

# KALEIDOSCOPE MASTER PARTNER AGREEMENT FOR KALEIDOSCOPE CLOUD AND IOT SERVICES



THIS MASTER PARTNER AGREEMENT FOR KALEIDOSCOPE'S CLOUD AND IOT SERVICES ARE INCORPORATED BY REFERENCE INTO BOTH THE KALEIDOSCOPE SELF SERVICE PARTNER PORTAL, THIS DOCUMENT, AND THE PARTNER REGISTRATION DOCUMENT, EXECUTED BY THE COMPANY IDENTIFIED AS THE "PARTNER" THEREIN ("PARTNER" OR "YOU") AND KALEIDOSCOPE IOT SYSTEMS, INC. (KNOWN IN THIS AGREEMENT AS KALEIDOSCOPE), AND TOGETHER WITH PARTNER, THE ("PARTIES"). THIS MASTER PARTNER AGREEMENT FORM A BINDING AND EXECUTED PARTNER AGREEMENT BETWEEN PARTNER AND KALEIDOSCOPE, EFFECTIVE AS OF THE FIRST DATE OF MUTUAL EXECUTION BY PARTNER AND KALEIDOSCOPE OR WHEN YOU CHECK THE BOX PRESENTED WITH THESE TERMS OR, IF EARLIER, WHEN YOU RECEIVE ANY PARTNER BENEFITS. YOU REPRESENT TO US THAT YOU ARE LAWFULLY ABLE TO ENTER INTO CONTRACTS, AND IF YOU ARE ENTERING INTO THESE TERMS ON BEHALF OF AN ENTITY, SUCH AS THE COMPANY YOU WORK FOR, YOU REPRESENT TO US THAT YOU HAVE LEGAL AUTHORITY TO BIND THAT ENTITY. THE PARTIES AGREE TO THE FOLLOWING:

## 1 DEFINITIONS

The following terms, when used in this Partner Agreement, shall have the following meanings:

- 1.1 **Cloud & IoT Services** means, collectively, the Kaleidoscope IoT cloud services (e.g., Kaleidoscope software as a service offering, IoT services related to Kaleidoscope and/or its partner ecosystem, and related Kaleidoscope Programs) defined in the Services Specifications. The term "Cloud & IoT Services" does not include Professional Services.
- 1.2 **Intellectual Property** means patents, copyrights, trademarks, trade names, trade secrets, moral rights, and all other intellectual property rights of any kind.
- 1.3 **Kaleidoscope Programs** means the software products owned or licensed by Kaleidoscope to which Kaleidoscope grants You access as part of the Cloud & IoT Services, including Program Documentation, and any program updates provided as part of the Cloud & IoT Services. The "Kaleidoscope Programs" does not include Separately Licensed Third Party Technology.
- 1.4 **Password** means the identification and password to the Cloud & IoT Services provided by Kaleidoscope to Partner
- 1.5 **Partner Registration Document** means the document detailing Partner's membership level in the Program along with other licenses grants, fees and supplemental terms associated with such membership.
- 1.6 **Program Documentation** means the program user manuals for the Kaleidoscope Programs for Cloud & IoT Services, as well as any help windows and read me files for such Kaleidoscope Programs that are accessible from within the Cloud & IoT Services. The Program Documentation describes technical and functional aspects of the Kaleidoscope Programs. You may access the documentation via the Kaleidoscope Website, or such other address specified by Kaleidoscope. Kaleidoscope may update, modify or otherwise change the Program Documentation in its sole discretion without notice.
- 1.7 **Separately Licensed Third Party Technology** refers to third party technology that is licensed under Separate Terms and not under the terms of this Partner Agreement.
- 1.8 **Services Specifications** means the descriptions on the Kaleidoscope website, or such other address specified by Kaleidoscope, that are applicable to the Cloud Services under the Partner Registration Documents, including any Program Documentation, Kaleidoscope Cloud Hosting and Delivery Policies (e.g. support and security policies), and other descriptions referenced or incorporated in such descriptions.

1.9 **Kaleidoscope Website** means any content listed on [kaleidoscopeiot.com](http://kaleidoscopeiot.com), [cloud.kaleidoscopeiot.com](http://cloud.kaleidoscopeiot.com), or any other associated Kaleidoscope websites.

1.10 **Lead Referral Revenue** means any payments actually received by Kaleidoscope from a Commissionable Lead for the first year's fees under a subscription agreement or other ordering document between Kaleidoscope and the Commissionable Lead entered into during the Commissionable Period for the Commissionable Lead's first order of a Commissionable Product, minus any taxes, subsequently credited charges, write-offs, refunds or charge backs.

For the avoidance of doubt, Lead Referral Revenue does not include any amounts received for follow-up orders, additional sales, renewals, or for products or services that are not Commissionable Products at the time of the relevant Referral Confirmation, such as professional services, support services, training services or third party software products purchased by a Commissionable Lead, nor does it include amounts that are owed by the Commissionable Lead but have not actually been received by Kaleidoscope.

