

# TEND.AI

## Terms of Use

(last updated: January 27th, 2017)

These **Terms of Use** (“Terms”) constitute a binding agreement between **you** (“you” or “your” or “yourself”) and **Tend ai Inc.** (“Tend.ai”) with respect to your access to and use of [www.tend.ai](http://www.tend.ai) (“Site”), including any information, data, text, instructions, graphics, images, video, audio, and any other materials you may access, use or view on or through the Site (collectively, the “Content”). These Terms apply to the Site and Content that Tend.ai may choose to make available to you. Registration data and other personally identifiable information that the Site may collect about you is subject to, and treated in accordance with, the terms of Tend.ai’s **Privacy Policy** available on the Site (“Privacy Policy”) which is incorporated into and forms part of these Terms by this reference. **By accessing or using the Site you agree to the terms and conditions set forth in these Terms, and you affirm that you are at least 18 years of age. If you do not agree with any of these Terms you may not access or use the Site for any purpose.**

### 1. CHANGES TO TERMS

Tend.ai may revise, update or otherwise change these Terms from time-to-time in Tend.ai’s sole discretion. The date these Terms were last updated is set forth at the top of these Terms. All revisions, updates and other changes to the Terms are effective immediately and apply to all of your access to and use of the Site thereafter. Your continued access to or use of the Site following the posting of revised, updated or otherwise changed Terms indicates and means that you accept and agree to the revised, updated or otherwise changed Terms.

### 2. SCOPE OF AND RESTRICTIONS ON USE

Subject to these Terms, Tend.ai grants to you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Site and Content for your **personal, non-commercial transitory viewing purposes** only. This is a grant of a license under copyright law as indicated above, and is not any transfer of title or ownership. Except as otherwise expressly provided in these Terms, you agree that the Content may not be copied, downloaded, or stored in a retrieval system for any other purpose, nor may it be redistributed, reused, or modified for any purpose, without the express prior written consent of Tend.ai. You agree that you shall not directly or indirectly:

- collect information from the Site using an automated software tool or manually on a mass basis;
- use automated means to access the Site, or gain unauthorized access to the Site or to any account or computer system connected to the Site;
- obtain, or attempt to obtain, access to areas of the Site or Tend.ai’s systems that are not intended for access by you;
- “flood” the Site with requests or otherwise overburden, disrupt, or harm the Site or Tend.ai’s systems;
- restrict or inhibit other users from accessing or using the Site;
- modify, change, copy, decompile, disassemble, reverse engineer or create derivative works of the Site or Content;
- modify or delete any copyright, trademark, or other proprietary rights notices that appear in or on the Site or Content;
- access or use the Site or Content for any unlawful purpose or otherwise beyond the scope of the license or rights expressly granted to you in these Terms.

The above license shall automatically terminate if you breach or violate any of these Terms and may be terminated by Tend.ai at any time and for any reason with or without notice to you.

### 3. OWNERSHIP

The Site and Content are owned by Tend.ai or its licensors and are protected under copyright, trademark, and other applicable United States and international laws and treaties. Without limiting the foregoing, the trademarks, trade names, service marks, and logos displayed in or on the Site or Content are registered and unregistered marks of Tend.ai or its licensors. You acknowledge and agree that Tend.ai or its licensors are and shall remain the sole owners of the Site and Content, including, without limitation, all patents, copyrights, trademarks, trade secrets, and other intellectual property and proprietary rights therein and thereto.

### 4. ACCOUNT REGISTRATION AND SECURITY

Access to and use of the Tend.ai software and/or services made available by Tend.ai on or through the Site (collectively, the “Services”) requires you to register for an account with Tend.ai and requires you to accept and agree to the Tend.ai **Terms of Service**. If you wish to purchase or receive such Services, you agree to provide true, accurate, current, and complete information about yourself as prompted by the applicable registration or log-in form, and you are responsible for keeping such information up to date. You are responsible and liable for all activities conducted through your account, regardless of who conducts those activities. You are responsible for maintaining the confidentiality of your account information, including your username and password. You agree that you shall immediately notify Tend.ai of any unauthorized access to or use of use of your account, or any other breach of security affecting your account. Tend.ai shall not be responsible or liable for any losses or damages arising from your failure to protect your username or password.

