

## END USER LICENSE AGREEMENT

READ CAREFULLY THIS END USER LICENSE AGREEMENT (**EULA**), WHICH CONTAINS THE EXCLUSIVE TERMS AND CONDITIONS BETWEEN KALEIDOSCOPE TECHNOLOGIES, INC. (**KALEIDOSCOPE**), AND YOU (**YOU, YOUR**), REGARDING ACCESS AND USE OF THE SERVICES (AS DEFINED BELOW) DESCRIBED BELOW. YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO ENTER INTO THIS EULA, UNDER ALL APPLICABLE LAWS. BY SELECTING THE "ACCEPT" BUTTON OR BY ACCESSING, DOWNLOADING, INSTALLING OR USING THE SERVICES IN ANY MANNER (**ACCEPTANCE**), YOU WILL CREATE A LEGALLY ENFORCEABLE CONTRACT WHERE YOU AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS EULA WITHOUT MODIFICATION. ANY PURCHASE ORDER OR SIMILAR TERMS SHALL NOT APPLY.

**IF YOU CANNOT OR DO NOT AGREE TO ALL TERMS AND CONDITIONS IN THIS EULA, YOU ARE PROHIBITED FROM ACCESSING, DOWNLOADING, INSTALLING OR USING THE SERVICES.**

## 1. DEFINITIONS.

**End User Account** means Your account that permits You access to the Services.

**Documentation** means the user guide, help information, information files (e.g., "About" files), and/or other technical documentation (but not marketing collateral) delivered by Kaleidoscope to You with the Services, in digital, paper, or other format.

**Feedback** means all analyses, suggestions, data, and other feedback and information that are provided by You and related to the Services or Documentation.

**Services** means Kaleidoscope's services and products that are made available by Kaleidoscope.

**Workspace** means a unique domain to which You have been granted access by the workspace administrator in order to access the Services. For clarity, You may be granted access to multiple Workspaces.

## 2. ACCOUNTS; SOFTWARE.

**Account.** If You plan to use the Services for, on behalf of, or in connection with any of Your work or responsibilities for any of Your employers, institutions, universities, or labs (each, an **Organization**, please use Your email address associated with such Organization to sign up for the Services (**Organization Account**)).

Before accepting this EULA, please contact Your Organization to verify whether it has purchased any of the Services. You may be eligible or required to use the Services as an authorized user within such Organization pursuant to a separate written agreement entered into by such Organization with Kaleidoscope and/or the third party Kaleidoscope Workspaces that the Organization has been granted permission to access (each, an **Enterprise Agreement**), and such Enterprise Agreement will supersede these Terms and control Your use of the Services through the Organization Account. If Your Organization has not signed up for the Services yet, You may also use Your email address associated with such Organization to sign up for the Services. When such Organization enters into an Enterprise Agreement for the Services, You acknowledge and agree that Your Organization may request Kaleidoscope to transfer any of Your accounts using an email address associated with such Organization to such Organization, in which event Your use of the Services using Your Organization email address will be governed by the applicable Enterprise Agreement. For the avoidance of doubt, if there is any conflict between an Enterprise Agreement and this

EULA, the applicable Enterprise Agreement will prevail.

You further acknowledge and agree that in connection with the transfer of Your Organization Account to Your Organization, the End User Data (as defined in Section 6 below) stored in such account may be transferred over to Your Organization, which may have certain rights over Your End User Data, including without limitation, the right to access, edit, export, or delete any part of such End User Data, and the right to grant access to such End User Data to other third parties. Note that Your Organization, not Kaleidoscope, decides and controls what rights Your Organization may have over Your End User Data, and You may be subject to any agreement You have entered into with Your Organization when using the Services through Your Organization Account.

You are solely responsible for Your choice of End User Account or Organization Account and hereby release and hold Kaleidoscope harmless from any and all liability arising from such choice, including, without limitation, any transfer of or grant of rights to Your End User Data to any Organization as described herein.

**License.** During the term of this EULA and subject to all terms and conditions herein, Kaleidoscope grants You a limited, personal, non-exclusive, non-transferable, non-sublicensable right and license to internally access and use the Services (without modification) in accordance with the Documentation, solely for use by You. From time to time, You may (at Your discretion) provide Feedback to Kaleidoscope. From time to time, Kaleidoscope may provide upgrades, patches, enhancements, or fixes for Services generally without additional charge (**Updates**), and such Updates will become part of the Services and subject to this Agreement; provided that, Kaleidoscope shall have no obligation under this Agreement or otherwise to provide any such Updates. You agree to use the most up-to-date version of the Services as provided to You by Kaleidoscope. You understand that Kaleidoscope may cease supporting old versions of the Services at any time in its sole discretion; provided that Kaleidoscope shall use commercially reasonable efforts to give You reasonable prior notice of any major changes.

