

Terms of Service

Version 1.2

Last revised on: May 11, 2020

Welcome to Kaleido (“Kaleido”, “Company”, “we”, “our”, or “us”). These Terms of Service (“Terms” or “Terms of Service”) govern your use of the websites located at <http://kaleido.io/> and <https://console.kaleido.io> (the “Sites”), platform, and all related tools, applications, data, software, and other services provided by us (the “Services”). All such Policies are incorporated by reference into these Terms and constitute a legally binding agreement between you and Company in relation to your use of the Service.

The Terms of Service shall be deemed to include all additional guidelines, terms, rules, conditions, policies, and procedures that are referred to herein or that may otherwise be published on the Sites by Kaleido from time to time (collectively, the “Policies”), including without limitation, the AUP, Documentation. and Privacy Policy

THESE TERMS SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE SITES AND SERVICES. BY ACCESSING OR USING THE SITES OR SERVICES, YOU ARE ACCEPTING THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT), AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT). YOU FURTHER REPRESENT AND WARRANT THAT YOU ARE OTHERWISE LEGALLY PERMITTED TO USE THE SERVICES IN YOUR JURISDICTION AND THAT THE COMPANY IS NOT LIABLE FOR YOUR COMPLIANCE WITH SUCH APPLICABLE LAWS. YOU MAY NOT ACCESS OR USE THE SITES OR SERVICES OR ACCEPT THE TERMS IF YOU ARE NOT AT LEAST 18 YEARS OLD. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THESE TERMS, DO NOT ACCESS AND/OR USE THE SITES.

THESE TERMS REQUIRE THE USE OF ARBITRATION (SECTION 12.2) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

DEFINITIONS

“AUP” means Company’s acceptable use policy currently posted at <https://kaleido.io/acceptable-use-policy/>

“Customer Data” means data in electronic form input or collected through the Sites or Services by or from Customer, including without limitation by Customer’s Users.

“Documentation” means Company’s standard manual related to use of the Sites and

Services currently posted at <https://docs.kaleido.io/>

“Privacy Policy” means Company’s privacy policy, currently posted at <https://kaleido.io/privacy-policy/>

“Term” is defined in Section 10.1 below.

“User” means any individual who uses the Sites and Services on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.

“Policies” means all additional guidelines, terms, rules, conditions, policies, and procedures that are referred to in these Terms of Service or that may otherwise be published on the Sites by Kaleido from time to time.

ACCOUNTS

2.1 Account Creation. In order to use certain features of the Sites and the Services, you must register for an account (“Account”) and provide certain information about yourself as prompted by the account registration form. You may elect to register or not, at your discretion. If you sign up for the Services through a third party’s site, you will create the Account by being redirected to the Site. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information. You may delete your Account at any time, for any reason, by following the instructions on the Sites. Company may suspend or terminate your Account in accordance with this Agreement.

Your submission of Customer Data through the Site or Services is governed by the Company’s Privacy Policy.

2.2 Account Responsibilities. You are responsible for maintaining the confidentiality of your Account login information and are fully responsible for all activities that occur under your Account. You agree to immediately notify Company of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. Company cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

2.3 Customer Responsible for User Access. Customer is responsible and liable for: (a) Users’ use of the Sites or Services, including without limitation unauthorized User conduct and any User conduct that would violate the AUP or the requirements of this Agreement applicable to Customer; and (b) any use of the Sites or Services through Customer’s account, whether authorized or unauthorized.

2.4 Unauthorized Access. Customer shall take reasonable steps to prevent unauthorized access to the Sites or Services, including without limitation by protecting its passwords and other log-in information. Customer shall notify Company immediately of any known or suspected unauthorized use of the Sites of Services or breach of its security and shall use best efforts to stop said breach.

ACCESS TO SITES AND SERVICES

3.1 License. Subject to these Terms, Company grants you a non-transferable, non-exclusive, revocable, limited license to use and access the Sites and Services solely for your own personal or internal business use.

