

TEND VR LTD**VR SOFTWARE LICENCE & HARDWARE SUPPLY TERMS****Engagement Form**

Tend	TEND VR LTD a company incorporated and registered in England and Wales with company number 11552335 whose registered office is at Unit 24, St. Olav's Court, Lower Road, London, SE16 2XB. Email Address: [EMAIL]
Company	[NAME OF CLIENT COMPANY] a company incorporated and registered in [TERRITORY] with company number [NUMBER] whose registered office is at [ADDRESS] Email Address: [EMAIL]
Commencement Date	[INSERT DATE]
Equipment	means the VR equipment we may provide to the Company, including: - [NUMBER] VR Headsets - [INCLUDE OTHER EQUIPMENT DETAILS] The VR Equipment also includes the Software which is integrated into the VR Equipment.
Software	[INCLUDE NAME OF SOFTWARE AND BRIEF DETAILS IF APPLICABLE]
Site	[INSERT DELIVERY LOCATION/LOCATION OF VR EQUIPMENT USE]
Delivery Date	[INSERT DATE]
Equipment Hire Period	From: [INSERT DATE] To: [INSERT DATE]
Charges	[PLEASE INSERT DETAILS] Deposit: [INSERT] Monthly Payments: [INSERT AMOUNT]
Payment Schedule	[PLEASE INSERT DETAILS] Deposit: [INSERT] (i.e. payable on the date of this agreement) Monthly Payments: [INSERT] (i.e. payable in advance on the 1 st day of each month)
Maintenance Services	[Please include details of any maintenance services if applicable]
Special Terms	[Please include (if applicable)]

This agreement between Tend and Company consist of this Engagement Form, the VR Software Licence and Hardware Supply Terms and the EULA. Words and phrases defined in the VR Software Licence and Hardware Supply Terms shall have the same meaning when used in this Engagement Form. Should there be any conflict between the terms of this Engagement Form and the VR Software Licence and Hardware Supply Terms, the terms of this Engagement Form shall prevail.

We agree to the above:

Signed for and on behalf of Tend Name: _____ Title: _____ Signature: _____ Date: _____	Signed for an on behalf of Company Name: _____ Title: _____ Signature: _____ Date: _____
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VR SOFTWARE LICENSE AND VR HARDWARE SUPPLY TERMS

AGREED TERMS

1. Interpretation

1.1 The following definitions and rules of interpretation apply in this agreement:

- a. **Applicable Laws:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes from time to time in force which apply to parties and the hire of the Equipment.
- b. **Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- c. **Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.
- d. **Charges:** means the payments made by or on behalf of the Company for the hire of the Equipment and license of the Software.
- e. **Commencement Date:** means the date set out in the Engagement Form.
- f. **Delivery:** the transfer of physical possession of the Equipment to the Company at the Site.
- g. **Delivery Date:** means the date set out in the Engagement Form.
- h. **Deposit:** means the deposit amount set out in the Charges and Payment Schedule section as detailed in the Engagement Form.
- i. **Engagement Form:** means the engagement form to which these Terms are attached.
- j. **Equipment:** the items of equipment listed in the Engagement Form.
- k. **Equipment Hire Period:** the period of hire for the Equipment as set out in the Engagement Form.
- l. **EULA:** means the End User Licence Agreement as set out in Schedule 1 applicable to the Equipment and the Software as may be updated from time to time and is applicable to the Company and to every end-user of the VR Equipment.
- m. **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- n. **Payment Schedule:** means the payment schedule as set out in the Engagement Form which sets out the sums payable under this agreement.
- o. **Risk Period:** the period during which the Equipment is at the sole risk of the Company as set out in clause 5.2.
- p. **Site:** the Company's premises as set out in the Engagement Form.
- q. **Total Loss:** the Equipment (or any part of it) is, in Tend's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.
- r. **Terms:** means these VR Software License and VR Hardware Supply Terms.
- s. **VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 In this Agreement:

- (a) the words in particular, such as, include or including do not denote an exhaustive list;

- (b) references to statutes, statutory instruments and regulations are references to those statutes, statutory instruments and regulations as amended, re-enacted and/or replaced from time to time; and
- (c) reference to writing or written includes email.

