third-party applications for use in conjunction with the Services, You acknowledge that OceanWise may allow the providers of those third-party applications to access Your Data as required for the interoperation of such third-party applications with the Services. OceanWise shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

## Warranties and Acknowledgements

41. You warrant that where You have registered to use the Services on behalf of another person, You have the authority to agree to these Terms and Conditions on behalf of that person and agree that by registering to use the Services You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms and Conditions, without limiting Your own personal obligations under these Terms and Conditions.
42. You acknowledge that:
- a) You are authorised to use the Services and the Website and to access the information and Data that You input into the Website, including any Data input into the Website by any person you have authorised to use the Services. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the Services (whether that Data is Your own or that of anyone else);
  - b) OceanWise has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Services or access the Website on behalf of or for the benefit of anyone other than yourself (whether a body corporate or otherwise) you agree that:
    - v. You are responsible for ensuring that You have the right to do so
    - vi. You are responsible for authorising any person who is given access to information or Data, and you agree that OceanWise has no obligation to provide any person access to such

information or Data without Your authorisation and may refer any requests for information to You to address.

43. You will indemnify OceanWise against any claims or loss relating to:
  - a) OceanWise refusing to provide any person access to Your information or Data in accordance with these Terms and Conditions
  - b) OceanWise making available Data to any person with Your authorisation.
44. OceanWise does not warrant that the use of the Services will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Services, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. OceanWise is not in any way responsible for any such interference or prevention of Your access or use of the Services.
45. OceanWise is not responsible for the scientific or factual content of the data or the use that You make of the data available to You via the Services. Should you require advice on sensors, data processing, analysis or interpretation of Data or on how the Data available via the Services is or can be used then You should contact OceanWise for further advice.
46. It is Your sole responsibility to determine that the Services meet the needs of Your business and are suitable for the purposes for which they are used.
47. You remain solely responsible for complying with all applicable environmental, safety and other regulations. It is Your responsibility to check that storage of and access to your Data via the Website will comply with the regulations applicable to you (including any laws requiring you to retain records).
48. OceanWise gives no warranty about the Services. Without limiting the foregoing, OceanWise does not warrant that the Services will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.
49. You warrant and represent that You are acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services, the Website or these Terms and Conditions.

### **Limitation of Liability**

50. To the maximum extent permitted by law, OceanWise excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Services or Website.
51. If You suffer loss or damage as a result of OceanWise's negligence or failure to comply with these Terms and Conditions, any claim by You against OceanWise arising from OceanWise's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Subscription Fees paid by You in the previous 12 months.
52. If You are not satisfied with the Services, Your sole and exclusive remedy is to terminate these Terms and Conditions in accordance with the clauses herein.

### **Termination**

53. You are permitted to evaluate the Services on the demonstration or development websites provided by OceanWise for this purpose. If You then choose to use the Services, Your Subscription Fee will

be deemed to have commenced from the day You first add Data to the Service or Data is added to the Service on Your behalf. OceanWise will not provide any refund for any remaining prepaid period for a prepaid Subscription Fee.

54. These Terms and Conditions will continue for the period covered by the Subscription Fee. At the end of each period these Terms and Conditions will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Subscription Fee when due, unless either party terminates these Terms and Conditions by giving notice to the other party at least 30 days before the end of the relevant payment period. If You terminate these Terms and Conditions You shall be liable to pay all relevant Subscription Fees on a pro-rata basis for each day of the then current period up to and including the day of termination of these Terms and Conditions.
55. If You:
  - a) breach any of these Terms and Conditions (including, without limitation, by non-payment of any Subscription Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied or
  - b) breach any of these Terms and Conditions and the breach is not capable of being remedied (which includes (without limitation) any breach or any payment of Subscription Fees that are more than 30 days overdue); or
  - c) You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction, then
56. OceanWise may take any or all of the following actions, at its sole discretion:
  - a) terminate this Agreement and Your use of the Services and the Website
  - b) suspend for any definite or indefinite period of time, Your use of the Services and the Website
  - c) suspend or terminate access to all or any Data
  - d) take either of the actions above in respect of any or all other persons whom You have authorised to have access to Your Data.
57. For the avoidance of doubt, if payment of any invoice for Subscription Fees due in relation to any of Your Billing Contacts, Billing Plans or any of Your Organisations (as defined at clause 3) is not made in full by the relevant due date, OceanWise may suspend or terminate Your use of the Service, the authority for all or any of Your Organisations to use the Service, or Your rights of access to all or any Data.
58. Termination of these Terms and Conditions is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:
  - a) remain liable for any accrued charges and amounts which become due for payment before or after termination; and
  - b) immediately cease to use the Services and the Website.
59. The above clauses survive the expiry or termination of these Terms and Conditions.
60. Upon termination for any reason whatsoever Your data will not be deleted but kept in secure storage as determined by OceanWise for a minimum period of 10 years. You may request a copy of Your data which will be provided to You within 30 days. A transaction Fee in addition to Your Subscription Fee will be payable.



