

## **Kaleidescape Service and License Agreement**

### **1. Introduction**

Welcome to the Kaleidescape family! We are pleased to welcome you as a customer, and we hope you will enjoy your Kaleidescape System for years to come. Because the Kaleidescape System incorporates, stores, and communicates valuable customer information and intellectual property, Kaleidescape is serious about protecting its customers' privacy as well as the intellectual property of Kaleidescape and the many other technology and content owners that make the Kaleidescape System possible.

This Kaleidescape Service and License Agreement (“**Agreement**”) is between you (“**you**”) and Kaleidescape, Inc. (“**Kaleidescape**”, “**we**”, “**us**”, or “**the Company**”) and contains the terms and conditions that apply to your use of the Kaleidescape System.

YOU AGREE THAT YOUR USE OF THE KALEIDESCAPE SYSTEM, KALEIDESCAPE SOFTWARE, AND THE KALEIDESCAPE SERVICES IS SUBJECT TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, INCLUDING ITS ATTACHMENTS.

ARBITRATION NOTICE: EXCEPT FOR CERTAIN TYPES OF EXCLUDED DISPUTES DESCRIBED IN SECTION 11(H) BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A TRIAL OR CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

### **2. Definitions**

"**Account**" means a Kaleidescape Movie Service account.

"**Content**" means movies, TV shows, videos, music, and other content that may be played, accessed, or stored on a Kaleidescape System.

"**Disc**" means a Blu-ray disc, DVD or CD.

"**Kaleidescape Movie Service**" or "**Movie Service**" means the Kaleidescape service through which you may rent or purchase and download movies, TV shows, and other Content.

"**Hardware**" means one or more Kaleidescape hardware components.

"**Kaleidescape Content**" means Content that is provided to you, either directly or indirectly, by Kaleidescape, whether preloaded onto your Kaleidescape System or delivered to you via the Internet and includes Metadata and Licensed Content.

"**Kaleidescape Services**" and “**Services**” means the following Kaleidescape services: Movie Service, content delivery service, movie guide service, music guide service, alerts service, and Software update service; and “**Kaleidescape Service**” or "**Service**" means any one of these services.

"**Kaleidescape Software**" means any software that is provided to you by Kaleidescape, including kOS, firmware, control system software, and applications for PCs, Macs, smartphones and tablets, and all modifications, updates, enhancements and upgrades thereto and documentation thereof, but excluding Other Software.

"**Kaleidescape System**" and "**System**" means a combination of Hardware and Software that works

together, within a single location such as a home, yacht, or private aircraft, to store, organize and play movies, TV shows, music, and other Content in that single location. For purposes of this Agreement, "**Kaleidescape System**" expressly excludes third-party hardware and software relating to installation and integration, control programming, User Content and/or User Content loading services.

"**Licensed Content**" means Kaleidescape Content for which a license has been rented or purchased through the Kaleidescape Movie Service.

"**Metadata**" means data and information related to Content, and includes, without limitation, movie, chapter, episode, album and song titles; actor, director and artist names; parental control ratings; genres, reviews and synopses; high-resolution cover art; aspect ratio information and video bookmarks for features, aspect ratio changes, scenes and songs.

"**Movie Service Territory**" means any one of the following:

- United States, including its territories, possessions, and protectorates
- Canada
- United Kingdom

"**Other Software**" means software developed and owned by third parties, including firmware, that is provided to you by Kaleidescape.

"**Software**" means the Kaleidescape Software and Other Software.

"**User Content**" means all Content stored on your Kaleidescape System that is not Kaleidescape Content and includes both Content owned by you and by third parties.

"**Warranty Period**" means the period during which the limited warranty set forth in Section 8 below is valid unless otherwise set forth therein, as such period is set forth in the version of the Kaleidescape Warranty Period Policy available at <https://www.kaleidescape.com/legal/warranty-period.pdf> that is effective as of the date that the applicable Hardware component is shipped from Kaleidescape.

### **3. Kaleidescape System and Services**

Your Kaleidescape System is authorized to access Kaleidescape Services via the Internet, for use only with your lawful and licensed use of the Kaleidescape System. Kaleidescape, at its discretion and without notice may, from time to time, change, add or remove features and functions of the Kaleidescape System or the Kaleidescape Services, or suspend or discontinue some or all of the Kaleidescape Services at any time. Different Kaleidescape Systems may offer different features and functions and have access to different features and functions of the Services; Kaleidescape is under no obligation to provide all features and functions to all Kaleidescape Systems.

You agree that Kaleidescape Services may monitor the health or operation of your System and diagnose potential problems remotely over the Internet. As part of this service, Kaleidescape reserves the right to remotely (over the Internet) power down one or more components of your Kaleidescape System in the event that Kaleidescape determines that continued operation may damage your System.