2. Equipment Supply and Software Licence

- 2.1 Tend shall provide the Equipment to the Company:
 - 2.1.1 for use at the Site on a rental basis subject to the terms and conditions of this agreement; and
 - 2.1.2 for the duration of the Equipment Hire Period, unless and until this agreement is terminated earlier in accordance with its terms.
- 2.2 The Software forms part of and is integrated into the Equipment. The Company is permitted to use the Software during the Equipment Hire Period (unless the Company fails to make payment of the Charges).
- 2.3 Subject to the Company complying with the terms of this agreement, Tend grants to the Company a non-exclusive, non-transferable right, without the right to sub-licences, to permit the use of the Software during the Equipment Hire Period.

3. Charges and Deposit

- 3.1 The Company shall pay the Charges to Tend in accordance with the Payment Schedule which shall be made in full and cleared funds to the bank account nominated by Tend.
- 3.2 The Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Company at the rate and in the manner from time to time prescribed by law.
- 3.3 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 3.4 Tend shall be entitled to increase the Charges, at the start of each renewal period (if any) upon 30 days' prior notice.
- 3.5 If the Company fails to make a payment due to Tend under this agreement by the due date, then, without limiting Tend's remedies under 9, the Company shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 3.6 Any verifiable expenses incurred by Tend wholly and exclusively for the purpose of providing on-Site support in relation to the Equipment/Software and pre-approved by the Company shall be reimbursed to Tend by the Company.
- 3.7 The Deposit is a deposit against default by the Company of payment of any Charges or any loss of or damage caused to the Equipment. On the date of this agreement, the Company shall pay the full amount of the Deposit to Tend. If the Company fails to pay any of the Charges in accordance with the Payment Schedule, or causes any loss or damage to the Equipment (in whole or in part), Tend shall be entitled to apply the Deposit against such default, loss or damage. The Company shall pay to Tend any sums deducted from the Deposit within [ten (10)] Business Days of a demand for the same. Subject to clause 4.4, the Deposit, or balance of the Deposit, (except where any deductions have reduced the balance of the Deposit in full) shall be refundable within [ten (10)] Business Days following the end of the Rental Period.

4. Delivery

- 4.1 Tend shall use reasonable endeavours to effect Delivery by the Delivery Date. Risk shall transfer in accordance with clause 5.2 of this agreement.
- 4.2 The Company shall procure that a duly authorised representative of the Company shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Company has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by Tend, the Company's duly authorised representative shall sign a receipt confirming such acceptance.
- 4.3 If the Company fails to accept delivery of the Equipment on the Delivery Date, then, except where such failure is caused by Tend's failure to comply with its obligations under this agreement:
- 4.3.1 the Equipment shall be deemed to have been delivered at 9:00am on the Delivery Date; and
 - 4.3.2 Tend shall store the Equipment until delivery takes place and charge the Company for all related costs and expenses (including insurance).
- 4.4 If such failure to accept delivery pursuant to clause 4.3 persists for a duration of more than [fourteen (14)] days, it shall be deemed that the Company no longer wishes to receive the Equipment and this agreement shall automatically terminate. In such an event, the Deposit shall be non-refundable and the Company shall be responsible for all related costs and expenses (including insurance) which shall be payable by the Company immediately upon receipt of Tend's invoice.

5 Title, Risk and Insurance

- 5.1 The Equipment shall at all times remain the property of Tend, and the Company shall have no right, title or interest in or to the Equipment (save for the right to possession and use of the Equipment, subject to the terms and conditions of this agreement).
- 5.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Company on Delivery. The Equipment shall remain at the sole risk of the Company during the Equipment Hire Period and any further term during which the Equipment is in the possession, custody or control of the Company (**Risk Period**) until such time as the Equipment is re-delivered to Tend.
- 5.3 During the Equipment Hire Period and the Risk Period, the Company shall, at its own expense, obtain and maintain adequate insurance with a reputable insurer to cover against risks that would normally be insured by a prudent business-person in connection with the risks associated with this agreement and shall provide a copy of the particulars of this insurance to Tend upon reasonable written request.
- 5.4 The Company shall give immediate written notice to Tend in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Company's (or any of its personnel's) possession or use of the Equipment.