**Documentation.** During the term of this EULA and subject to all terms and conditions herein, Kaleidoscope grants You a non-exclusive, non-transferable right and license to use and reproduce the Documentation, solely in connection with Your authorized use of the Services.

**Conditions.** The Software is licensed as a single product and You may not use its component parts separately. You shall not sublicense or distribute any portion of the

Services or Documentation to any third parties. In addition, You agree that Your use of the Services shall comply with all other limitations, prohibitions, and conditions in this EULA and the Subscription (as defined below), including without limitation, any restriction regarding: the number of active seats or authorized users; the time period during which the Services may be used; the territory or other places where the Services may be used; the size or configuration of the system or network with which the Services may be used; the purpose for which the Services may be used (such as, trial use or evaluation).

**License Control.** You understand and agree that (a) the Services may contain code and/or require license keys or devices that detect or prevent unauthorized use of, or disable, the Services and (b) You have no right or license to access or possess source code related to the Services.

#### 4. PAYMENTS.

**Free Trials.** If You are using the Services for Your personal use through an End User Account, then portions of the Services may currently be free, but Kaleidoscope reserves the right to charge for certain or all Services in the future. Kaleidoscope will use commercially reasonable efforts to notify You before any Services begin carrying a fee and after such notification, You shall pay all applicable fees for such Services.

**Fees.** Notwithstanding the Free Trials section above, if You are using the Services for Your personal use through an End User Account and not in connection with an Organization, You shall pay Kaleidoscope fees for the Services as set forth in the Plans page in Your End User Account (**Subscription**). Unless otherwise agreed upon by the parties in a writing that expressly supersedes this EULA, all fees shall be invoiced annually in advance and all invoices issued under this Agreement are payable in U.S. dollars within thirty (30) days from date of invoice. Past due invoices are subject to interest on any outstanding balance of the lesser of 1.5% per month or the maximum amount permitted by law. You shall be responsible for all taxes associated with the Services (excluding taxes based on Kaleidoscope's net income). All fees paid are non-refundable and are not subject to set-off. For the avoidance of doubt, if You are using the Services in connection with an Organization, Your Organization will be responsible for the fees as set forth in its Enterprise Agreement.

#### 5. CONFIDENTIALITY.

**Scope.** The term **Confidential Information** means all trade secrets, know-how, inventions, developments, software, and other financial, business, or technical information that are disclosed by or for Kaleidoscope in relation to this EULA. The restrictions on use and disclosure of Confidential Information shall not apply to any information that You can demonstrate has been (a) rightfully furnished to You without restriction by a third party not in breach of any obligation to Kaleidoscope, (b) generally available to the public without breach of this EULA, or (c) independently developed by You without reliance on such information. All Software, non-public Documentation, pricing information, and license keys, and the results of any functional, performance, or benchmark testing of the Software, are deemed to be Kaleidoscope's Confidential Information.

**Confidentiality.** Except for the specific rights granted by this EULA, You agree not to access, reproduce, use or disclose any Confidential Information without Kaleidoscope's written consent, and You agree to use commercially reasonable efforts to protect the Confidential Information from unauthorized access, use and disclosure. Promptly after any termination of this EULA or at Kaleidoscope's request at any other time, You shall return all tangible Confidential Information, permanently erase all Confidential Information from any storage media and destroy all information, records and materials developed therefrom. Notwithstanding anything herein to the contrary, if You become legally required (by law, regulation, judicial or governmental order, discovery request, deposition, interrogatory, request for documents, subpoena, civil investigation, or similar process) to disclose any Confidential Information, You may do so without liability, but You agree (a) to promptly notify Kaleidoscope of any such disclosure to the extent legally permissible and (b) to reasonably cooperate with Kaleidoscope, at Kaleidoscope's expense, in any attempt it may make to obtain a protective order or other appropriate assurance that confidential treatment will be afforded the Confidential Information. You also acknowledge and agree that You may be bound by confidentiality obligations as between You and the Organization in charge of the relevant Workspace(s) to which You have been granted permission.

