

TEND.AI

Terms of Service

(last updated: January 27th, 2017)

These **Terms of Service** (“Terms”) constitute a binding agreement between **you** (“you” or “your”) and **Tend ai Inc.** (“Tend.ai”) with respect to your access to and use of the Tend.ai software (“Software”) accessible on or through www.tend.ai (“Site”) on a software-as-a-services basis. These Terms also apply to the services, if any, available on and through the Site (“Services”) that Tend.ai may choose to make available to you. Registration data and other personally identifiable information that the Software, Site and/or Services 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. You must be at least eighteen (18) years of age to access and use the Software and/or Services. By accessing and using the Software and/or Services you agree to the terms and conditions set forth in these Terms. **If you do not agree with any of these Terms you may not access or use the Software or Services for any purpose and should not check the “AGREE” box during registration.**

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 Software and/or Services thereafter. Your continued use of the Software and/or Services 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 and your payment of the applicable fees, you may access and use the Software and/or Services for your internal business purposes only. You agree not to: (i) modify or delete any copyright, trademark, or other proprietary rights notices that appear in or on the Software, Site and/or Services; (ii) access or use the Software, Site and/or Services for any unlawful purposes or otherwise beyond the scope of the rights expressly granted to you in these Terms; (iii) cause or permit the copying, reverse engineering, disassembly, or decompilation of the Software, Site or Services (except to the extent necessary to achieve interoperability of the Software with an independently created program and provided such activities are expressly permitted by applicable law for achieving such interoperability purposes); (iv) use or permit the use of the Software, Site or Services for commercial time-sharing, rental, or service bureau use, or consulting activities; or (v) modify or create derivative works based on the Software, Site or Services.

3. OWNERSHIP

The Software, Site and Services 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 Software, Site and/or Services are registered and unregistered trademarks 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 Software, Site and/or Services, 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 Software and/or Services may require you to register for an account with Tend.ai. You agree to provide true, accurate, current, and complete information about you 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 your account, or any other breach of security affecting your account. Tend.ai shall not be liable for any losses or damages arising from your failure to protect your username or password.

5. PAYMENT; NO REFUND

You agree to pay to Tend.ai all applicable fees charged to you by Tend.ai for your access to and use of the Software and/or Services. All fees are due from you to Tend.ai upon your receipt of each invoice from Tend.ai and are payable in full by you to Tend.ai within thirty (30) days of your receipt of each such invoice. For any overdue payments hereunder late fees will be charged to you and shall accrue at the lesser of (i) 1% per month; or (ii) the maximum rate allowed under applicable law. All fees hereunder are in U.S. dollars and do not include taxes or levies thereon. If Tend.ai is required to collect or pay any sales, use, GST, value-added, or similar taxes or levies, such taxes (other than taxes based on Tend.ai's net income) and levies shall be billed to and paid by you. All purchases hereunder are final and Tend.ai is under no obligation to make or issue any refund of any fees or amounts paid by you to Tend.ai in connection with the Software and/or Services or otherwise under these Terms.

6. 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, "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 Software, Site and/or Services, 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.

7. DISCLAIMERS

THE SOFTWARE, SITE AND SERVICES 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 SOFTWARE, SITE, SERVICES, 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 SOFTWARE, SITE AND SERVICES, NOR DO THE TEND.AI ENTITIES REPRESENT, WARRANT OR GUARANTEE THAT ANY DEFECTS, ERRORS OR MALFUNCTIONS IN OR CONNECTED WITH THE SOFTWARE, SITE OR SERVICES WILL BE CORRECTED, THAT THE SOFTWARE, SITE, SERVICES, OR THE SERVERS THAT MAKES ANY OF THEM AVAILABLE, ARE FREE OF VIRUSES OR OTHER HARMFUL CODE OR COMPONENTS, OR THAT THE SOFTWARE, SITE OR SERVICES 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 SOFTWARE, SITE OR SERVICES, FOR EXAMPLE, FROM THE SOFTWARE, SITE AND SERVICES INOPERABILITY, UNAVAILABILITY, OR SECURITY VULNERABILITIES OR FROM YOUR RELIANCE ON THE QUALITY, ACCURACY, OR RELIABILITY OF THE SOFTWARE, SITE OR SERVICES, OR ANY INFORMATION FOUND ON, USED ON, OR MADE AVAILABLE IN OR THROUGH THE SOFTWARE, SITE OR SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES, SO SOME OF THE EXCLUSIONS AND/OR LIMITATIONS IN THIS SECTION 7 MAY NOT APPLY TO YOU.