6 Company Obligations

- 6.1 The Company shall during the term of this agreement:
- 6.1.1 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions and any other instructions that Tend may provide from time to time;
 - 6.1.2 take such steps (including compliance with all safety and usage instructions provided by Tend) as may be necessary to ensure that the Equipment is at all

times safe and without risk to health when it is being set, used, cleaned, stored or maintained by a person at work;

- 6.1.3 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery Date (fair wear and tear only excepted). In the event any repairs are required, the Company shall notify Tend immediately and the Company shall be responsible for the costs and expenses of any replacement of worn, damaged and lost parts, and the costs and expenses incurred for making good any damage to the Equipment;
- 6.1.4 not make any alterations to the Equipment and shall not remove any existing component (or components) from the Equipment. Title in any and all substitutions, replacements, renewals made in or to the Equipment shall vest in Tend immediately on installation;
- 6.1.5 keep Tend fully informed of all material matters relating to the Equipment;
- 6.1.6 keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without Tend's prior written consent;
- 6.1.7 permit Tend or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 6.1.8 not part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 6.1.9 not use the Equipment for any unlawful purpose;
- 6.1.10 and shall procure that any person that it provides the Equipment to, complies at all times with the EULA;
- 6.1.11 ensure that at all times the Equipment remains identifiable as being Tend's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment; and
- 6.1.12 deliver up the Equipment at the end of the Equipment Hire Period to such address as Tend requires, or if requested by Tend, allow Tend or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment.

6.2 The Company shall not:

- 6.2.1 cause or permit any unauthorised third party access to the Equipment and/or Software;
- 6.2.2 reverse engineer or make a copy of all or any part of the Software; or
- 6.2.3 modify any of the Equipment and/or Software or combine or incorporate any of the Equipment and/or Software in any other program or system.

6.3 The Company acknowledges that Tend shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Company or any of its officers, employees, agents and contractors and the Company shall indemnify Tend in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Tend arising out of, or in connection with any failure by the Company to comply with its obligations in this clause 6.

7 Warranties

- 7.1 Each party warrants that it has the legal right and authority to enter into and perform its obligations under this agreement.
- 7.2 Company warrants, represents and undertakes that it shall:
- 7.2.1 comply with all Applicable Laws which apply to its use of the Equipment and/or Software and acknowledge that Tend is merely a provider of access to the Equipment/Software and accepts no responsibility for the Company's use thereof or compliance with Applicable Laws or to any Company staff (other than to the extent Tend is required by Applicable Laws);
 - 7.2.2 not use the Equipment/Software for any unlawful purposes; and
 - 7.2.3 not do, or omit to do, anything which disparages, defames or puts into disrepute Tend, its trade marks/trading names, goodwill and/or the Equipment/Software.
- 7.3 Tend warrants that:
- 7.3.1 it will perform its obligations under this agreement with reasonable care and skill;
 - 7.3.2 the Equipment and Software will at the date of Delivery conform in all material respects with the documentation accompanying the Equipment and Software; and
 - 7.3.3 the Equipment will be of satisfactory quality.
- 7.4 Tend gives no other warranty, express or implied, and all warranties implied by operation of law or by custom are hereby excluded to the fullest extent permitted.
- 7.5 Subject to clause 7.6, if the Equipment/Software do not meet the criteria set out in clause 7.3, Tend will, at its sole option, either:
- 7.5.1 modify, improve or update the Equipment/Software to make them conform within a reasonable period;
 - 7.5.2 return all or part of the Charges paid for the use of the Equipment/Software for the period that it failed to conform; and
 - 7.5.3 this shall be Company's exclusive remedy for any breach of this clause 7.5.
- 7.6 Tend shall have no liability for any breach of this agreement, if any claim relates to:
- 7.6.1 a modification of the Equipment/Platform in combination with any third party software, data or other equipment by the Company or its agents;
 - 7.6.2 the Company's use (or use by Company staff) of the Equipment/Software in a manner contrary to the instructions given to the Company by Tend;
 - 7.6.3 the Company's use (or use by Company staff) of the Equipment/Software after notice of an alleged or actual infringement has been given to the Company by Tend or by any appropriate authority; or
 - 7.6.4 where a claim for infringement arises directly in respect of a feature which was specified by the Company for their specific use only or on the Company's behalf.