3.2 Certain Restrictions. The rights granted to you in these Terms are subject to the following restrictions: Customer shall comply with the AUP generally. In addition, (a) you shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Sites or Services, whether in whole or in part, or any content displayed on the Sites or Services; (b) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Sites or Services; (c) you shall not access the Sites or Services in order to build a similar or competitive website, product, or service or for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; (d) except as expressly stated herein, no part of the Sites or Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; (e) you shall not use the Site or Services to store or transmit computer viruses, works, time bombs, Trojan horses and other harmful or malicious code, routines, files, scripts, agents or programs; (f) you shall not use the Site or Services to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the privacy or intellectual property rights of any third party; and (g) you shall not interfere with or disrupt the integrity or performance of the Site or Services or third-party data contained therein. Unless otherwise indicated, any future release, update, or other addition to functionality of the Sites or Services shall be subject to these Terms. All copyright and other proprietary notices on the Sites or Services (or on any content displayed on the Sites) must be retained on all copies thereof.+

3.3 Compliance with Laws. In using the Sites or Services, Customer shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data. This specifically includes, without limitation, providing appropriate notices to your Users, obtaining any necessary consents, providing any required opt-out opportunities and fulfilling your responsibilities when transferring personal data.

3.4 Modification. Company reserves the right, at any time, to modify, suspend, or discontinue the Site, Services, or any SLA then in place (in whole or in part) with or without notice to you. If any such revision materially reduces features or functionality provided pursuant to an Order, Customer may within 30 days of notice of the revision terminate such Order, without cause, or terminate this Agreement without cause if such Order is the only one outstanding. If any such revision to any SLA then in place materially reduces service levels provided pursuant to an outstanding Order, the revisions will not go into effect with respect to such Order until the start of the Term beginning 30 or more days after Company posts the revision and so informs Customer.

PAYMENT

4.1 Subscription Fees. Customer shall pay Company the fee set forth in each Order (the “Subscription Fee”) for each Term. Company’s invoices are due within 30 days of issuance. For late payment, Customer shall pay interest charges from the time the payment was due at the rate that is the lower of 1.5% per month or the highest rate permissible under applicable law. Except for Company’s material breach of this Agreement or as otherwise specified in Section 3.3, Company will not be required to refund the Subscription Fee under any circumstances.

4.2 Taxes. Amounts due under this Agreement are payable to Company without deduction and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value added tax withheld at the source. If applicable law requires withholding or deduction of such taxes or duties, Customer shall separately pay Company the withheld or deducted amount.

4.3 Third-Party Payment Processors. We use third-party payment processors (the “Payment Processors”) to bill you through a payment account linked to your Account on the Services (your “Billing Account”) for use of the paid Services. The processing of payments may be subject to the terms, conditions and privacy policies of the Payment Processors in addition to this Agreement. We are not responsible for error by the Payment Processors. By choosing to use paid Services, you agree to pay us, through the Payment Processors, all charges at the prices then in effect for any use of such paid Services in accordance with the applicable payment terms and you authorize us, through the Payment Processors, to charge your chosen payment provider (your “Payment Method”). You agree to make payment using that selected Payment Method. We reserve the right to correct any errors or mistakes that it makes even if it has already requested or received payment

YOU MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR BILLING ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY US OR OUR PAYMENT PROCESSORS IF YOUR PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR USER NAME OR PASSWORD. CHANGES TO SUCH INFORMATION CAN BE MADE AT billing@kaleido.io

INTELLECTUAL PROPERTY

5.1 Ownership. You acknowledge that all right, title and interest in, and intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Services, Sites, and its content are owned by Company or Company’s suppliers. Neither these Terms (nor your access to the Sites or use of the Services) transfers to

you or any third party any rights, title or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 2.1. Company and its suppliers reserve all rights not granted in these Terms. There are no implied licenses granted under these Terms.

5.2 Feedback. If you provide Company with any feedback or suggestions regarding the Sites or Services (“Feedback”), you hereby assign to Company all rights in such Feedback and agree that Company shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. Company will treat any Feedback you provide to Company as non-confidential and non-proprietary. You agree that you will not submit to Company any information or ideas that you consider to be confidential or proprietary.