## Service Availability

61. OceanWise intends that the Services shall be available 24 hours per day, seven days per week. It is possible that on occasions the Services may be unavailable for short periods of time to permit maintenance or development activities to take place. OceanWise intends that any period of unavailability is kept to a minimum.
62. The Services are monitored using an automated alert system 24 hours per day, seven days per week and, as a consequence, OceanWise endeavours to pre-empt or, if necessary, resolve any interruptions in the Services as soon as practicable.
63. OceanWise will notify You of any planned maintenance activities at least 24 hours prior to when the maintenance is scheduled to take place. OceanWise will also notify You of any unplanned disruption in Services as soon as practicable. Notification will include a reason for the disruption and an estimation of when normal service will be resumed. Notices will be updated periodically as circumstances change. Notification will include postings to the Website and the sending of emails to registered and Authorised Users.

## Technical Support

64. In the case of disruption to the Services or other technical difficulties You must make all reasonable efforts to investigate and diagnose problems e.g. local network issues before contacting OceanWise.
65. If You still need technical help, You should submit a support request via the [support portal](#) or by sending an email to [support@oceanwise.eu](mailto:support@oceanwise.eu) or by calling OceanWise on +44 1420 768262. This line is manned during UK Office Hours only. Please include as much information as possible, including details of all alerts displayed on the Website.
66. OceanWise undertakes to respond to support requests within four (4) working hours and to resolve any problems within one (1) working day unless You have a higher-level service agreement in place (see Clause 67). If resolution is not possible within this time period, then You will be told the reason for this and a plan to resolve the problem prepared and communicated to You.
67. These Terms and Conditions do not oblige OceanWise to monitor or attempt to resolve issues involving telemetry or sensor equipment or data communications, nor provide cover or respond to support requests outside UK office hours, unless this is specifically included in a higher-level Service Level Agreement or You agree to pay for this prior to any work being undertaken. Please contact OceanWise or an OceanWise Licensed Partner for details of how to set up a Service Level Agreement and our pricing for this and *ad hoc* work.

## General Conditions

68. Entire Agreement: These Terms and Conditions, together with OceanWise's Privacy Policy and the terms of any other notices or instructions given to You under these Terms and Conditions of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and OceanWise relating to the Services and the other matters dealt with in these Terms and Conditions.
69. Waiver: If either party waives any breach of these Terms and Conditions, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.
70. Delays: Neither party will be liable for any delay or failure in performance of its obligations under these Terms and Conditions if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.
71. No Assignment: You may not assign or transfer any rights to any other person without OceanWise's prior written consent.



- 72. **Governing Law and Jurisdiction:** This Agreement is governed by the laws of England and Wales and You hereby submit to the exclusive jurisdiction of the courts of England and Wales for all disputes arising out of or in connection with this Agreement.
- 73. **Severability:** If any part or provision of these Terms and Conditions is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.
- 74. **Notices:** Any notice given under these Terms and Conditions by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to OceanWise Ltd must be sent to [support@oceanwise.eu](mailto:support@oceanwise.eu) or to any other email address notified by email to You on the Website. Notices to You will be sent to the email address which You provided when setting up Your access to the Services.
- 75. **Rights of Third Parties:** A person who is not a party to these Terms and Conditions has no right to benefit under or to enforce any term of these Terms and Conditions.

[END OF AGREEMENT]