8 Limitation of Liability

- 8.1 References in this clause 8 include every kind of liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in this agreement limits any liability which cannot legally be limited including liability for:
- 8.2.1 death or personal injury caused by negligence;
 - 8.2.2 fraud or fraudulent misrepresentation; and

- 8.2.3 any other liability which cannot be excluded by law.
- 8.3 Subject to clause 8.2, Tend will not have any liability to the Company under or in connection with this agreement for any:
- 8.3.1 loss of profits or revenue;
 - 8.3.2 loss of opportunity;
 - 8.3.3 loss of contracts;
 - 8.3.4 loss of anticipated savings;
 - 8.3.5 loss of use or corruption of software, data or information;
 - 8.3.6 loss of or damage to goodwill; or
 - 8.3.7 any indirect or consequential loss.
- 8.4 Subject to clauses 8.2 and 8.3, Tend's total liability to the Company under or in connection with this agreement will be limited, in respect of all claims (connected or unconnected) in any consecutive 12-month period, to an amount equal to the Charges paid to Tend by the Company in that period.
- 8.5 For the avoidance of doubt, the Company acknowledges that the Equipment and Software are in no way intended to be a substitute for professional medical treatment, consultation, advice or diagnosis. Company shall not (and shall procure that any of its staff or agents shall not) rely on any information or guidance we provide you with in respect to the Equipment/Software as an alternative to medical advice from a doctor or healthcare professional and we expressly disclaim all responsibility and shall have no liability for any damages, loss, injury or liability of any kind suffered by Company's staff or agents as a result of Company's provision of such Equipment/Software to any of Company's staff or agents (to the fullest extent permitted by law).

9 Termination

- 9.1 Either party may terminate this agreement at any time with immediate effect by giving notice to the other party if:
- 9.1.1 the other party commits a material breach of this agreement and, if such breach is remediable, fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
 - 9.1.2 the other party: (i) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; (ii) the other party appoints a person (including the holder of a charge or other security interest) to manage or take control of the whole or part of its business or assets, or gives notice of an intention to appoint such a person or files with any court documents relating to such an appointment; (iii) the ability of the other party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order an amount less than the sums owing to them in satisfaction of those sums; or (iv) any process is instituted which could lead to the other party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).
- 9.2 Without affecting any other right or remedy available to it, Tend may terminate this agreement:
- 9.2.1 with immediate effect by giving written notice to the Company if the Company fails to pay any amount due under this agreement on the due date for payment and remains in default for more than seven (7) days after being notified in writing to make such payment; or
 - 9.2.2 at any time upon [one (1)] months' notice in writing to the Company.
- 9.3 The agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

10 Consequences of termination

- 10.1 On termination or expiry of this agreement, howsoever caused:
- 10.1.1 Tend's consent to the Company's possession of the Equipment shall terminate;
 - 10.1.2 Tend may, by its authorised representatives, without notice and at the Company's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located;
 - 10.1.3 the Company shall ensure the safe and proper storage of the Equipment until it has been collected by Tend; and
 - 10.1.4 without prejudice to any other rights or remedies of Tend, the Company shall pay to Tend on demand:
 - a) all Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to 3.5; and
 - b) any costs and expenses incurred by Tend in recovering the Equipment or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 10.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 10.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

11 Force Majeure

Neither party shall be in breach of this agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for two (2) months, the party not affected may terminate this agreement by giving seven (7) days' written notice to the affected party.

12 Confidential Information

- 12.1 Each party undertakes that it shall not at any time during or after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- 12.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this 12; and
 - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

13 Intellectual Property

- 13.1 All Intellectual Property Rights in the Equipment and Software (including any underlying source code and software) is the property of Tend, its licensors or other relevant third parties and the Company shall have no rights in respect of any Tend Intellectual Property Rights except as expressly granted under this agreement.
- 13.2 Notwithstanding any other provision of this agreement, licenses granted by Tend under this agreement are subject to the payment by the Company of all amounts owing to Tend under the agreement in full and on time, and subject to which Tend hereby grants to the Company a non-exclusive, personal, non-transferrable, revocable, royalty-free, right and licence to access and use the Equipment and Software in accordance with this agreement for the duration of the Equipment Hire Period.

14 Data Privacy

- 14.1 In the event that personal data is being shared or processed by the parties, both parties shall ensure that they will comply with Tend's Privacy Policy (accessible through this [\[LINK\]](#)).

15 Entire agreement.

- 15.1 This agreement constitutes the entire agreement between the parties.
- 15.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

16 Assignment and other dealings.

- A party shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the agreement without the prior written consent of the other party.

- 17 Variation.** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 18 Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- 18.1 waive that or any other right or remedy; or
- 18.2 prevent or restrict the further exercise of that or any other right or remedy.

- 19 Severance.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted under clause 19 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20 Notices.