### 5. USER CONTENT

**5.1. User Content and Restrictions.** The Site may enable users to submit, upload, post, share, display, or transmit to other users (hereinafter, “post”) ideas, information, materials, and other user-generated content (collectively, “User Content”) and interact with others through user comment areas, message boards, and similar user-to-user areas. You may not post any User Content that:

- is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy rights or right of publicity, or otherwise objectionable;
- constitutes or promotes sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age;
- contains any material that could give rise to any civil or criminal liability under any applicable laws, rules, or regulations or that otherwise may be in conflict with these Terms;
- infringes upon, misappropriates, or otherwise violates any intellectual property rights or other rights of a third party;
- encourages criminal conduct;
- contains false, misleading, fraudulent, or deceptive claims or content;
- gives the impression that it emanates from or is endorsed by Tend.ai or any other person or entity, if this is not the case; or
- contains any virus, trap, malware, spyware, or other harmful content or code.

**5.2. Licenses and Rights You Grant to Tend.ai.** You hereby grant to Tend.ai an irrevocable, perpetual, non-exclusive, transferable, sublicensable, royalty-free, worldwide right and license to use, reproduce, display, perform, distribute, and prepare derivative works of any User Content you post on or through the Site for any purpose and in all forms and all media, whether now known or that become known in the future, and you waive any and all claims that

you may have now or may hereafter have in any jurisdiction to so-called “rental rights,” “moral rights,” and all rights of “droit moral” in that User Content, even if the User Content is altered or changed in a manner not agreeable to you. If you post User Content, you represent and warrant to Tend.ai that you own or control all rights in and to such User Content and have the right to grant the licenses and rights above to Tend.ai.

**5.3. No Responsibility.** You agree that you are solely responsible for your User Content, and you acknowledge and agree that Tend.ai is not responsible for, and does not endorse, any User Content.

**5.4. No Obligation to Prescreen, Monitor or Use.** Tend.ai does not have, and does not undertake, any obligation to prescreen, monitor, edit, or remove any User Content posted on or through the Site. However, Tend.ai retains the right (but not the obligation), in its sole discretion and for any reason, to prescreen, monitor, edit, remove, or move User Content posted on or through the Site. You acknowledge and agree that Tend.ai is not obligated to post, keep, or use your User Content.

**5.5. Submitted Ideas.** While Tend.ai appreciates your interest in the Site, Content, Services and/or Tend.ai’s business, Tend.ai does not want to receive and cannot accept any ideas or information users consider confidential and/or proprietary. This is to avoid the possibility of future misunderstandings when projects independently developed by or on behalf of Tend.ai might seem to others to be similar to users’ own creative ideas, suggestions, and/or materials. Except with respect to your personal information as expressly provided for in our [Privacy Policy](#), all comments, suggestions, ideas, drawings, concepts, or other information or materials disclosed or offered to Tend.ai by you via the Site or Services or in response to solicitations on the Site shall be deemed to be non-confidential and non-proprietary.

## **6. ELECTRONIC COMMUNICATIONS**

The communications between you and Tend.ai via the Site use electronic means. For contractual purposes, you consent to receive communications from Tend.ai in electronic form, and you agree that all terms and conditions, agreements, notices, disclosures, and other communications that Tend.ai provides to you electronically satisfy any legal requirement that such communications be in writing.

## **7. ONLINE PURCHASES OF SERVICES**

All purchases of the Services made by you on or through the Site, or other transactions for the purchase of other Tend.ai products or services made by you on or through the Site, are governed by the Tend.ai [Terms of Service](#). If you do not agree to be bound to such [Terms of Service](#) then you should not purchase the Services or such other Tend.ai products or services and should not indicate any agreement, assent or acceptance of such [Terms of Service](#).

## **8. PRIVACY POLICY**

You acknowledge and agree that all personally identifiable information collected by Tend.ai through the Site or Services is subject to the Tend.ai [Privacy Policy](#). By accessing or using the Site or the Services, you consent to all actions Tend.ai takes with respect to such information in compliance with the Tend.ai [Privacy Policy](#).