You may access and use the Services only with an authorized Kaleidescape System. You agree not to tamper with or otherwise modify any Kaleidescape System or any part thereof. The Services and the information they provide, including Metadata, are provided for use only with your lawful and licensed use of the Kaleidescape System and such information may not be resold, in whole or in part, or commercially exploited. Except as expressly provided in this Agreement, you may not transfer your license to use the Services.

#### **4. Software Updates and Content Delivery**

You agree to receive any mandatory updates and upgrades to Kaleidescape Software that Kaleidescape, in its sole discretion, provides, including new Software. Certain optional Software upgrades or new features may require payment of an additional fee.

You agree that Kaleidescape may send Kaleidescape Content (including movies and advertising and promotional material) to your System as part of the Kaleidescape Services.

#### **5. Ownership and Licenses**

Kaleidescape and certain third parties will at all times retain all right, title, and interest (including intellectual property rights) in and to the Kaleidescape Software, Other Software, Kaleidescape Content and the Services. Information with respect to your rights to use the Other Software is available at <https://www.kaleidescape.com/legal/third-party-software-notices.pdf>. You understand and acknowledge that third-party licensors' warranties, guarantees, liabilities and indemnities relating to such Other Software, if any, do not extend to you, unless such third party licensor license, listed at the link referenced above, expressly states otherwise.

Your right to use Kaleidescape Content is subject to your compliance with the Terms and Conditions governing the Kaleidescape Movie Service and Kaleidescape Content, which are appended as Attachment A of this Agreement.

Kaleidescape grants you a nonexclusive license to use the kOS software solely as incorporated into your System and solely in accordance with the applicable Kaleidescape documentation and the terms of this Agreement. You are licensed to use all other Kaleidescape Software solely in accordance with the applicable Kaleidescape documentation and the terms of this Agreement and any accompanying license agreements. You have no right to receive source code for any Kaleidescape Software except as expressly required by our licensors.

You may not, and may not allow third parties to, directly or indirectly: (i) modify, translate, or create derivative works of any Software, Hardware, Service, System, or Content, except as expressly authorized by Kaleidescape in writing or, in the case of Other Software, by the owner of that Other Software; (ii) reverse assemble, decompile, reverse engineer or otherwise attempt to derive source code or object code or the underlying ideas, algorithms, structure or organization of the System, the Kaleidescape Software, any Service or any of their components, except to the extent that this provision is expressly prohibited by applicable statutory law; (iii) disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the System or any Service, except as expressly authorized by Kaleidescape in writing; (iv) use the Kaleidescape Software on or in connection with any hardware except the Hardware into which it is incorporated by Kaleidescape, except as expressly authorized by Kaleidescape in writing; or (v) reproduce or transmit or copy Kaleidescape Software in whole or in part, except as expressly authorized by Kaleidescape in writing. You may not use technical means to investigate and/or replicate any functionality of the System or Services and/or to copy or create other products based (in whole or in part) on any Service, except as expressly authorized by Kaleidescape in writing.

If any provision of this Agreement that limits your rights or defines the rights of Kaleidescape in relation to the Software would (but for this clause) be rendered void by the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs, then the provision will be deemed to include exceptions to the limitations and extensions of the rights granted, to the extent necessary (but no further) to avoid the provisions being null and void.

#### **6. No Improper Use, No Bypass of Security**

You are responsible for any use of your System and any use of the Services by your System or through

your Account, including information or materials you choose to submit to Kaleidescape. You agree to abide by all applicable laws in connection with your use of the System and the Services. You may not use the System or the Services to engage in any unlawful conduct or act, including, but not limited to, actions that are unlawful under applicable copyright laws. You acknowledge that unlawful use of the System or Services could expose you to criminal and/or civil liability.

You agree never to load or import or permit someone else to load or import commercial content of any kind onto your Kaleidescape System unless you own or have licensed the rights to the content. This includes digital files (e.g. MP4 files) that have been downloaded from the Internet, or any file or disc that has been transcoded, repackaged, or otherwise copied from a commercial content stream, download, or disc.

In particular, you agree never to load or import or permit someone else to load or import a commercial DVD or CD or replica thereof onto your Kaleidescape System unless you rightfully own the DVD or CD. You further agree that if you sell, give away, lend, or otherwise transfer ownership or possession of a commercial DVD or CD (other than by destroying it or loaning it to Kaleidescape), you will immediately delete from your System all Content previously loaded or imported from that DVD or CD.

The foregoing agreements preclude you from loading or importing any DVD or CD that has been rented by or to you, borrowed by you, lent to you, or which is licensed to you for use during a limited period of time, such as a self-destructing DVD or CD.