CUSTOMER DATA, PRIVACY, CONFIDENTIALITY

6.1 Use of Customer Data. Unless it receives Customer’s prior written consent, Company: (a) shall not access, process, or otherwise use Customer Data other than as necessary to facilitate the Services; and (b) shall not intentionally grant any third party access to Customer Data, including without limitation Company’s other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Company may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Unless otherwise prohibited by applicable law or governmental authority, Company shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer’s expense.

6.2 Privacy Policy Not Applicable to Third Parties. Our Privacy Policy applies only to the Services and does not apply to any third party website or service linked or accessed through the Services.

6.3 Specific Risks Relating to Data.

6.3.1 Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the Services, Customer assumes such risks. Company offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.

6.3.2 Company has no responsibility or liability for the accuracy of data uploaded to the Services by Customer or Customer’s Users.

6.3.3 Company may permanently erase Customer Data if Customer’s account is delinquent, suspended, or terminated for 30 days or more.

6.4 Company’s Use of Customer Data. Notwithstanding the provisions above of this Article 6, Company may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. (“Aggregate Data” refers to Customer Data with

the following removed: personally identifiable information and the names and addresses of Customer and any of its Users or customers.)

6.5 Confidential Information. “Confidential Information” refers to the following items Company discloses to Customer: (a) any document Company marks “Confidential”; (b) any information Company orally designates as “Confidential” at the time of disclosure; (c) the Documentation whether or not marked or designated confidential; and (d) any other nonpublic, sensitive information Customer should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Customer’s possession at the time of disclosure; (ii) is independently developed by Customer without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Customer’s improper action or inaction; or (iv) is approved for release in writing by Company. Customer is on notice that the Confidential Information may include Company’s valuable trade secrets.

6.5.1. Nondisclosure. Customer shall not use Confidential Information for any purpose other than Customer’s use of the Sites or Services (the “Purpose”). Customer: (a) shall not disclose Confidential Information to any employee or contractor of Customer unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Customer with terms no less restrictive than those of this Article 6; and (b) shall not disclose Confidential Information to any other third party without Company’s prior written consent. Without limiting the generality of the foregoing, Customer shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Customer shall promptly notify Company of any misuse or misappropriation of Confidential Information that comes to Customer’s attention. Notwithstanding the foregoing, Customer may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Customer shall give Company prompt notice of any such legal or governmental demand and reasonably cooperate with Company in any effort to seek a protective order or otherwise to contest such required disclosure, at Company’s expense.

6.5.2 Injunction. Customer agrees that breach of this Article 6 would cause Company irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Company will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

6.5.3 Termination & Return. With respect to each item of Confidential Information, the obligations of Section 6.5.1 above (Nondisclosure) will terminate two years after the date of disclosure; provided that such obligations related to Confidential Information constituting Company’s trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Customer shall return all copies of Confidential Information to Company or certify, in writing, the destruction thereof.

6.5.4 Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Company will retain all right, title, and interest in and to all Confidential Information.

6.5.5 Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:

(a) Immunity. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(b) Use of Trade Secret Information in Anti-Retaliation Lawsuit. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

REPRESENTATIONS AND WARRANTIES

7.1. By Company. Company represents and warrants that it is the owner of the Sites and Services and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. In the event of a breach of the warranty in this Section 7.1, Company, at its own expense, shall promptly take the following actions: (a) secure for Customer the right to continue using the Sites and Services; (b) replace or modify the Sites or Services to make it noninfringing; or (c) terminate the infringing features of the Sites or Services and refund to Customer any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Customer's right to terminate for breach where applicable, the preceding sentence states Company's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Section 7.1 and for potential or actual intellectual property infringement by the Sites and Services.

7.2. By Customer. Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the Sites and Services; and (c) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.