#### 6. PROPRIETARY RIGHTS.

**Restrictions.** Except as expressly set forth in this Agreement, You shall not (and shall not permit any third

party to), directly or indirectly: (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Services (except to the extent applicable laws specifically prohibit such restriction); (b) use or allow the transfer, transmission, export, or re-export of all or any part of the Services or any product thereof, in violation of any export control laws or regulations of the United States or any other relevant jurisdiction; (c) modify, translate, or create derivative works based on the Services; (d) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services; (e) use the Services for the benefit of a third party; (f) remove or otherwise alter any proprietary notices or labels from the Services or any portion thereof; (g) use the Services to build an application or product that is competitive with any Kaleidoscope product or service; (h) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services; or (i) bypass any measures Kaleidoscope may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services). You are responsible for all of Your activity in connection with the Services, including but not limited to uploading End User Data onto the Services and importing or storing data on the Services. You (1) shall use the Services in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Your use of the Services (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (2) shall not use the Services in a manner that violates any third party intellectual property, contractual or other proprietary rights. You acknowledge and agree that the Services (including, without limitation, any source code contained therein to which You may be given access hereunder) (collectively, the ***Kaleidoscope Materials***) represent valuable trade secrets and confidential information of Kaleidoscope. Accordingly, You (x) shall not use any Kaleidoscope Materials except as expressly set forth herein; (y) shall not disclose any Kaleidoscope Materials to any third party, and (z) shall use reasonable efforts to prevent any such unauthorized use or disclosure (but at least the same efforts that You use to protect its own most highly sensitive and confidential information). You acknowledge and agree that due to the unique nature of the Kaleidoscope Materials, there can be no adequate remedy at law for any breach of its obligations under this Section 6, which breach may result in irreparable harm to Kaleidoscope, and

therefore, that upon any such breach or any threat thereof, Kaleidoscope shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to whatever remedies it might have at law.

**Kaleidoscope.** Except for the limited rights and licenses expressly granted hereunder, no other right, license, or option is granted (by implication, estoppel, or otherwise), no other use is permitted, and Kaleidoscope (and its licensors) shall own and retain all rights, title, and interests (including all patent rights, copyright rights, trade secret rights, and other intellectual property and proprietary rights) in and to the Software and Documentation. You agree not to take any action inconsistent with such title and ownership. You agree that Kaleidoscope is free to use and exploit the Feedback, and all generalized knowledge, expertise, know-how, and technologies related to or acquired in connection with this EULA, in any manner for all purposes (including in connection with developing new or improved products and services).

**Third Party Services.** You acknowledge and agree that the Services may operate on, with or using application programming interfaces (***APIs***) and/or other services operated or provided by third parties (***Third Party Services***), including without limitation through integrations or connectors to such Third Party Services that are provided by Kaleidoscope. Kaleidoscope is not responsible for the operation of any Third Party Services nor the availability or operation of the Services to the extent such availability and operation is dependent upon Third Party Services. You are solely responsible for procuring any and all rights necessary for You to access Third Party Services (including any End User Data or other information relating thereto) and for complying with any applicable terms or conditions thereof. Kaleidoscope does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between You and a third party provider is solely between You and such third party provider and is governed by such third party's terms and conditions.

**Data.** For purposes of this Agreement, ***End User Data*** shall mean any data, information or other material provided, uploaded, or submitted by You to the Services in the course of using the Services. You shall retain all right, title and interest in and to the the End User Data, including all intellectual property rights therein. You, not Kaleidoscope, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability,

appropriateness, and intellectual property ownership or right to use of all End User Data. Kaleidoscope shall use commercially reasonable efforts to maintain the security and integrity of the Services and the End User Data. Kaleidoscope is not responsible to You for unauthorized access to End User Data or the unauthorized use of the Services unless such access is due to Kaleidoscope's gross negligence or willful misconduct. You are responsible for the use of the Services by any person to whom You have given access to the Services, even if You did not authorize such use. You agree and acknowledge that End User Data may be irretrievably deleted if Your account is ninety (90) days or more delinquent. Notwithstanding anything to the contrary, You acknowledge and agree that Kaleidoscope may (a) internally use and modify (but not disclose) End User Data for the purposes of (1) providing the Services to You and (2) generating Aggregated Anonymous Data (as defined below), and (3) freely use and make available Aggregated Anonymous Data for Kaleidoscope's business purposes (including without limitation, for purposes of improving, testing, operating, promoting and marketing the Services). **Aggregated Anonymous Data** means data submitted to, collected by, or generated by Kaleidoscope in connection with Your use of the Services, but only in aggregate, anonymized form which can in no way be linked specifically to You.

#### **7. NO WARRANTIES AND DISCLAIMERS.**

**Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND ARE WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

#### **8. INDEMNIFICATION.**

**You.** You agree to defend Kaleidoscope against any demand, suit, action, or other claim by any third party that arises from Your breach of this EULA and Your negligence or willful misconduct and to indemnify Kaleidoscope for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded in an adverse judgment based on any such claim.

**Conditions.** Your indemnification obligations hereunder are conditioned on (a) Kaleidoscope providing prompt

written notice thereof and reasonable cooperation, information, and assistance in connection therewith, and (b) You having sole control and authority to defend, settle or compromise such claim. Kaleidoscope may participate in the defense at its sole cost and expense. You will not enter into any settlement (other than for payment of money subject to its indemnity) that adversely affects Kaleidoscope's rights or interests without Kaleidoscope's prior written approval, not to be unreasonably withheld. You shall not be responsible for any settlement You do not approve in writing.