## **9. INDEMNIFICATION**

You shall indemnify, defend, and hold harmless Tend.ai, its affiliates, subsidiaries, licensors, partners, and service providers, and the officers, directors, employees, agents, and representatives of each of them (collectively, the “Tend.ai Entities”) from and against any and all claims, demands, liabilities, losses, damages, judgments, awards, costs, and expenses (including reasonable attorneys’ fees) arising out of or resulting from your access to or use of the Site and/or Content, or any breach or violation of these Terms or applicable law. Tend.ai reserves the right, at its own expense, to assume the exclusive defense and control of any action subject to this indemnification by you, and in such event you agree to cooperate with Tend.ai in defending such action. You agree not to settle any such action or matter without the express prior written consent of Tend.ai. Your indemnification, defense, and hold harmless obligations in these Terms shall survive the termination of your access to or use of the Site and/or these Terms.

## 10. DISCLAIMERS

**THE SITE AND CONTENT ARE PROVIDED TO YOU STRICTLY ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND WHATSOEVER, AND THE TEND.AI ENTITIES HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTEES IN CONNECTION WITH THE SITE, CONTENT, AND THESE TERMS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, THE TEND.AI ENTITIES DO NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, PERFORMANCE, OR AVAILABILITY OF THE SITE OR CONTENT, NOR DO THE TEND.AI ENTITIES REPRESENT, WARRANT OR GUARANTEE THAT ANY DEFECTS, ERRORS OR MALFUNCTIONS IN OR CONNECTED WITH THE SITE OR CONTENT WILL BE CORRECTED, THAT THE SITE, CONTENT, OR THE SERVERS THAT MAKES ANY OF THEM AVAILABLE, ARE FREE OF VIRUSES, TRAPS OR OTHER HARMFUL CODE OR COMPONENTS, OR THAT THE SITE OR CONTENT WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS. ACCORDINGLY, THE TEND.AI ENTITIES SHALL NOT BE LIABLE TO YOU FOR ANY LOSS OR DAMAGE THAT MIGHT ARISE FROM OR IN CONNECTION WITH THE SITE OR CONTENT, FOR EXAMPLE, FROM THE SITE OR CONTENT INOPERABILITY, UNAVAILABILITY, OR SECURITY VULNERABILITIES OR FROM YOUR RELIANCE ON THE QUALITY, ACCURACY, OR RELIABILITY OF THE SITE OR CONTENT, OR ANY INFORMATION FOUND ON, USED ON, OR MADE AVAILABLE IN OR THROUGH THE SITE OR CONTENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES, SO SOME OF THE EXCLUSIONS AND/OR LIMITATIONS IN THIS SECTION 10 MAY NOT APPLY TO YOU.**

IF YOU ARE DISSATISFIED WITH THE SITE AND/OR CONTENT FOR ANY REASON, YOUR SOLE AND EXCLUSIVE RIGHT AND REMEDY IS TO DISCONTINUE ALL YOUR ACCESS TO AND USE OF THE SITE AND CONTENT.

## 11. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE TEND.AI ENTITIES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES ARISING FROM OR RELATED TO YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SITE OR CONTENT, OR OTHERWISE ARISING FROM OR RELATED TO THESE TERMS, WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE OR ADVISED OF THE POSSIBILITY OF SAME. THE TEND.AI ENTITIES’ MAXIMUM AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES OR LOSSES THAT YOU SUFFER IN CONNECTION WITH THE SITE OR CONTENT, OR OTHERWISE WITH THESE TERMS, IS LIMITED TO DIRECT DAMAGES ONLY WHICH SHALL NOT IN ANY EVENT EXCEED THE FEES (IF ANY) PAID BY YOU TO TEND.AI IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY OR \$1,000.00 USD, WHICHEVER AMOUNT IS LESS. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF YOUR REMEDIES UNDER THESE TERMS FAIL OF THEIR ESSENTIAL PURPOSE. ACCESS TO OR USE OF THE SITE AND CONTENT IS AT YOUR SOLE RISK. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN

**CONSEQUENTIAL DAMAGES, SO SOME OF THE EXCLUSIONS AND/OR LIMITATIONS IN THIS SECTION 11 MAY NOT APPLY TO YOU.**

**TEND.AI AND YOU ACKNOWLEDGE AND AGREE THAT THIS SECTION 11 AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN FAIRLY ALLOCATES THE RISKS UNDER THESE TERMS BETWEEN TEND.AI AND YOU IN CONNECTION WITH THE SITE AND CONTENT.**