You agree not to bypass, modify, defeat or tamper with or circumvent any of the functions or protections of the System, Services, or Kaleidescape Content, or mechanisms that protect or limit use or access to the System, Services, or the Kaleidescape Content, including, but not limited to, any digital rights management functionality. You agree that you will not compromise security of any System, Service, Kaleidescape Content, or Account. If we believe you may have become involved in a violation of Kaleidescape System security, Kaleidescape reserves the right to release information concerning you to third parties to assist them in investigating such security violations.

You agree that any unauthorized use of your Kaleidescape Hardware or Software, or any other breach of this Section 6, is a material breach that will automatically terminate Kaleidescape's Warranty and Service obligations and your license to use Kaleidescape Software and Licensed Content.

## **7. Indemnity**

YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS KALEIDESCAPE, ITS LICENSORS, AND EACH OF THEIR RESPECTIVE AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS (E.G., CLAIMS ALLEGING NEGLIGENCE OR INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS), ACTIONS, PROCEEDINGS, INJURIES, LIABILITIES, JUDGMENTS, LOSSES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING FROM OR IN CONNECTION WITH YOUR BREACH OF ANY TERM OF THIS AGREEMENT, YOUR MISUSE OR UNAUTHORIZED USE OF THE SYSTEM OR SERVICES OR KALEIDESCAPE CONTENT, OR YOUR DIRECT OR INDIRECT UNAUTHORIZED MODIFICATION OR ALTERATION OF THE SYSTEM OR SOFTWARE OR THE USE OR INSTALLATION OF THE SYSTEM OR SOFTWARE IN AVIATION OR MARINE ENVIRONMENTS.

## **8. Limited Warranty, Limitation of Liability, Force Majeure**

Except as set forth in this Section 8, Kaleidescape warrants to each owner of a Kaleidescape System that, during the applicable Warranty Period, the Hardware will be free of defects in workmanship and material and will substantially conform to Kaleidescape's published specifications under normal use and service.

To obtain service under this limited warranty, you should first contact your dealer (if you purchased your System from a dealer) to ascertain if the problem relates to your network or to installation, integration, control programming, User Content, or User Content loading services. If you purchased your System from Kaleidescape, or if you no longer have a dealer, and the problem arises from defective Hardware or Software, you may contact Kaleidescape by email at support@kaleidescape.com, by telephone at +1 (650) 625-6160, or by mail at Kaleidescape, Inc., Attn.: Support Dept., 295 N. Bernardo Avenue, Suite 100, Mountain View, CA 94043-5205, United States, to arrange for warranty service of your Hardware or to obtain support for your Software. No products may be returned to Kaleidescape without an RMA (return authorization) number obtained from Kaleidescape. You must write that RMA number clearly on the outside of the packaging in which you return the defective Hardware. You are responsible for pre-paying shipping charges incurred to return Hardware to Kaleidescape; Kaleidescape will pay return shipping charges unless your Hardware is found, in the sole discretion of Kaleidescape, to be non-defective. You agree, if requested by Kaleidescape, to provide proof of purchase. If defective Hardware is returned to Kaleidescape pursuant to this Section during its Warranty Period, Kaleidescape will, at its option, repair that Hardware or replace it with new, repaired, or comparable Hardware. This Section 8 states Kaleidescape's sole liability and your sole remedy for any breach of warranty.

This warranty does not apply to Hardware installed in aircraft, or to damage or defects resulting from: (i) physical damage, accident, misuse, neglect, alteration, tampering, improper installation, unusual environmental, physical or electrical stress (such as overheating and voltage surges), or unauthorized repair; (ii) third party products, or actions by you or by any third party; or (iii) the insertion of a disk cartridge or disk drive other than a Kaleidescape disk cartridge or disk drive into a Kaleidescape server or player.

This warranty will be void if the Kaleidescape System has been tampered with or otherwise modified, if you do not keep the Kaleidescape System connected to the Internet to ensure proper monitoring of the health of your System and timely Software updates, or if Hardware is not returned to Kaleidescape in the original shipping carton or in such other packaging as may be permitted by Kaleidescape in writing. This warranty gives you specific legal rights, and you may also have other rights which vary depending on your jurisdiction. In the European Union, you may also have other legal rights under applicable national legislation governing the sale of consumer goods.

The foregoing warranty does not apply to installation, integration, control programming, Content loading, or replication services relating to your Kaleidescape System, even if such services are provided to you by your dealer or any other third party in connection with a warranty repair or replacement.