## 2 APPOINTMENTS AND LICENSE; CERTAIN RESTRICTIONS; OWNERSHIP; SECURITY

- 2.1 **Appointments:** Subject to the terms and conditions of this Partner Agreement and the Partner Registration Document, Kaleidoscope hereby appoints You as a non-exclusive member of the Kaleidoscope partner program for the Kaleidoscope IoT Cloud ("Program"). Your membership level (including without limitation approved territories, use and access rights and/or other licenses associated with Your Program membership level) shall be set forth in the Partner Registration Document entered into by and between You and Kaleidoscope.
- 2.2 **Restrictions:** You shall not, and shall not permit or assist any third party to:
  - (a) modify, translate, create derivative works based on, reverse engineer, disassemble or otherwise attempt to discover the underlying structure, source code, ideas or algorithms of, or remove any proprietary notices contained in, the Cloud & IoT Services or Program Documentation;
  - (b) create any link to the Cloud & IoT Services or frame or mirror any content contained or accessible from the Cloud & IoT Services;
  - (c) except as otherwise expressly provided herein, distribute, (sub)license, (re)sell, use on a timeshare or service bureau

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basis or otherwise commercially exploit the Cloud & IoT Services;

- (d) use the Cloud & IoT Services in a manner that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable local, state, federal or foreign law, treaty, regulation or convention ("Law");
- (e) access or use the Cloud & IoT Services without an authorized Password;
- (f) use a Password that is intended for You to demonstrate the Cloud & IoT Services internally to provide the Cloud & IoT Services (or any other services);
- (g) provide to third parties any evaluation version of the Cloud & IoT Services without Kaleidoscope's prior written consent;
- (h) allow any third party that offers or provides services that are competitive to or with Kaleidoscope's products and/or services to use or access the Cloud & IoT Services without prior written permission from Kaleidoscope; or
- (i) use the Cloud & IoT Services in violation of Kaleidoscope's Cloud & IoT Services Agreement located on the Kaleidoscope Website, or such other address specified by Kaleidoscope.

2.3 **Ownership:** Kaleidoscope retains and shall have sole and exclusive ownership of all right, title, and interest (including all Intellectual Property) in and to

- (a) the Cloud & IoT Services, Kaleidoscope Programs and the Program Documentation (including all derivative works of or modifications or improvements to, or suggestions, comments or other feedback related to, any of the foregoing) and
- (b) all software, deliverables, documentation, specifications, materials, algorithms, reports, methods and other ideas and items provided, conceived or developed pursuant to this Partner Agreement and/or any statement of work related to this Partner Agreement between the parties, whether created solely by either Party or jointly by the Parties (including with their subcontractors or other personnel) (clauses (a) and 0, collectively, "Kaleidoscope IP").

If You obtain any right, title or interest in or to any Kaleidoscope IP, you hereby assign to Kaleidoscope all right, title and interest in and to the Kaleidoscope IP and shall cooperate with Kaleidoscope as reasonably necessary in order to give full effect to such assignment. You represent that have in place with all its personnel (including all personnel of agents and/or subcontractors) such Partner Agreements permitting You to comply with this Section 2.3.

You shall not integrate, embed or otherwise include any of Your pre-existing or third party software, materials or other technology into any Kaleidoscope IP without Kaleidoscope's prior written approval. To the extent any Kaleidoscope IP depends on, integrates with, has embedded, or otherwise includes Your or third party software, material or other technology collectively, You hereby grant to Kaleidoscope a perpetual, non-terminable, irrevocable, transferable, worldwide, fully paid, royalty-free, sub licensable (through multiple tiers), nonexclusive license to make, have made, use, sell, offer for sale, import, copy, maintain, modify, enhance, display, perform, distribute, create derivative works of and otherwise exploit such Supplemental Technology solely in connection with the Kaleidoscope IP.

2.4 **Reservation of Rights:** Kaleidoscope reserves the right to discontinue developing, licensing, distributing, supporting or otherwise making available the Cloud & IoT Services at any time upon reasonable written notice to You, provided that the Cloud & IoT Services maintains the functionality for the Cloud & IoT Services that exists as of the Effective Date of this Partner Agreement. Kaleidoscope reserves all rights not expressly granted herein, including the right to sell Cloud & IoT Services

to, and provide marketing services through the use of, the Cloud & IoT Services directly to any third parties worldwide.

2.5 **Cloud Hosting and Delivery Services Policies:** Cloud Hosting and Delivery Services Policies describe and govern Cloud & IoT Services. You may access these policies that apply to the Cloud & IoT Services that You have ordered or access as part of the Kaleidoscope Master Partner Agreement on the Kaleidoscope Website, or such other address specified by Kaleidoscope. Kaleidoscope may update, modify or otherwise change the Cloud Hosting and Delivery Services Policies in its sole discretion without notice.

2.6 **Limitation on Activities:** You are an independent contractor, and nothing contained in this Agreement shall be construed to:

- (a) give either party the power to direct and control the day-to-day activities of the other;
- (b) create a principal-agent or employer-employee relationship; or
- (c) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking.