## **12. RESERVATION OF RIGHTS**

Tend.ai reserves all of Tend.ai's rights, including but not limited to any and all copyrights, trademarks, patents, trade secrets, and any and all other intellectual and proprietary rights that Tend.ai may have in and to the Site, Content, and information that may be provided in, on, or through the Site or Content. Other than as expressly set forth in these Terms, the use of Tend.ai's rights and property requires Tend.ai's express prior written consent. By making access to the Site and/or Content available to you, Tend.ai is not providing you with any implied or express licenses or rights, and, other than as expressly set forth in these Terms, you will have no licenses or rights to make any commercial or other use of the Site or Content without Tend.ai's express prior written consent.

## **13. CHANGE AND SUSPENSION**

**13.1. Changes to the Site.** Tend.ai reserves the right to make changes to, suspend, or discontinue (temporarily or permanently) the Site, Content, or any portion thereof, at any time. You agree that Tend.ai shall not be responsible or liable to you or to any third party for any such change, suspension, or discontinuance.

**13.2. Suspension/Termination of Access.** Tend.ai has the right to deny access to, and to suspend or terminate your access to, the Site, Content, or to any features or portions thereof, at any time and for any reason, including if you breach or violate these Terms. In the event that Tend.ai suspends or terminates your access to the Site, you will continue to be bound by the Terms that were in effect as of the date of your suspension or termination.

## **14. COPYRIGHT INFRINGEMENT**

Tend.ai takes claims of copyright infringement seriously. Tend.ai reserves the right to disable and/or terminate the access to or use of the Site or Content by users who Tend.ai in its sole discretion determines are infringers or repeat infringers. Tend.ai will respond to notices of alleged copyright infringement that comply with applicable law. If you believe any Content accessible on the Site infringes your copyright, you may request removal of such Content (or access thereto) by submitting written notification to Tend.ai's copyright agent designated below. In accordance with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (17 U.S.C. §512) ("DMCA"), your written notice of alleged copyright infringement must include substantially the following:

- your physical or electronic signature;
- identification of the copyrighted work you believe to have been infringed or, if the claim involves multiple works on the Site, a representative list of such works;
- identification of the Content you believe to be infringing in a sufficiently precise manner to allow Tend.ai to locate that Content;
- adequate information by which Tend.ai can contact you (including your name, postal address, telephone number and, if available, email address);
- a statement that you have a good faith belief that use of the copyrighted material is not authorized by the copyright owner, its agent or the law;
- a statement that the information in your written notice is accurate; and

- a statement, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

Tend.ai's designated agent to receive DMCA notices is:

Tend.ai Copyright Notice Agent  
2964 Northwest Terra Meadow Drive  
Bend, Oregon 97701  
contact@Tend.ai

\*NOTE: This contact information is for inquiries regarding potential copyright infringement only.

If you fail to comply with all of the requirements of Section 512(c)(3) of the DMCA, your DMCA notice may not be effective. Please be aware that if you knowingly materially misrepresent that Content on the Site is infringing your copyright, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

#### **15. THIRD PARTY MATERIALS**

The Site or Content may display, include, or make available third-party content (including data, information, applications and other products services and/or materials) or provide links to third-party websites or services (collectively, "Third Party Materials"). You acknowledge and agree that Tend.ai is not responsible for any Third Party Materials, including their accuracy, completeness, timeliness, validity, legality, decency, quality, or any other aspect thereof. Tend.ai does not assume and will not have any responsibility or liability to you or any other person or entity for any Third Party Materials. Third Party Materials and links thereto are provided solely as a convenience to you, and you access and use them at entirely at your own risk and subject to such third parties' terms and conditions.

#### **16. THIRD PARTY PLATFORMS**

Tend.ai may provide the Site or Content to you through third-party websites, operating systems, platforms, and portals, including social networking sites (collectively, "Third Party Platforms"). Additional terms and conditions may apply to you with respect to your use of Third Party Platforms, which are not under Tend.ai's control. Tend.ai does not assume any responsibility or liability for your access to or use of such Third Party Platforms.