THIS SECTION 8 STATES YOUR SOLE WARRANTY. NO DEALER OR THIRD PARTY IS AUTHORIZED TO EXPAND OR EXTEND THIS WARRANTY OR TO MAKE ANY OTHER WARRANTY ON KALEIDESCAPE'S BEHALF. KALEIDESCAPE MAKES NO WARRANTY WITH RESPECT TO THE SERVICES, SOFTWARE OR KALEIDESCAPE CONTENT. KALEIDESCAPE DOES NOT WARRANT THAT USE OF THE SYSTEM OR SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR SECURE, AND KALEIDESCAPE IS NOT LIABLE FOR ANY LOSS OR CORRUPTION OF DATA. EXCEPT AS EXPRESSLY PROVIDED HEREIN, KALEIDESCAPE AND ITS LICENSORS AND SUPPLIERS EACH DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND WARRANTIES ARISING FROM TRADE USAGE OR COURSE OF DEALING. ALL IMPLIED WARRANTIES WITH RESPECT TO HARDWARE EXPIRE AT THE END OF THE WARRANTY PERIOD FOR SUCH HARDWARE, AND ALL OTHER IMPLIED WARRANTIES EXPIRE THIRTY (30) DAYS AFTER DELIVERY OF THE AFFECTED ITEM TO YOU. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (i) KALEIDESCAPE WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR FOR LOST PROFITS OR REVENUES OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR CONTENT; AND (ii) KALEIDESCAPE'S TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SYSTEMS, SERVICES OR CONTENT WILL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU FOR SYSTEMS, SERVICES AND/OR KALEIDESCAPE CONTENT DURING THE TWO-YEAR PERIOD PRECEDING THE DATE ON WHICH YOUR FIRST CLAIM AGAINST KALEIDESCAPE AROSE (PROVIDED THAT IF SUCH AMOUNT IS \$0, THEN KALEIDESCAPE'S MAXIMUM LIABILITY WILL BE \$500). THESE LIMITATIONS OF WARRANTIES, REMEDIES AND DAMAGES APPLY REGARDLESS OF THE FORM OF ACTION (WHETHER UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY), REGARDLESS OF WHETHER ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER KALEIDESCAPE HAS BEEN INFORMED OF OR IS AWARE OF THE POSSIBILITY OF YOUR LOSS OR DAMAGE. IN ADDITION, BECAUSE IT IS YOUR RESPONSIBILITY TO: (A) ENSURE THAT YOUR SYSTEM IS INSTALLED AND OPERATED IN ACCORDANCE WITH KALEIDESCAPE'S RECOMMENDATIONS AND SPECIFICATIONS, INCLUDING USING A PROPERLY INSTALLED AND RELIABLE LOCAL AREA NETWORK, AND (B) TO PERSONALLY PERFORM IN ACCORDANCE WITH ALL MATERIAL PROVISIONS IN THIS AGREEMENT, YOUR FAILURE TO SO INSTALL OR OPERATE YOUR SYSTEM, OR YOUR BREACH OF THIS AGREEMENT SHALL CAUSE KALEIDESCAPE'S ABOVE STATED MAXIMUM TOTAL CUMULATIVE LIABILITY TO BE REDUCED ON A STRAIGHT-LINE BASIS OVER THE TERM OF THE APPLICABLE WARRANTY, TO \$1 AT THE END OF SUCH WARRANTY PERIOD.

However, these provisions are not intended to limit Kaleidescape's liability in the event of Kaleidescape's willful or intentional misconduct. Moreover, if Kaleidescape mistakenly or wrongfully overcharges your account, this Section does not limit Kaleidescape's obligation to refund such mistakenly or wrongfully overcharged amounts.

Kaleidescape will NOT be responsible or liable for failure or delay in the performance of any of its obligations under this Agreement to the extent such failure or delay is due to causes beyond its reasonable control.

THE KALEIDESCAPE SYSTEM IS NOT INTENDED FOR USE IN THE OPERATION OF ALARMS, SAFETY APPLICATIONS, OR ANY OTHER USE IN WHICH FAILURE COULD LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL OR ENVIRONMENTAL DAMAGE.

You agree to inspect Discs before inserting them into any Kaleidescape product. Cracked or damaged discs can shatter and damage the player or cause injury. Damage to Hardware caused by dirty, cracked or damaged discs is not covered by this limited warranty.

## **9. Transferring Ownership of Your Kaleidescape System**

If you transfer the ownership of your Kaleidescape System to another person, then you must provide Kaleidescape with prior written notice, including the effective date of the transfer. The new owner must enter (or have already entered) into the Kaleidescape Service and License Agreement to reactivate the transferred System under the new owner's name. Prior to transferring ownership of your System, you agree to delete all copies of DVDs and CDs that have been imported. Alternatively, you may concurrently transfer the ownership of your physical DVDs and CDs to the new owner.