- 20.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be: (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (ii) sent by email to the addresses set out in the Engagement Form.
- 20.2 Any notice shall be deemed to have been received (i) if delivered by hand, at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other

next working day delivery service, at 9.00 am on the second Business Day after posting; or (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21 Third party rights. No one other than a party to this agreement shall have any right to enforce any of its terms.

22 Governing law. This agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the laws of England.

23 Jurisdiction. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

SCHEDULE 1

END USER LICENCE AGREEMENT

Terms of Use

TEND VR LTD

Last updated: NOVEMBER 2023

1. INTRODUCTION

- 1.1 These terms and conditions (the '**T&Cs**') govern your use of the Tend platforms (including the virtual reality technologies, applications, products, software and other materials under the 'Tend' brand) ('**Software**') as may be made available by Tend VR Ltd ('**Tend**'). We've tried to keep them as short as possible, to help you understand how you can use the Software.
- 1.2 By using the Software, you are agreeing to be bound by and become a party to these T&Cs. If you do not agree to all of the terms set out in these T&Cs, you should not use the Software.
- 1.3 In most cases, the Software will be pre-loaded onto all or part of our VR equipment, however we may offer the Software through various application stores including, without limitation, Meta Quest via the Meta Store and/or such other application stores as we may determine from time to time (each a '**Store**'). That means you need a Store account to use the Software, and your use of each Store is subject to the terms of use applicable to that Store (as may change from time to time).
- 1.1 By using the Software, you confirm that you are either 13 years of age or older. In addition, if you are under the age of 18, you must have your parent or legal guardian's consent to use the Software and your parent or legal guardian must agree to these T&Cs and explain them to you.
- 1.4 Please read and follow the Health and Safety Notice at section 6 below before you use our Software.

2. SUMMARY

- 2.1 These T&Cs are a legal agreement between us, please read them carefully.
- 2.2 These T&Cs describe how you are allowed to use the Software.
 - 2.3 If you break these T&Cs, we may stop you using the Software, contact you about them or exercise other rights available to us.
 - 2.4 The Software is provided on an 'as is' and 'as available' basis and we make no (and hereby disclaim all) representations and warranties with respect to the Software, subject to your mandatory consumer rights, to the extent permitted by applicable law.
- 2.5 These T&Cs may change from time to time. Please refer to section 11.2 below.

3. WHAT YOU CAN DO

- 3.1 As long as you follow these T&Cs, you can use the Software for your non-commercial, personal use as described herein. We grant you a non-exclusive, revocable, non-transferable, non-sublicensable, limited right and license to do so. As long as you follow the rest of these T&Cs, you can use the Software in the following ways:
 - 1.1.1 To use the Software. We grant you a non-exclusive, revocable, non-transferable, non-sublicensable, limited right and license to use the Software for your personal, non-commercial use in accordance with these T&Cs. We do not grant you ownership of the Software itself.
 - 1.1.2 To use and access the Software to store and track your progress. For the avoidance of doubt, any data stored for the purposes of tracking your progress shall be stored in accordance with section 14 below.
 - 1.1.3 To use upgrades, updates and additional Software-related content which we may make available from time to time (although we are not obliged to provide that or any updates, upgrades or support).

2. **WHAT YOU CANNOT DO**

- 2.1 We use commercially reasonable endeavours to protect our Software and users, and it is important that the Software is not used in a way which is unfair or which might harm our rights or the rights of others. Accordingly, we reserve the right to take any action available to us with respect to any conduct that violates the terms or spirit of these T&Cs.
- 2.2 The following sets out some of the things that you cannot do with any of the Software:
 - 2.2.1 do not share, rent, resell, or make available copies of the Software (or any 'hacked' versions) or otherwise use the Software commercially in any way except as expressly permitted by law (such as under 'fair dealing or 'fair use' laws);
 - 2.2.2 do not cheat, rig, fix, circumvent rules or processes, use multiple accounts, exploit 'loopholes' or bugs, or use our Software in a way which is not within the spirit intended by our T&Cs or in a way which may harm the experience of other users of the Software;
 - 2.2.3 do not modify or adapt the Software or hack, translate, creative derivative works based on the Software, or otherwise tamper with it;
 - 2.2.4 do not make public or commercial use, by any means, of any of the Software without our prior written consent;
 - 2.2.5 do not reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for any underlying software or other intellectual property used to provide the Software;
 - 2.2.6 where applicable, do not share any password or security information you use to access the Software with any other person;
 - 2.2.7 do not delete, obscure, remove or otherwise prevent the proper display of intellectual property (including without limitation copyright and trade mark notices or other legal lines or credits) notices in our Software;
 - 2.2.8 do not do anything (or attempt to do anything) which might disrupt use or maintenance of the Software by us or other users, or which could threaten, harass or upset other users of the Software or our community; and
 - 2.2.9 do not make anything available on or through or in connection with the Software that violates the rights of third parties (including without limitation their intellectual property or privacy rights).
- 2.3 We may make codes of conduct and usage rules and guidance available to you, which may provide additional rules and guidance about your use of our Software. We require that you comply with these rules so that we can properly operate our Software and to ensure that our users have a safe and fair experience. To the extent of ambiguity or conflict between a code of conduct and these T&Cs, these T&Cs prevail.