7.3. Warranty Disclaimers. Except to the extent set forth in any SLA then in place and in Section 7.1 above, CUSTOMER ACCEPTS THE SITES AND SERVICES "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND,

EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) COMPANY HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SITES AND SERVICES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SITES AND SERVICES IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

INDEMNIFICATION

8.1 You agree to indemnify and hold Company (and its officers, employees, and agents) harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Sites and Services, (b) your violation of these Terms, (c) your violation of applicable laws or regulations or (d) your User Content. Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Company. Company will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

LIMITATION ON LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL COMPANY (OR OUR SUPPLIERS) BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SITES OR SERVICES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SITES IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO A THE GREATER OF FIFTY THOUSAND US DOLLARS (U.S. \$50,000) OR THE AMOUNT ACTUALLY PAID BY CUSTOMER TO COMPANY IN THE

PRECEDING TWELVE MONTHS. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. YOU AGREE THAT OUR SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

TERM AND TERMINATION

10.1 Unless terminated hereunder, the Term for your Order will be specified in your Order.

10.2 Subject to this Section, these Terms will remain in full force and effect while you use the Sites and Services. We may suspend or terminate your rights to use the Sites and Services (including your Account) at any time for any reason at our sole discretion, including for any use of the Sites or Services in violation of these Terms. Upon termination of your rights under these Terms, your Account and right to access and use the Sites and Services will terminate immediately. Unless expressly discussed herein, Company will not have any liability whatsoever to Customer for any termination of your rights under these Terms, including for termination of your Account. Even after your rights under these Terms are terminated, the following provisions of these Terms will remain in effect: Sections 4, 5, 6, 8, 9, and the entirety of 12.2.

THIRD PARTY LINKS & ADS; OTHER USERS

11.1 Third-Party Links & Ads. The Sites may contain links to third-party websites and services, and/or display advertisements for third parties (collectively, "Third-Party Links & Ads"). Such Third-Party Links & Ads are not under the control of Company, and Company is not responsible for any Third-Party Links & Ads. Company provides access to these Third-Party Links & Ads only as a convenience to you, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Links & Ads. You use all Third-Party Links & Ads at your own risk, and should apply a suitable level of caution and discretion in doing so. When you click on any of the Third-Party Links & Ads, the applicable third party's terms and policies apply, including the third party's privacy and data gathering practices. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction in connection with such Third-Party Links & Ads.

GENERAL

Changes. These Terms are subject to occasional revision, and if we make any changes, we will change the Last Updated date above. Continued use of our Sites following such

notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

12.2 Dispute Resolution. Please read this Arbitration Agreement carefully. It is part of your contract with Company and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

12.2.1 This Agreement shall be governed by the laws of the State of New York. Any claim, dispute, or controversy (“Claim”) arising out of or relating to this Agreement or the relationships among the parties hereto shall be resolved by one arbitrator through binding arbitration conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures (the “Rules”) as those Rules exist on the effective date of this Agreement, including Rules 16.1 and 16.2 of those Rules. The arbitrator’s decision shall be final, binding, and non-appealable. Judgment upon the award may be entered and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party other than as provided herein or for enforcement of this clause or of the arbitrator’s award; any such suit may be brought only in a Federal District Court or a New York state court located in New York County, New York. The arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability, or formation of this Agreement including any claim that all or any part of the Agreement is void or voidable.

12.2.2 THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and the Company in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND THE COMPANY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

12.2.3 If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

12.2.4 Notwithstanding the foregoing, either you or the Company may bring an individual action in small claims court.

12.2.5 Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A

request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

12.2.6 Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

12.3 Export. The Sites and Services may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree not to export, re-export, or transfer, directly or indirectly, any U.S. technical data acquired from Company, or any products utilizing such data, in violation of the United States export laws or regulations.

12.4 Disclosures. If you are a California resident, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Product of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

12.5 Electronic Communications. The communications between you and Company use electronic means, whether you use the Sites or send us emails, or whether Company posts notices on the Sites or communicates with you via email. For contractual purposes, you (a) consent to receive communications from Company in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hard-copy writing. The foregoing does not affect your non-waivable rights.

12.6 Entire Terms. These Terms constitute the entire agreement between you and us regarding the use of the Sites. Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. The word "including" means "including without limitation". If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Your relationship to Company is that of an independent contractor, and neither party is an agent or partner of the other. These Terms, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Company's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Company may freely assign these Terms. The terms and conditions set forth in these Terms shall be binding upon assignees.

12.7 Contact. We welcome your comments or questions about these Terms. Please contact us at: legal@kaleido.io.