## **10. Termination**

You may terminate this Agreement, and your right to use the Kaleidescape System, Kaleidescape Services, and Kaleidescape Content, at any time and for any reason or no reason, by written notice to Kaleidescape.

Kaleidescape may suspend or terminate your right to use the Kaleidescape System, Services, and/or Kaleidescape Content, and may terminate this Agreement, without notice, if: (i) you breach any provision in this Agreement, (ii) misuse the Kaleidescape System, or (iii) use or permit others to use, the Kaleidescape System in a manner that infringes upon the intellectual property rights of Kaleidescape or any third party.

Upon any termination of this Agreement, all rights and licenses granted to you under this Agreement immediately terminate, and Kaleidescape may deactivate your System or Systems.

The provisions of the first, fourth and fifth paragraphs of Section 5 (Ownership and Licenses), the fifth paragraph of Section 6 (No Improper Use, No Bypass of Security), and Sections 7 (Indemnity), 8 (Limited Warranty, Limitation of Liability, Force Majeure), 9 (Transferring Ownership of Your Kaleidescape System), 10 (Termination) and 11 (Miscellaneous) of this Agreement, and, in Attachment A, the last paragraph of Section 1A (Account Registration), Section 1C (Deregistration), paragraph 4 of Section 2 (Your Use of the Kaleidescape Movie Service and Kaleidescape Content), Section 3 (No Warranty), the first paragraph and last sentence of the last paragraph of Section 5 (Fees, Payment), and Sections 6 (Security), and 8 (Reservation of Rights) will survive and remain in full force upon termination of this Agreement.

## **11. Miscellaneous Provisions**

(a) Notices. Any notice of a change of address or transfer of ownership, or other communication required or permitted hereunder, must be sent to Kaleidescape at the email address: legal@kaleidescape.com

(b) No Other Agreements. This Agreement contains all agreements between the parties with respect to the subject matter hereof, and no terms, conditions, course of performance, trade usage, agreements, understandings or any other memoranda, written or oral will supersede, modify, amend, or otherwise alter the terms of this Agreement, unless in a subsequent writing executed by the parties.

(c) Export Restrictions. Certain encryption technology incorporated into the Kaleidescape System is subject to regulation by the U.S. government and its agencies, which prohibit export or diversion of such technical products and information to certain countries and individuals. You warrant and agree that you will comply in all respects with all export and re-export restrictions applicable to the Kaleidescape System. You also agree to comply with all applicable export control laws with respect to any export of any Kaleidescape Content.

(d) U.S. Government End-Users. Kaleidescape Software and Other Software, and documentation for the Kaleidescape System, are "commercial items" as defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as defined in 48 C.F.R. 12.212 and 48 C.F.R. 227.7202. This software and documentation are licensed to U.S. Government End Users only as commercial items and only with those rights set forth explicitly herein.

(e) Third-Party Beneficiaries. Content owners licensing Content that you rent or purchase through the Kaleidescape Movie Service are intended third-party beneficiaries under this Agreement. However, you shall have no legal, equitable or other recourse against such content owners.

(f) Injunctive Relief. Notwithstanding anything to the contrary herein, you hereby irrevocably waive any right to seek or obtain injunctive or other equitable relief or remedy, or any order against Kaleidescape

or our Content providers to enjoin or restrain or otherwise impair in any manner, the manufacture, distribution, use, exhibition or other exploitation of any products or services, including but not limited to Content.

(g) SYSTEMS OR HARDWARE NOT OWNED BY YOU. If for any reason you are not the rightful owner of any System or Hardware used by you or in your possession or control, then NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, YOU AGREE THAT ANY SUCH SYSTEM OR HARDWARE IS RECEIVED AND WILL BE USED BY YOU “AS IS” AND DOES NOT HAVE ANY WARRANTY OF ANY KIND WHATSOEVER FROM KALEIDESCAPE (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) AND THAT, EXCEPT AS REQUIRED BY APPLICABLE LAW, THE MAXIMUM TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT IS HEREBY MODIFIED SO THAT UNDER ANY AND ALL CIRCUMSTANCES IT SHALL NOT EXCEED \$500.

(h) Except for a dispute relating to the infringement or misappropriation of our intellectual property (including but not limited to trademarks, trade dress, copyrights, patents, and trade secrets) or in which Kaleidescape is seeking an injunction (“Excluded Dispute”), you agree that any dispute between you and Kaleidescape (whether or not such dispute involves a third party) with regard to your relationship with the Company, including without limitation disputes related to this Agreement or your use of the System and Services, will be resolved by binding, individual arbitration under the Judicial Arbitration and Mediation Services rules for arbitration of consumer-related disputes and you and we hereby expressly waive trial by jury.