3.2 Please make sure you read these T&Cs carefully and understand them.

- 3.3 The Software often requires internet access to install and run, may download substantial content from the internet, and your data usage while using them may be significant. You are responsible for all data, roaming and other similar charges (or consumption of data or roaming allowances included in your mobile data or similar service package) arising from your installation and use of the Software and we recommend that you connect to a WiFi network.

- 3.4 If we are threatened with or face legal action because you break these T&Cs, we may hold you responsible and you will need to compensate and pay us back for any damage or losses we suffer as a result, including legal and other expenses.
- 3.5 If you do not comply with these T&Cs, we have the right to suspend, terminate or otherwise take under review your right to use the Software and otherwise granted in these T&Cs.

4. **CONTENT IN OUR SOFTWARE**

- 4.1 The Software and its content are protected by intellectual property rights (including copyright and trade mark rights) owned by us or our licensors. You have no intellectual property or other rights in, or to, the Software or its content, and are only granted a limited licence to use (not sell) the Software in accordance with these T&Cs. All rights in the Software and its content are reserved by us and our licensors.

3. **HEALTH AND SAFETY PRECAUTIONS**

PLEASE READ THIS NOTICE BEFORE YOU USE OUR SOFTWARE (INCLUDING WITH VR EQUIPMENT)

- 3.1 The Software may contain flashing/strobe lights, realistic images, and simulations.
- 3.2 Some people experience side effects such as motion sickness, epileptic seizures, momentary loss of consciousness, dizziness, motion sickness or nausea when viewing certain types of flashing light or pattern, including when using VR equipment (including VR headsets and sensors) and viewing VR content. This may happen where a person has not previously suffered in this way and have no known symptoms or history of such side effects. If you, or anyone considering using our Software suffers or has suffered in this way, has a condition which makes this possible or has experienced similar symptoms, please consult a doctor before using the Software. If you or they are already using the Software please stop and consult a doctor.
- 3.3 If you or any part of you feels tired, fatigue or discomfort whilst using the Software please stop and rest. If it continues after you stop using the Software please consult a doctor. If you have suffered or suffer from an injury, the use of the Software, particularly together with any VR equipment, can aggravate it. If relevant please consult a doctor. Failure to follow this advice may result in long term injury.

PLEASE FOLLOW THESE RECAUTIONS WHENEVER USING THE SOFTWARE WITH VR EQUIPMENT

- 3.4 Please:
 - 4.1.1 only use the Software with VR equipment in a safe environment;
 - 4.1.2 be aware of your surroundings before using the Software with VR equipment;
 - 4.1.3 do not use the Software, or VR equipment, if you are sick or feel tired, have fatigue or discomfort, are under the influence of alcohol or drugs, or hung-over;
 - 4.1.4 do not use the Software with VR equipment while in a moving vehicle such as a car, bus, or train or while walking;
 - 4.1.5 please take precautions as may be advised by your doctor in the event you are pregnant; and
 - 4.1.6 do not use the Software with VR equipment for too long at any one time, please follow all guidance applicable to or accompanying the

Software you use in respect of playing time and take a 10 to 15 minute break every 30 minutes.

