

**Fend Incorporated**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Fend Incorporated ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



## Terms and Conditions

### **Fend Incorporated - Terms and Conditions of Sale (Hardware)**

4600 FAIRFAX DRIVE, SUITE 410 • ARLINGTON, VA 22203  
TEL 571-970-1382

. Typographical and/or clerical errors are subject to correction at any time. The following terms and conditions apply unless otherwise stipulated in the quotation. This quote is not an invoice.

**Payment:** Unless payment terms are otherwise stipulated on the front of an invoice, payment is due upon delivery within thirty (30) days of the invoice receipt date. If any payment is not made when due, interest at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. Any change in liability for debts incurred due to a change in the Buyer's form of business shall not be effective until Fend Incorporated receives notice of the change by certified mail.

**Title** to products sold by Fend Incorporated passes to the buyer upon acceptance in accordance with FAR 552.212-4(n).

**Claims** of a shortage, misshipment, or damaged goods must be received in writing by Fend Incorporated within 5 business days of Buyer's receipt of the goods or the goods will be deemed delivered and accepted as of the invoice date, subject to the Inspection/Acceptance provisions of FAR 552.212-4(a).

**Delivery:** Shipments of all products are subject to availability. Fend Incorporated will make every reasonable effort to meet quoted or acknowledged delivery date(s). Excusable delays shall be governed by FAR 552.212-4(f). Buyer agrees to accept delivery within ten (10) days of notice that its products are available.



**Warranties:** Fend Incorporated provides a limited 1-year warranty for all its products from the date of shipment FOB Arlington, Virginia. Fend Incorporated warrants, that at the time of delivery, the goods shipped under this agreement are in accordance with Fend Incorporated's published specifications or are in accordance with "agreed to" written customers' specifications. The warranty delivered to Fend Incorporated by the manufacturer of components used in Fend Incorporated's manufacturing, or other vendor thereof, shall be assigned to the Buyer, to the extent such assignment is permitted by the terms thereof. Notwithstanding the foregoing, no such warranty shall apply to any goods which have been altered or repaired, except by Fend Incorporated or the manufacturer, or which have been subjected to misuse, negligence or accident. Such warranties are expressly in lieu of any other, and Fend Incorporated makes no other warranty, expressed or implied, with respect to the goods, and in particular. Fend incorporated disclaims any warranty with respect to the merchantability of such goods or the fitness of such goods for a particular purpose or use. In no event will Fend Incorporated be liable for indirect, special, or consequential damages, including lost profits, even when Fend Incorporated has been advised of the possibility of such damages. The Buyer agrees that Fend Incorporated's liability for any allegedly defective product and/or service shall not exceed the Buyer's purchase price or the fair market value of the product at the time the defect is reported, whichever is less.

**Returns** must be authorized in advance. Shipping changes are the responsibility of the Buyer. Fend Incorporated may replace the item, provide credit towards the Buyer's next purchase, or a refund of the purchase price, at its option (see **Payment** above). NO returns will be allowed after 30 days.

## **Reserved**

**Order of Precedence:** Buyer's signature represents acceptance of these Terms and Conditions of Sale and any attachments, which together constitute the entire understanding between the parties and supersede and previous communications, representations, or agreements by either party, whether verbal or written. No change or modification of any of the terms or conditions herein shall be valid or binding on either party unless in writing and signed by an authorized representative of each party. Other than the GSA Scheule Contract, These Terms and Conditions of Sale and any attachments take precedence over Buyer's additional or different terms and conditions, to which notice of objection is hereby given. Neither Fend Incorporated commencement of performance nor delivery shall be deemed or construed, as acceptance of Buyer's additional or different terms.



**Export:** Fend products are intended for installation and use in the United States and countries approved for export. Buyer acknowledges that Fend products are subject to U.S. export control and sanctions laws and regulations, including, without limitation, the Export Administration Regulations (15 C.F.R. §§ 730-774), and the regulations, rules, and executive orders administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") (collectively, the "Export Controls and Sanctions Laws"). Buyer agrees to comply with all Export Controls and Sanctions Laws applicable to Fend products and shall not take any action that will cause Fend to violate or be subject to penalty under any Export Controls and Sanctions Laws.