#### **17. LINKING TO THE SITE**

You may link to the Site's homepage, provided you do so in a way that is fair and legal and does not damage or take advantage of Tend.ai's reputation, but you must not establish a link in such a way as to suggest any form of association, approval, or endorsement on Tend.ai's part where none exists. You must not establish a link from any website that is not owned by you. The Site must not be mirrored or framed in or on any other website, nor may you create a link to any part of the Site other than the homepage. You agree to cooperate with Tend.ai in causing any unauthorized mirroring, framing or linking immediately to cease. Tend.ai reserves the right to withdraw linking permission with or without notice.

#### **18. MISCELLANEOUS**

**18.1 Applicable Law, Jurisdiction and Venue.** You agree that these Terms and any dispute arising out of or related to these Terms or your access to or use of the Site or Content, or any information available on, in or through the Site or Content, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to any conflict of law provisions. Any legal suit, action, or proceeding arising out of or related to these Terms, the Site, Content, or any information available on, in or through the Site or Content, shall be instituted exclusively in the federal or state courts located in Wilmington, Delaware, and you agree to waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

**18.2 Geographic Restrictions.** Tend.ai is based in the State of Oregon in the United States. Tend.ai makes no claims that the Site, Content or information available on, in or through the Site or Content, are accessible or appropriate outside of the United States. Access to or use of the Site or Content may not be legal by certain persons or in certain countries. If you access or use the Site or Content from outside the United States, you do so on your own initiative and are solely responsible for compliance with all applicable foreign laws.

**18.3 Export Administration.** You agree that the Site and/or Content may be subject to restrictions and controls imposed by the U.S. Export Administration Act, as amended, and you agree to comply with all applicable export control laws and regulations issued from time-to-time by the U.S. Department of Commerce ("DOC") and similar agencies. You represent that the Site and Content will not be transferred or re-exported, directly, or indirectly, into any prohibited country or for any prohibited purpose without further compliance with the validated license requirements of the DOC and/or of other applicable U.S. Government agencies.

**18.4 U.S. Government Users.** If you are a unit or agency of the United States Government, or if rights hereunder are acquired pursuant to a contract with any such unit or agency, you agree that the Site and Content are provided with Restricted Rights, and any use, duplication, or disclosure is subject to the restrictions as set forth in the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 subparagraph (c)(1)(ii), or the Commercial Computer Software -- Restricted Rights at CFR 52.227-19, subparagraphs (c)(1) and (2), as applicable. Manufacturer is Tend.ai 2964 Northwest Terra Meadow Drive, Bend, Oregon 97701.

**18.5 Limitation on Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR ACCESS TO OR USE OF THE SITE, CONTENT, OR ANY INFORMATION AVAILABLE ON, IN OR THROUGH THE SITE OR CONTENT, MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION OR CLAIM ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

**18.6 Waiver of Jury Trial.** YOU HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR ACCESS TO OR USE OF THE SITE, CONTENT, OR ANY INFORMATION AVAILABLE ON, IN OR THROUGH THE SITE OR CONTENT.

**18.7 Waiver and Severability.** Tend.ai's failure to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. If any provision of these Terms is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent possible, and the remaining provisions of these Terms will continue in full force and effect.

**18.8 Headings.** The headings in these Terms are for convenience of reference only and shall not be used to construe or interpret the provisions of these Terms.

**18.9 Force Majeure.** Tend.ai shall not be liable or responsible for, and shall be excused from performance hereunder for, anything that is beyond the reasonable control of Tend.ai.

**18.10 Assignment.** These Terms, and your rights and obligations under these Terms, are not transferable or assignable by you without the express prior written consent of Tend.ai and any attempt by you to assign or transfer them without such consent is null and void.

**18.11 Entire Agreement.** These Terms, including the Privacy Policy, constitute the entire and exclusive understanding and agreement between Tend.ai and you with respect to the subject matter hereof, and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, between Tend.ai and you regarding such subject matter. No terms or conditions contained on or in any purchase order or any other business or other document unilaterally issued by you to Tend.ai will apply to or have any effect on these Terms.

**Questions.** If you have any questions about the Site or these Terms, please contact Tend.ai at [contact@Tend.ai](mailto:contact@Tend.ai).

If you are a California resident, in accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.