5. OUR LIABILITY

- 5.1 Nothing in these T&Cs will limit any of your rights which may not be excluded under law. This means that, notwithstanding any other terms in these T&Cs our liability to you for personal injury or death caused by our negligence is not excluded or limited, nor is our liability to you for any fraud, or fraudulent representation we make.
- 5.2 Other than as mentioned above, our overall liability to you under or in connection with these T&Cs and your use of the Software, is limited to the amount you have paid to use the relevant Software, or, where no price was paid, £10.
- 5.3 The Software, along with any updates, upgrades and any additional content, are provided 'as is'. That means we don't make any promises to you about the Software other than that it will be of satisfactory quality, as described, and fit for purpose. We don't make any other promises about the Software.
- 5.4 We'll use reasonable skill and care to provide the relevant Software but can't guarantee there won't be any errors, bugs or interruptions, or that our Software will not cause any problems with your device.
- 3.5 If we release a version of the Software which is not yet complete, because we want to give you early access, then you'll need to bear in mind that it may have some errors, bugs or interruptions.
- 5.5 Please do let us know straight away if you discover any problems with the Software, so we are aware and can decide whether it is something we need to address in a future release or update (if there is a future release or update). You can contact us to let us know about any problems with the Software at the following email address: [\[INSERT EMAIL ADDRESS\]](#).

6. STORE TERMS

The ways in which you can use the Software may also be controlled by the relevant Store's terms and conditions and policies as made available to you by the Store. To the extent there is a conflict between the terms of these T&Cs and the terms of the Store from which you purchased (where applicable) or installed the Software, the Store's terms shall prevail to the extent of the conflict.

7. OPERATING SYSTEM AND DEVICE REQUIREMENTS

Our Software requires a certain operating system version (or later) and a minimum amount of memory to use the Software. Please review the Software-specific minimum requirements where these are made available to you in the relevant Software description / store page information to ensure that the Software is compatible with your device.

8. TERMINATION AND SERVICE OUTAGE

- 8.1 We may temporarily discontinue any or all Software, and any and all services and content available through them at any time for the purposes of upgrades, maintenance or other service administration reasons. We will use our reasonable endeavours to limit the length of time this occurs for.
- 8.2 We may end your rights to use the Software at any time if you breach these T&Cs. If what you have done can be put right, we may, in our sole discretion, give you a reasonable opportunity to do so. Where you have paid for Software, content or services in connection with our Software, and your rights have been terminated in accordance with this clause because of your breach of these T&Cs, we may not refund you.

- 3.6 We may terminate our agreement with you upon reasonable notice to you in certain circumstances. This may happen, without limitation, because we choose to end the availability of a particular element of the Software and/or all of the Software. If your use of the Software was free of charge, you will not be entitled to compensation in this event. If you paid for the Software, content or services in connection with the Software, you will not be entitled to a refund where you have substantially had the enjoyment of what you had paid for. Where you have not had a reasonable period of opportunity to enjoy the paid-for Software, we may offer you a partial or full refund.
- 3.7 Our agreement with you shall terminate automatically if you delete any account for the Software.

9. **GENERAL**

- 9.1 These T&Cs do not affect any legal rights you may have under the law which cannot be excluded or limited.
- 3.8 We may change or update these T&Cs from time to time, but changes only affect you to the extent they can legally apply. For example, if we release an update with a new set of T&Cs, and you don't use the update, then the old set of T&Cs applies, but if you do use the updates or if you use parts of the Software that relies on our ongoing online services then the new T&Cs will apply. Please check back at our website and/or application from time to time in case of updates to the T&Cs.
- 9.2 We may transfer our rights and obligations under these T&Cs to another organisation. We will endeavour to let you know if that happens by way of notice and/or update on our website and we will ensure that your rights under these T&Cs are unaffected. You may not transfer your rights or obligations under these T&Cs unless we expressly agree to it in writing.
- 9.3 Except where expressly stated to the contrary in these T&Cs, these T&Cs do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these T&Cs.
- 9.4 Even if we delay in enforcing these T&Cs and/or our rights, we can still enforce these T&Cs and/or our rights later. If we do not insist immediately that you do anything you are required to do under these T&Cs, or if we delay in taking steps in respect of your breaking of any term of these T&Cs, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
- 9.5 These T&Cs are governed by English law and you can bring proceedings in respect of the relevant Software or these T&Cs in the English courts. In addition you may have the legal right to bring proceedings in your local jurisdiction. For instance if you live in Scotland you can bring legal proceedings in either the Scottish or the English courts.

4. **COMPLAINTS AND ALTERNATIVE DISPUTE RESOLUTION**

- 4.1 Should you have any queries or complaints, please get in touch via the contact information set out in section 13 below.
- 4.2 Alternative dispute resolution is a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court. If you are not happy with how we have handled any complaint, you may want to consider an alternative dispute resolution provider. In addition, please note that if you are in Europe, disputes may be submitted for online resolution to the European Commission Online Dispute Resolution platform.