In particular, Buyer warrants and covenants that it:

- (a) will not, directly or indirectly, export, reexport, or transfer Fend products to, or transship Fend products through, a country against which the United States maintains economic sanctions or embargoes (hereinafter, "Sanctioned Country");
- (b) will not, directly or indirectly, export, reexport, sell, lease, transfer, or otherwise assign the rights to Fend products to a Prohibited Person;
- (c) will not use Fend products to produce products that will be shipped, sold, or supplied, directly or indirectly, to a Sanctioned Country or a Prohibited Person.
- (d) will not, directly or indirectly, export, reexport, or transfer Fend products to any party or destination without obtaining or relying upon any necessary authorization under applicable Export Controls and Sanctions Laws, including, but not limited to, a general license, specific license, or license exception; and
- (e) will not, directly or indirectly, export, reexport, transfer, sell, or use Fend products in support of activities, end-uses, or end-users prohibited by applicable Export Controls and Sanctions Laws

"Prohibited Person" means (i) any individual or entity that has been determined by competent authority to be the subject of a prohibition in any law, regulation, rule, or executive order administered by OFAC or the U.S. Department of State; (ii) the government, including any political subdivision, agency, or instrumentality thereof, of any Sanctioned Country; (iii) any individual or entity that acts on behalf of or is owned or controlled by the government of a Sanctioned Country; (iv) any individual or entity that has been identified on the OFAC Specially Designated Nationals and Blocked Persons List (Appendix A to 31 C.F.R. Ch. V) or the OFAC Consolidated Sanctions List, as amended from time to time, or any entity that is directly or indirectly owned 50% more (individually or in the aggregate) or otherwise controlled by individuals or entities identified on either list; or (v) any individual or entity that has been designated on any similar list or order published by the United States government, including, without limitation, the Denied Persons List, Entity List, or Unverified List of the U.S. Department of Commerce, or the Debarred List or Nonproliferation Sanctions List of the U.S. Department of State.

**Limitations on Reverse Engineering, Decompilation, Disassembly, or Modification.** Buyer may not reverse engineer, decompile, or disassemble or otherwise attempt to discover the hardware, source code, or underlying ideas or algorithms of the hardware, firmware, or software or modify, adapt, translate, recast, alter, or create derivative works from the hardware, firmware, or software or any portion of it, or provide or disclose any such hardware, firmware, or software



or any portion of it to any third party, except and only to the extent that such activity is expressly permitted by applicable law, or by prior written approval of Fend (which approval may be conditioned, restricted, or denied in the sole discretion of Fend), notwithstanding this limitation.

**End Use Certification.** Buyer represents that they are the end-user of the product. Product may not be resold, transferred, or otherwise disposed of to any other organization or person other than authorized end-user(s), either in its original form or after being incorporated into other items, unless intent to distribute/resell is made known in writing to Fend at the time of purchase. Such intention to distribute/resell may be conditioned, restricted, or denied at the sole discretion of Fend.

**Cloud Services:** These terms do not govern the provision by Fend Incorporated, or purchase by Buyer, of any cloud software or associated services. The Parties acknowledge and agree that any provision or purchase of cloud software or associated services from Fend shall be governed by a separate agreement between the Parties.

**Miscellaneous:** This Agreement is made in, and is governed by the Federal laws of the United States. The Buyer's remedies herein are exclusive. Any provision hereof which is invalid under an applicable statute or rule of law should be curtailed and limited only to the extent necessary to bring it within the requirements of the law. All other provisions of this Agreement shall remain in full force and effect.

## **FEND INCORPORATED CUSTOMER TERMS AND CONDITIONS**

### **(Software and Cloud Products)**

Last Modified: 7/23/2021



These Customer Terms and Conditions (this “**Agreement**”), effective [DATE] (the “**Effective Date**”), is by and between Fend Incorporated, a Virginia corporation (“**Fend**”) and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order (“**Customer**”). The individual accepting this Agreement hereby represents and warrants that it is duly authorized by the entity on whose behalf it accepts this Agreement to so accept this Agreement. Fend and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

These terms do not govern the provision by Fend, or purchase by Customer, of any hardware. The Parties acknowledge and agree that any provision or purchase of hardware from Fend shall be governed by a separate agreement between the Parties.