The language of the arbitration shall be English. Neither you nor we will participate in a class action or class-wide arbitration for any claims covered by this Agreement. You may elect to use Online Dispute Resolution, such as desktop or video conference call arbitration, if available, for claims less than \$25,000. Otherwise, you agree that the arbitration hearings will be held in the County of Santa Clara, California. You and only you may bring claims on your behalf.

This dispute resolution provision will be governed by the Federal Arbitration Act. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with this Agreement. The decision of the arbitrator will be final and binding except as provided in the Federal Arbitration Act. You understand and agree that all aspects of any dispute and any arbitration proceeding and the award, including the hearing, except as may be necessary in connection with a court application for a preliminary or permanent injunction, or unless otherwise required by law or judicial decision, shall be confidential. You understand and agree that any provision of applicable law notwithstanding, the arbitrator will not have authority to award punitive or exemplary damages, and the parties waive any right to recover any such damages. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. If any portion of this section is found to be invalid, illegal, or unenforceable, for any reason, that portion shall be severed from the rest and shall not affect the agreement to resolve all controversies and claims through arbitration. Any issue concerning the location of the arbitration, the extent to which any dispute is subject to arbitration, or the applicability, interpretation, or enforceability of this Agreement or arbitrability of any dispute will be resolved by the arbitrator.

In order to promote the expeditious resolution of issues without the expense or delay of arbitration, before initiating any arbitration proceeding, you agree to first discuss the matter informally with us for at least thirty (30) days. To do that, please send your full name and contact information, your concern and your proposed solution by mail to us at: Kaleidescape, Inc., 295 N. Bernardo Avenue, Suite 100, Mountain View, CA 94043-5205 Attn: Chief Executive Officer (copy to General Counsel).



**(i) REVISIONS TO THIS AGREEMENT. KALEIDESCAPE MAY AT ITS DISCRETION REVISE THE TERMS OF THIS AGREEMENT. YOU AGREE THAT ALL SUCH AMENDMENTS WILL BE EFFECTIVE UPON NOTIFICATION BY KALEIDESCAPE TO THE EMAIL ADDRESS YOU PROVIDE WHEN REGISTERING YOUR SYSTEM (OR ANY UPDATED EMAIL ADDRESS YOU LATER PROVIDE TO KALEIDESCAPE). YOU FURTHER AGREE THAT YOUR CONTINUED USE OF YOUR SYSTEM OR THE SERVICES (INCLUDING THE MOVIE SERVICE) FOLLOWING DELIVERY OF SUCH EMAIL NOTICE WILL BE DEEMED TO BE YOUR IRREVOCABLE ACCEPTANCE OF SUCH REVISIONS. IF YOU ARE DISSATISFIED WITH ANY CHANGES TO THIS AGREEMENT, YOU MAY TERMINATE THIS AGREEMENT AS PROVIDED IN SECTION 10 (TERMINATION).**

**(j) GOVERNING LAW AND LANGUAGE. THIS AGREEMENT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. IN THE EVENT OF AN EXCLUDED DISPUTE, YOU AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN SANTA CLARA COUNTY OF THE STATE OF CALIFORNIA. ENGLISH SHALL BE THE CONTROLLING LANGUAGE OF THIS AGREEMENT.**

**I REPRESENT THAT I HAVE READ AND UNDERSTOOD THIS ENTIRE AGREEMENT (INCLUDING ITS ATTACHMENTS) AND I AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

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## ATTACHMENT A

### TERMS AND CONDITIONS GOVERNING KALEIDESCAPE MOVIE SERVICE AND KALEIDESCAPE CONTENT

#### 1. Registration and Use of Your Account

##### A. Account Registration and Security

In order to use the Kaleidescape Movie Service, you must first set up an account at <https://movies.kaleidescape.com>, providing us a valid credit card (we currently accept VISA, MasterCard and American Express) with a billing address in the appropriate Movie Service Territory. You may set up an Account only if you are legally able to enter into agreements and make rentals and purchases electronically. You acknowledge that you are responsible for all rentals and purchases made through your Account and all agreements (including this Agreement) entered into through or in connection with that Account, whether or not authorized by you, and agree to be bound by all such agreements and to pay for all such rentals and purchases.

You agree to provide us true, accurate and complete information when you set up your Account ("**Registration Data**"), including your legal name, physical and email addresses, telephone number(s), and applicable payment data (e.g., credit card number and expiration date), and agree to promptly update that information as and when it changes. You may not use a false identity. You agree that we may store and use the information you provide in connection with your Account in a manner consistent with our rights under this Agreement, including without limitation, our Privacy Policy, and that our credit card processing partners may store and use credit card information in a manner consistent with our Privacy Policy. If your credit card expires, is canceled, is lost or is used without your authorization, or if your Account is used without your authorization, follow the Account help instructions at <https://movies.kaleidescape.com/help> to update your Registration Data.