10. **COMPANY AND CONTACT INFORMATION**

In these T&Cs, '**we**', '**us**' and '**our**' refers to Tend Ltd, a company incorporated in England & Wales, with company number 11552335 and its registered office at Unit 24, St. Olav's

Court, Lower Road, London, SE16 2XB. Our VAT number is [INSERT NUMBER]. You can contact us using the following information:

By Post: to our registered office address above

Email: [INSERT EMAIL ADDRESS]

11. **PRIVACY**

11.1 Under data protection legislation, we are required to provide you with certain information about who we are, how we process your personal data and for what purposes and your rights in relation to your personal data and how to exercise them.

11.2 Generally, you provide most of the personal information we collect directly, which may include your name, email address, IP address, location data when you sign up for our Software and the information you may provide to us when you elect to provide answers to any of our available surveys when you are using our Software and the VR equipment.

11.3 Our Software and VR equipment are being provided with the intention of providing an aid for Mindfulness Based Cognitive Therapy ("MBCT") courses and such other tools as we may determine from time to time with respect to mental wellbeing. We may provide users with the opportunity to use our Software as well as being able to track their progress throughout their use of the Software. Some personal data you therefore input, may be categorised as sensitive personal data as this could contain certain physical or mental health conditions, as well as biometric data (i.e. physical and behavioural characteristics) which may require special treatment or a higher level of protection.

11.4 As we are requirement to have a legal basis to use your personal information, we have set these out below:

11.5 Information you give us:

11.5.1 where you fill in a form on any of our platforms, website, request information or contact us by email or social media channels, our legal basis is that it is in our legitimate interests as a business to be able to respond to the enquiries we get;

11.5.2 where you have enquired about our services, are using our Software for its purpose and are inputting information within the Software (such as any voice recordings), our legal basis for these matters is that it is in our legitimate interests, is necessary for us to fulfil a contract with you and is necessary to improve and update our Software;

11.5.3 if you have signed up to follow us via email, social media and other means and have agreed that we can send you marketing, we may use this in connection to tell you about news related to us and the Software. We do this on the legal basis that you have consented to us sending you marketing. You have the right to change your mind about this at any time and there will be unsubscribe links in all marketing emails we send you; and

11.5.4 which may constitute sensitive personal data. This is where you have provided sensitive personal data when using our Software (i.e. providing responses to any survey questions and answers) where this data will be used solely for the purposes of update you on your progress and mapping any survey responses to our mental health scoring matrixes. Where we are required to obtain your explicit consent, we will make this clear within the Software and will obtain this prior to processing any sensitive personal data.

11.6 Information we collect about you from your use of the Software: where we collect voice data (if any), any movement data, we will endeavour to ensure this

will be anonymised however generally, this will not be anonymised as it will be kept against your profile name to ensure the Software is appropriate for you. Our legal basis is that it is in our legitimate interests as a business to update and improve our Software as well as to complete our contractual requirement of providing our Software to you and for the purposes to which you have provided your explicit consent; if we collect any data through cookies for example, our legal basis is that it is in our legitimate interests where cookies are essential, and where they are non-essential, our legal basis is that you have provided your consent.

- 11.7 If you have an account for the Software, you can request to receive an exported file of the personal data we hold about you, including any data you have provided to us. You can request that we erase any personal data we hold about you. This does not include any data we are obliged to keep for administrative, legal or security purposes.
- 11.8 Please note that if you don't provide the personal information we need when we ask for it, we may not be able to respond to you or enter into a contract with you (for example, we may not be able to answer any queries you have made). Where we do process your personal information on consent, you have the right to withdraw your consent at any time.
- 11.9 We will only transfer your personal data outside of the UK or EEA where our third party service providers (as set out above) are based outside the UK or EEA, have support services located outside the UK or EEA or host personal data outside the UK and EEA. We only share personal data where we have a legal basis for doing so and do this based on appropriate adequacy decisions, implemented Standard Contractual Clauses or International Data Transfer Agreements.
- 11.10 If you require any further information regarding how we process and store your personal data, please find further information as set out in our Privacy Policy *[Link to Privacy Policy]* or email us at the following email: [\[EMAIL ADDRESS\]](#).