The Parties agree as follows:

1. Definitions.

1.1 “**Authorized User**” means Customer’s employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Platform under the rights granted to Customer pursuant to this Agreement; and (ii) for whom access to the Platform has been purchased hereunder.

1.2 “**Customer Data**” means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Platform; provided that, for purposes of clarity, Customer Data does not include Derivative Data.

1.3 “**Derivative Data**” means data and information related to or derived from Customer Data or Customer’s use of the Platform that has been aggregated and/or anonymized by Fend.

1.4 “**Documentation**” means Fend’s end user documentation relating to the Platform available at <https://app.fend.tech/support>.

1.5 “**Fend IP**” means the Platform, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Fend IP includes Derivative Data and any information, data, or other content derived from Fend’s provision of the Platform but does not include Customer Data.

1.6 “**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data processed thereby.

1.7 “**Order**” means: (i) the purchase order, order form, or other ordering document entered into by the Parties that incorporates this Agreement by reference; or (ii) if Customer registered for the Platform through Fend’s online ordering process, the results of such online ordering process.

1.8 “**Personal Information**” means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located, including without limitation all data considered “personal data”, “personally identifiable information”, or something similar under applicable laws, rules, or regulations relating to data privacy.

1.9 “**Platform**” means Fend’s proprietary hosted software platform, as made available to Authorized Users from time to time.

1.10 “**Subscription Period**” means the time period identified on the Order during which





Customer's Authorized Users may access and use the Platform.

1.11 **"Third-Party Products"** means any third-party products provided with, integrated with, or incorporated into the Platform.

1.12 **"Usage Limitations"** means the usage limitations set forth in this Agreement and the Order, including without limitation any limitations on the number of Authorized Users (if any), and the applicable product, pricing, and support tiers agreed-upon by the Parties.

## 2. Access and Use.

2.1 Provision of Access. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, including without limitation the Usage Limitations, Fend will make available to Customer during the Subscription Period, on a non-exclusive, non-transferable (except in compliance with Section 13.8), and non-sublicensable basis, access to and use of the Platform, solely for use by Authorized Users. Such use is limited to Customer's internal business purposes and the features and functionalities specified in the Order. Each Authorized User must have its own unique account on the Platform and Authorized Users may not share their account credentials with one another or any third party. Customer will be responsible for all of the acts and omissions of its Authorized Users in connection with this Agreement and for all use of Authorized Users' accounts.

2.2 Documentation License. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Fend hereby grants to Customer a non-exclusive, non-transferable (except in compliance with Section 13.8), and non-sublicensable license to use the Documentation during the Subscription Period solely for Customer's internal business purposes in connection with its use of the Platform.

2.3 Use Restrictions. Customer shall not use the Platform for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of any Fend IP, whether in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Platform or Documentation to any third party; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Platform, in whole or in part; (iv) remove any proprietary notices from any Fend IP; (v) use any Fend IP in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (vi) access or use any Fend IP for purposes of competitive analysis of Fend or the Platform, the development, provision, or use of a competing software service or product, or any other purpose that is to Fend's detriment or commercial disadvantage; (vii) bypass or breach any security device or protection used by the Platform or access or use the Platform other than by an Authorized User through the use of valid access credentials; or (viii) input, upload, transmit, or otherwise provide to or through the Platform any information or materials that are unlawful or injurious, or that contain, transmit, or activate any Harmful Code.

2.4 Reservation of Rights. Fend reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Fend IP.

2.5 Suspension. Notwithstanding anything to the contrary in this Agreement, Fend may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Platform if: (i) Fend reasonably determines that (A) there is a threat or attack on any of the Fend IP; (B) Customer's or any Authorized User's use of the Fend IP disrupts or poses a security risk to the Fend IP or to any other customer or vendor of Fend; (C) Customer, or any Authorized User, is using the Fend IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (E) Reserved; or



(F) Fend's provision of the Platform to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Fend has suspended or terminated Fend's access to or use of any Third-Party Products required to enable Customer to access the Platform; or (iii) in accordance with Section 5.1 (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Fend shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Platform following any Service Suspension. Fend shall use commercially reasonable efforts to resume providing access to the Platform as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Fend will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

2.6 Derivative Data. Notwithstanding anything to the contrary in this Agreement, Fend may monitor Customer's use of the Platform and collect and compile Derivative Data. As between Fend and Customer, all right, title, and interest in Derivative Data, and all intellectual property rights therein, belong to and are retained solely by Fend. Customer acknowledges that Fend may compile Derivative Data based on Customer Data input into the Platform. Notwithstanding anything to the contrary in this Agreement, Customer acknowledges that Fend may use and disclose Derivative Data for any lawful purpose.