#### **9. LIMITATION OF LIABILITY.**

IN NO EVENT SHALL EITHER KALEIDOSCOPE'S, ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF USD \$100.

#### **10. TERM AND TERMINATION.**

**Term.** This EULA shall commence upon Your Acceptance of these terms and shall remain in effect until terminated as set forth herein.

**Convenience.** Either party may terminate this EULA at any time for its convenience upon at least one (1) days' prior written notice to the other party.

**Effects of Termination.** Upon expiration or termination of this EULA for any reason, all rights, obligations, and licenses of the parties hereunder shall cease, except that the following shall survive: (a) all obligations that accrued prior to the effective date of termination (including without limitation, payment obligations) and remedies for breach of this EULA; (b) You shall stop using the Services; and (c) the provisions of Sections 4 (Payments), 5 (Confidentiality), 6 (Proprietary Rights), 7 (No Warranties and Disclaimers), 8 (Indemnification), 9 (Limitation of Liability), 11 (General Provisions), and this Section 10. If You terminate this EULA, You acknowledge that You will have no right to access the Services (either for Your personal use or on behalf of any Organization that You are associated with).

## 11. GENERAL PROVISIONS.

**Entire Agreement.** This EULA constitutes the entire agreement, and supersedes all prior negotiations, understandings, or agreements (oral or written), between the parties about the subject matter of this EULA. Any additional, different or inconsistent terms on any related purchase order, confirmation or similar form, even if signed by the parties hereafter, shall have no force or effect under this EULA. This EULA may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile copy (including PDF) or by electronic signature (e.g., DocuSign) shall have the same force and effect as execution of an original, and a facsimile or electronic signature shall be deemed an original and valid signature. No change, consent, or waiver under this EULA will be effective unless in writing and signed by the party against which enforcement is sought. If any provision of this EULA is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this EULA will otherwise remain in full force and effect and enforceable. This EULA is in English only, which language shall be controlling in all respects. No version of this EULA in another language shall be binding or of any effect.

**Governing Law.** This EULA shall be governed by and construed in accordance with the laws of the State of New York, USA, without regard to its conflicts of law provisions. In the event of any conflict between US and foreign laws, regulations, and rules, US laws, regulations, and rules shall govern. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the implementation of the Computer Information Transactions Act in any jurisdiction shall apply to this EULA. The sole jurisdiction and venue for actions related to this EULA will be the state or federal courts located in New York and both parties consent to the exclusive jurisdiction of such courts with respect to any such action.

**Remedies.** Except as expressly provided otherwise, each right and remedy in this EULA is in addition to any other right or remedy, at law or in equity. The failure of either party to enforce its rights or remedies under this EULA at any time or for any period will not be construed as a waiver of such rights or remedies, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. Each party agrees that, in the event of any breach or threatened breach of Section 5 or Section 6 by You, Kaleidoscope will suffer irreparable damage for which it will have no adequate remedy at

law. Accordingly, in addition to any other remedy, Kaleidoscope shall be entitled to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of proving actual damages or posting any bond or surety.

**Notices.** Any notice or other communication hereunder shall be in writing and either personally delivered or sent via confirmed facsimile or confirmed email, recognized express delivery courier, or certified or registered mail (prepaid and return receipt requested), addressed to the other party at its address specified herein, or at such other address designated in a subsequent notice. All notices shall be in English, effective upon receipt.

**Assignment.** This EULA and Your rights and obligations hereunder are personal to You and may not be assigned, in whole or in part, without Kaleidoscope's prior written consent, at its sole discretion. Without Your consent, Kaleidoscope may subcontract performance of all or any part of the Support Service, and Kaleidoscope may assign this EULA (and all of its rights and obligations hereunder) to any of its affiliates or to any successor to all or substantially all of its business which concerns this EULA. This EULA shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

**Force Majeure.** Neither party shall be liable for any delay or failure in performing its obligations hereunder that is related to or arises out of any event, cause, condition, restriction, change in law or regulation, government order or guidance, risk to public health, safety, or welfare, or other circumstance beyond its reasonable control.

**Independent Contractors.** The parties shall be independent contractors in their performance under this EULA, and nothing contained herein will constitute either party as the employer, employee, agent, or representative of the other party, or both parties as joint venturers or partners for any purpose.

**Government.** If any user of the Software or Documentation is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, modification, release, disclosure, or transfer of the Software or Documentation is restricted in accordance with FAR 12.212 for civilian agencies and DFAR 227.7202 for military agencies. The Software is commercial computer software and the Documentation is commercial

computer software documentation. The use of the Software and Documentation is further restricted in accordance with the terms of this EULA.

**Acknowledgment.** You acknowledge that (a) You have read and understand this EULA, (b) this EULA has the same force and effect as a signed agreement, (c) Kaleidoscope requires that You be identified before issuing this license, and (d) issuance of this license does not constitute general publication of the Confidential Information.