Once you have set up your Account, you may link up to five (5) Systems to that Account, provided each such system belongs to you, is leased by you, or is on loan to you and is in your possession or control. You may create any number of Accounts. However, each System may be linked only to a single Account.

You are responsible for safeguarding and maintaining the confidentiality of your Account information. You may not post your username or password on any website or transmit it through unsecured sites. If we feel your username and/or password are insecure or otherwise problematic, we may require you to change them and/or may terminate your Account. You agree to notify us immediately in the event of any unauthorized use of your Account or any other breach of security.

##### B. Privacy

Kaleidescape respects the privacy of your personal information and will not disclose it except as permitted in the Kaleidescape Privacy Policy or this Agreement. The latest version of the Kaleidescape Privacy Policy is available at <https://www.kaleidescape.com/legal/privacy-policy.pdf>

**YOU AFFIRM THAT YOU UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS OF OUR PRIVACY POLICY.**

##### C. Deregistration

If you will no longer use a System linked to your Account, you may deregister it in the Movie Service, or

through the browser interface. The System will need to be connected to the Internet. If the System is non-functional, you may deregister it by contacting us at [support@kaleidescape.com](mailto:support@kaleidescape.com). Kaleidescape may require you to return one or more of the components of the non-functional System to Kaleidescape. Once a System is deregistered, it will no longer be able to play Licensed Content that was rented or purchased on the Movie Service through the Account to which it was linked, as well as User Content (other than music) stored on that System, until the System is linked to a new Account.

## **2. Your Use of the Movie Service and Kaleidescape Content**

Your right to use the Movie Service and Kaleidescape Content is subject to your compliance with this Agreement, including this Attachment A.

Once you have linked a System to your Account, you may rent or purchase a license to view Licensed Content for that System through the Movie Service. The Movie Service may be accessed from any computer, tablet or smart phone located in the Movie Service Territory, through a supported browser. When renting or purchasing a license to view Licensed Content, you will be asked to specify the linked System(s) to which the Content should be downloaded. Such Systems must be located in the Movie Service Territory at the time of download. (You may not use a proxy or any other method to obscure the location of your System or the device from which you are accessing the Movie Service.) Licensed Content will automatically be downloaded to the System(s) you specify. Based on restrictions by our Content Owners, some Licensed Content may not be available for rental, purchase and/or download through the Movie Service in every Movie Service Territory.

When you rent or purchase a license to view Licensed Content from the Movie Service, you are granted a non-exclusive, non-transferable (except as specified in Section 8), limited right and license, under copyright, to display the Licensed Content, only via your Kaleidescape System, and solely for your private non-commercial viewing. Any other use or exploitation of the Movie Service or the Licensed Content is strictly prohibited.

Kaleidescape may offer upgrades to higher quality for eligible DVDs and Blu-ray discs. Such offers are only available for titles that have been legitimately purchased and are presently owned by you. Kaleidescape reserves the right to periodically re-verify possession of discs used to qualify for such offers. Kaleidescape reserves the right to withhold these offers, or to limit or cancel your access to the title if we reasonably believe such title does not meet, or no longer meets, the requirements set forth in this paragraph. The audio and video content embodied in a DVD or Blu-ray disc may differ from the audio and video content of the digital Licensed Content on the Kaleidescape Services.

All Content included in or made available through the Movie Service, such as text, graphics, logos, button icons, images, audio clips, and data compilations is the property of Kaleidescape or its content suppliers and protected by United States and international copyright laws.

You may not:

- (i) Sell, rent, lease, publicly perform or display, copy, record, broadcast, upload (e.g., to a peer-to-peer file sharing service), post, stream, transmit or otherwise distribute any of the Kaleidescape Content, or facilitate any such activities (e.g., through operation of eDonkey directory servers, BitTorrent trackers and/or websites which index and link to content served at a separate host), or sublicense or otherwise transfer or assign any right to any of the Kaleidescape Content to any third party;
- (ii) Customize, modify, or create derivative works of the Kaleidescape Content or any portion of thereof;

- (iii) Remove any proprietary notices or labels on any Kaleidescape Content;
- (iv) Attempt to remove, disable, bypass, modify, defeat, or otherwise circumvent or interfere with any of the digital rights management, copy protection, watermarks or other security-related tools incorporated into any Kaleidescape Content or the Movie Service;
- (v) Use the Movie Service or Kaleidescape Content for any commercial or unlawful purpose, or otherwise infringe a Kaleidescape Content-owner's intellectual property rights. While using the Movie Service, you may encounter Kaleidescape Content that may be deemed offensive, indecent, or objectionable. You agree to use the Movie Service at your sole risk and that neither we nor our suppliers will have any liability to you for the type of Content that you may access, including without limitation Content that you may find offensive, indecent, or objectionable. Neither we nor our suppliers warrant the truth or validity of information provided via the Service, including Metadata; and/or
- (vi) Engage in activities that infringe intellectual property rights (for example, the unauthorized P2P file-sharing, posting, streaming, making available, uploading, downloading or other distribution of content protected by intellectual property).