### 3. Customer Responsibilities.

3.1 General. Customer is responsible and liable for all uses of the Platform and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Platform and shall cause Authorized Users to comply with such provisions.

3.2 Third-Party Products. Fend may from time to time make Third-Party Products available to Customer or Fend may allow for certain Third-Party Products to be integrated with the Platform to allow for the transmission of Customer Data from such Third-Party Products into the Platform. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products.

3.3 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (i) all Customer Data, including its content and use; (ii) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Platform; (iii) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party Platform ("**Customer Systems**"); (iv) the security and use of Customer's and its Authorized Users' access credentials; and (v) all access to and use of the Platform directly or indirectly by or through the Customer Systems or its or its Authorized Users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

4. Support. During the Subscription Period, Fend will use commercially reasonable efforts to provide Customer with basic customer support via Fend's standard support channels during Fend's normal business hours.

### 5. Fees and Taxes.

5.1 Fees. The Platform may be provided for a fee or other charge. Customer shall pay Fend the fees ("**Fees**") identified in the Order in accordance with the GSA Schedule Pricelist without offset or deduction at the cadence identified in the Order (e.g., monthly or annually). Customer shall make all



payments hereunder in US dollars by ACH or line credit or debit card payment via the link provided in the applicable invoice to such account as Fend may specify in writing from time to time, or by another mutually agreed-upon payment method. If Customer pays online via credit or debit card, Customer agrees that there are different applicable terms of Fend's third-party payment processors. If Customer fails to make any payment when due, and Customer has not notified Fend in writing within ten (10) days of the payment becoming due and payable that the payment is subject to a good faith dispute, without limiting Fend's other rights and remedies: (i) Fend may charge interest on the undisputed past due amount at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

5.2 Taxes. Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).

6. Confidential Information.

6.1 Definition. From time to time during the Subscription Period, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media that: (i) is marked, designated or otherwise identified as "confidential" or something similar at the time of disclosure or within a reasonable period of time thereafter; or (ii) would be considered confidential by a reasonable person given the nature of the information or the circumstances of its disclosure (collectively, "**Confidential Information**"). Except for Personal Information, Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party without use of, reference to, or reliance upon the disclosing Party's Confidential Information.

6.2 Duty. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees, contractors, and agents who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder ("**Representatives**"). The receiving Party will be responsible for all the acts and omissions of its Representatives as they relate to Confidential Information hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. Further, notwithstanding the foregoing, each Party may disclose the terms and existence of this Agreement to its actual or potential investors, debtholders, acquirers, or merger partners under customary confidentiality terms. Fend recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

6.3 Return of Materials; Effects of Termination/Expiration. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-use and non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire three (3) years from the date of termination or expiration of this Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret



protection under applicable law.

7. Personal Information. Customer agrees that it shall not, without the prior written consent of Fend, disclose or make available any Personal Information in connection with the Services.

8. Intellectual Property Ownership; Feedback.

8.1 Fend IP. Customer acknowledges that, as between Customer and Fend, Fend owns all right, title, and interest, including all intellectual property rights, in and to the Fend IP and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

8.2 Customer Data. Fend acknowledges that, as between Fend and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Fend a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Fend to provide the Platform, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Derivative Data. Customer may export the Customer Data at any time through the features and functionalities made available via the Platform.

8.3 Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Fend by mail, email, telephone, or otherwise, suggesting or recommending changes to the Fend IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Fend is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback.