IF YOU ARE DISSATISFIED WITH THE SOFTWARE AND/OR SERVICES FOR ANY REASON, YOUR SOLE AND EXCLUSIVE RIGHT AND REMEDY IS TO TERMINATE YOUR ACCOUNT WITH TEND.AI AND TO DISCONTINUE ALL YOUR ACCESS TO AND USE OF THE SOFTWARE AND SERVICES.

8. 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 SOFTWARE, SITE OR SERVICES, 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 SOFTWARE, SITE OR SERVICES, OR OTHERWISE WITH THESE TERMS, IS LIMITED TO DIRECT DAMAGES ONLY WHICH SHALL NOT IN ANY EVENT EXCEED THE FEES PAID BY YOU TO TEND.AI UNDER THESE TERMS FOR YOUR ACCESS TO AND USE OF THE SOFTWARE OR SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF YOUR REMEDIES UNDER THESE TERMS FAIL OF THEIR ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN CONSEQUENTIAL DAMAGES, SO SOME OF THE EXCLUSIONS AND/OR LIMITATIONS IN THIS SECTION 8 MAY NOT APPLY TO YOU.

TEND.AI AND YOU ACKNOWLEDGE AND AGREE THAT THIS SECTION 8 FAIRLY ALLOCATES THE RISKS UNDER THESE TERMS BETWEEN TEND.AI AND YOU, AND THAT TEND.AI'S FEES IN CONNECTION WITH THE SOFTWARE AND SERVICES REFLECT THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

9. 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 Software, Site, Services, and information that may be provided in, on or through the Software, Site or Services. 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 Software, Site and/or Services 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 Software, Site or Services without Tend.ai's express prior written consent.

10. CHANGES; SUSPENSION AND TERMINATION

10.1 Changes to the Site. Tend.ai reserves the right to make changes to, suspend, or discontinue (temporarily or permanently) the Software, Site, Services or any portion thereof at any time in its sole discretion. You agree that Tend.ai shall not be liable to you or to any third party for any such change, suspension, or discontinuance.

10.2 Suspension/Termination of Access. Tend.ai has the right to deny access to, and to suspend or terminate your access to, the Software, Site or Services, or to any features or portions thereof, at any time and for any reason, including if you breach or violate these Terms.

10.3 Termination of Terms. These Terms shall be effective commencing upon your access to or use of the Software or Services, and shall remain in effect until these Terms are terminated as provided for in these Terms. Either Tend.ai or you may terminate these Terms upon ten (10) days prior written notice of such termination to the other party hereto. Upon any termination of these Terms, all rights granted to you under these Terms shall immediately terminate, including your access to and use of the Software and/or Services. Sections 3, and 5 through 11 inclusive, of these Terms shall survive any termination of these Terms.

11. MISCELLANEOUS

11.1 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 Software, Site or Services, or any information available on, in or through the Software, Site or Services, 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 Software, Site, Services, or any information available on, in or through the Software, Site or Services, 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.

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

11.3 Export Administration. You agree that the Software, Site and/or Services 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 Software, Site and Services will not be sold to, 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.

11.4 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 Software, Site and Services 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.

11.5 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 SOFTWARE, SITE, SERVICES, OR ANY INFORMATION AVAILABLE ON, IN OR THROUGH THE SOFTWARE, SITE OR SERVICES, 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.

11.6 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 SOFTWARE, SITE, SERVICES, OR ANY INFORMATION AVAILABLE ON, IN OR THROUGH THE SOFTWARE, SITE OR SERVICES.

11.7 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.

11.8 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

11.9 Force Majeure. Except for your obligation to make payment of fees or amounts due under these Terms, non-performance of these Terms by you or by Tend.ai shall be excused to the extent that performance is beyond the reasonable control of and not caused by the negligence of the non-performing party.

11.10 Independent Contractors. The relationship between Tend.ai and you is that of independent contractors, and not one of principal and agent, joint venture, or partnership.

11.11 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.

11.12 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 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 Software, Site, Services, or these Terms, please contact Tend.ai at contact@Tend.ai.