### **3. No Warranty**

THE LICENSED CONTENT IS PROVIDED "AS IS". KALEIDESCAPE AND OUR CONTENT PROVIDERS EACH DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE LICENSED CONTENT, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND WARRANTIES ARISING FROM TRADE USAGE OR COURSE OF DEALING. ALL IMPLIED WARRANTIES WITH RESPECT TO AN ITEM OF LICENSED CONTENT WILL EXPIRE THIRTY (30) DAYS AFTER THE FIRST DOWNLOAD OF THAT ITEM TO ANY OF YOUR SYSTEMS. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

### **4. Availability of Licensed Content**

Licensed Content rentals and purchases provide different rights. Licensed Content rentals are typically viewable on a single Kaleidescape System at a time, must be played within thirty (30) days, and must be completed within forty-eight (48) hours of the start of play (stopping, pausing or restarting does not extend this period), subject to our arrangements with the rights owners of such Licensed Content. If, for example, we are notified of certain licensing restrictions, you may not have the right to download certain Licensed Content to more than one (1) Kaleidescape System or you may be required to complete viewing within thirty (30) days. Neither we, nor any of our Content providers, will be liable to you if any Licensed Content becomes unavailable for further download, including re-download or the entire viewing period set forth in the first sentence of this section.

Licensed Content purchases will remain available for download and for re-download from the Movie Service, subject to our arrangements with the rights owners of such Licensed Content. If, for example, such third party agreements expire or are terminated, or we are notified of certain licensing restrictions, you may lose some or all of your rights to download or re-download certain Licensed Content to your Kaleidescape System. However, such events will have no effect on your ability to play such Licensed Content previously downloaded to your Kaleidescape System provided you have not deleted the Licensed Content from your System. Neither we, nor any of our Content providers, will be liable to you if any

Licensed Content becomes unavailable for further download, including re-download.

Whereas Kaleidescape currently does not charge for delivery associated with downloads or re-downloads of purchased Licensed Content for up to five (5) Systems registered to your Account, Kaleidescape reserves the right to charge you a delivery fee for certain downloads and re-downloads in the future.

You acknowledge that Licensed Content rentals and purchases from the Movie Service are only available on a download basis and are not available on a streaming basis.

## **5. Fees, Payment**

You are responsible for all charges arising from use of your Account. You are also responsible for all charges associated with connecting to and using the Movie Service and downloading and accessing Licensed Content to and through your System, including Internet access fees and computer equipment and any service fees or bandwidth costs you incur in downloading and accessing Licensed Content.

The availability and price for each item of Licensed Content is indicated by the Movie Service. Prices are subject to change at any time but will be clearly marked on the transaction page for the Content prior to your rental or purchase. The fee for each rented or purchased item of Licensed Content will be charged to the credit card on file when you make that rental or purchase. If a charge is declined or reversed or otherwise not paid after you download Licensed Content, you agree that Kaleidescape may deauthorize that Licensed Content so that you may not play it until you pay for it.

## **6. Security**

You agree not to bypass, modify, defeat or tamper with or circumvent any of the functions or protections of the Movie Service or Licensed Content, or mechanisms that protect or limit use or access to the Movie Service or the Licensed Content, including, but not limited to, any digital rights management functionality. You agree that you will not compromise the security of the Movie Service or any Kaleidescape Content or Account. If we believe you may have become involved in a violation of Kaleidescape system security, Kaleidescape reserves the right to release information concerning you to third parties to assist them in investigating such security violations.

## **7. Future Changes Regarding Licensed Content**

Kaleidescape reserves the right to modify, suspend or discontinue the Movie Service at any time, or your use thereof, without notice. You acknowledge that if Kaleidescape exercises these rights, you may not be able to access, view or use the Licensed Content in the same manner as prior to such changes, or at all. Neither Kaleidescape nor any of our Licensed Content providers will be liable to you in such circumstances.

Kaleidescape reserves the right to charge for continued access to the Movie Service and its Licensed Content.

## **8. Reservation of Rights**

Except for the rights explicitly granted to you in this Agreement, Kaleidescape and its Content providers retain all right, title and interest in the Services and the Kaleidescape Content (including, but not limited to all commercial, promotional use rights and any other intellectual property rights in connection with such Content).