9. Warranty Disclaimer. FEND WARRANTS THAT THE THE FEND IP WILL, FOR A PERIOD OF SIXTY(60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE FEND IP WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE FEND IP IS PROVIDED "AS IS" AND FEND HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. FEND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FEND MAKES NO WARRANTY OF ANY KIND THAT THE FEND IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER PLATFORM, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

10. Indemnification.

10.1 Fend Indemnification.

(a) Fend shall indemnify, have the right to intervene to defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Platform, or any use of the Platform in accordance with this Agreement, infringes or misappropriates such third party's US copyrights or trade secrets; provided that Customer promptly notifies Fend in writing of the claim, cooperates with Fend, and allows Fend sole authority to control the defense and settlement of such claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

(b) If such a claim is made or appears possible, Customer agrees to permit Fend, at Fend's sole discretion: to (i) modify or replace the Platform, or component or part thereof, to make it non-



infringing; or (ii) obtain the right for Customer to continue use. If Fend determines that neither alternative is reasonably commercially available, Fend may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(c) This Section 10.1 will not apply to the extent that the alleged infringement arises from: (i) use of the Platform in combination with data, software, hardware, equipment, or technology not provided by Fend or authorized by Fend in writing; (ii) modifications to the Platform not made by Fend; (iii) Customer Data; or (iv) Third-Party Products.

#### 10.2 Reserved.

10.3 Sole Remedy. THIS SECTION 10.3 SETS FORTH CUSTOMER'S SOLE REMEDIES AND FEND'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE PLATFORM INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL FEND'S AGGREGATE LIABILITY UNDER THIS SECTION 10 EXCEED THE TOTAL AMOUNTS PAID TO FEND.

11. Limitations of Liability. IN NO EVENT WILL FEND BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER FEND WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL FEND'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO FEND UNDER THIS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

#### 12. Subscription Period and Termination.

12.1 Subscription Period. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect for the period identified in the Order (the "**Initial Subscription Period**"). This Agreement may be renewed for additional successive terms equal to the length of the Initial Subscription Period by executing a written order for the additional successive term (each a "**Renewal Subscription Period**" and together with the Initial Subscription Period, the "**Subscription Period**").

#### 12.2 Termination. In addition to any other express termination right set forth in this Agreement:

(a) When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Fend shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer;

(b) reserved; or

(c) reserved.

#### 12.3 Effect of Expiration or Termination. Upon expiration or earlier termination of this





Agreement, Customer shall immediately discontinue use of the Fend IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Fend IP and certify in writing to the Fend that the Fend IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

12.4 Survival. This Section 12.4 and Sections 1, 5, 6, 8, 9, 10, 11, 12.3, and 13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

13. Miscellaneous.

13.1 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement; and (ii) second, any other documents incorporated herein by reference.

13.2 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

13.3 Force Majeure. Excusable delays shall be governed by FAR 552.212-4(f).

13.4 Amendment and Modification. Fend may change this Agreement (except for any Orders) from time to time at its discretion. The date on which the Agreement was last modified will be updated at the top of this Agreement. Fend will provide Customer with reasonable notice prior to any amendments or modifications taking effect, either by emailing the email address associated with Customer's account on the Platform or by another method reasonably designed to provide notice to Customer. If Customer accesses or uses the Platform after the effective date of the revised Agreement, such access and use will constitute Customer's acceptance of the revised Agreement beginning at the next Renewal Subscription Period or, if Customer enters into a new Order with Fend, as of the date of execution of such Order.

13.5 Waiver. No failure or delay by either Party in exercising any right or remedy available to it in connection with this Agreement will constitute a waiver of such right or remedy. No waiver under this Agreement will be effective unless made in writing and signed by an authorized representative of the Party granting the waiver.

13.6 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.7 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the Federal laws of the United States.



13.8 Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Fend. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

13.9 Export Regulation. The Platforms utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release the Platform or the underlying software or technology to, or make the Platform or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Platform or the underlying software or technology available outside the US.

13.10 US Government Rights. Each of the Documentation and the software components that constitute the Platform is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Platform and Documentation as are granted to all other end users, in accordance with 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

13.11 Reserved.

13.12 Publicity. Fend may identify Customer as a user of the Platform and may use Customer's name, in Fend's customer list, press releases, blog posts, advertisements, and website (and all use thereof and goodwill arising therefrom shall inure to the sole and exclusive benefit of Customer) to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Otherwise, neither Party may use the name, logo, or other trademarks of the other Party for any purpose without the other Party's prior written approval.