2.7 **Nonexclusive Referral Agreement:** Each party acknowledges that this Agreement does not create an exclusive agreement between the Parties. Each Party shall have the right to recommend similar products and services of third parties and to work with other parties in connection with the design, sale, installation, implementation and use of similar services and products of third parties. Notwithstanding the foregoing, once You establish a Commissionable Lead with Kaleidoscope, You will not refer a direct competitor of Kaleidoscope to such Commissionable Lead. You will not enter into an agreement with a third party the effect of which would prohibit your submission of a Proposed Lead pursuant to this Agreement.

### 3 TRADEMARKS

3.1 **Trademarks:** All goodwill arising out of any use of Kaleidoscope's trademarks shall inure solely to the benefit of Kaleidoscope. You shall use Kaleidoscope's trademarks solely

- (a) in conformity with any written guidelines or policies provided by Kaleidoscope from time to time (the "Guidelines"),
- (b) except as expressly provided herein, subject to Kaleidoscope's prior written approval, which will not be unreasonably withheld, and
- (c) in a manner that reflects favorably upon Kaleidoscope and the Cloud & IoT Services.

You shall promptly discontinue any use of any trademark which Kaleidoscope determines to be inappropriate or unacceptable.

### 4 PUBLICITY AND MARKETING

4.1 **Publicity:** Neither Party will make any separate public announcement regarding this Partner Agreement or the terms hereof without the prior written consent of the other Party, with exception of the Partner benefits as per the Partner Registration Document. Notwithstanding the foregoing, during the Term, Kaleidoscope may

- (a) use Your name and trademarks in any general listing of partners of Kaleidoscope, including on any Kaleidoscope website in Kaleidoscope's sole discretion,
- (b) use Your name in connection with proposals to third parties, and
- (c) otherwise refer to You in print or electronic form for marketing, reference and other business purposes.
- (d) You may elect (but are not obligated) to provide to Kaleidoscope or its affiliates other text, images, web content, audio, video, or other content (excluding software) ("Additional Materials"), as part of this Master Partner Agreement, and you grant to us and our affiliates a non-

exclusive, worldwide, royalty-free license to reproduce, publish, distribute and translate all or any part of such Additional Materials in connection with the Partner Agreement.

- 4.2 **Identifying Yourself as a Kaleidoscope Partner:** You may not issue any press release or other public statement as per 4.1. If interacting with any local or federal government about our services, you must explain that you are a Kaleidoscope partner. Your participation as a Kaleidoscope partner may qualify for certain benefits as described in the Partner Registration Document, and Kaleidoscope may make available to you a small graphic image that identifies you as a partner of Kaleidoscope which we may modify from time to time.

We grant Logo Partners a non-exclusive, worldwide, royalty-free, revocable license to display the most recent version of the Kaleidoscope Partner Logo on their website or in their own offline materials (e.g., in any printed material, mailing, or other document) solely to identify as a Kaleidoscope partner. You may not transfer, assign or sublicense your limited permission to use the Kaleidoscope Partner Logo to any other person or entity.

## 5 PARTNER CONTRIBUTIONS

### 5.1 Contributions, Submissions and Case Studies:

- (a) If you provide any suggestions for, or contributions to, any Partner Program Content ("Contributions") to us you hereby irrevocably assign to us all right, title, and interest in and to the Contributions and agree to provide us any assistance we require to document, perfect, and maintain our rights in the Contributions.
- (b) If you provide any code for sample code repositories or quick start templates ("Submissions"), your Submissions will be governed by the terms of the Apache License, Version 2.0, unless you request, and we consent in writing, to another license supported by us.
- (c) If you provide any written or recorded case studies or testimonials ("Case Studies") to us, you hereby authorize Kaleidoscope to reproduce, publish, distribute and/or translate the Case Studies, along with your company name and logo, for marketing purposes on websites operated by Kaleidoscope, including the Site and/or in commercial presentations.

- 5.2 You represent and warrant that your Contributions, Submissions, and Case Studies do not violate any rights of any third party, and you have full rights and authority to grant the foregoing rights to us without needing additional approval from, or creating monetary liability to, any third party.

- 5.3 You agree that any nonpublic information disclosed by Kaleidoscope in connection with the Partner Agreement will be treated as confidential information under the terms of the Customer Agreement, or such other agreement between you and Kaleidoscope governing the use of confidential information.

You will treat any information regarding any third-party, including information relating to an identified or identifiable person, ("Third-Party Data") that Kaleidoscope provides to you as confidential information.

## 6 PROVISION OF THE CLOUD & IOT SERVICES

- 6.1 **Partner Conduct and Guidelines:** You shall be responsible for the collection, accuracy, currency, quality, legality, completeness and use of information and data that it uses in connection with the Cloud & IoT Services and for the content of all communications while using the Cloud & IoT Services. You are responsible for all activities that occur with respect to the Your account. You shall in all respects act professionally and in a manner that reflects favorably upon the goodwill and reputation of Kaleidoscope, and You shall not make any statements or engage in any acts that may be detrimental to or

disparaging of Kaleidoscope, the Cloud & IoT Services, or any other aspect of our IoT Platform.

- 6.2 **Compliance with Laws:** You represent and warrant that You have taken appropriate technical and organizational precautions to protect such information from loss, misuse unauthorized access, disclosure, alteration and/or destruction. In addition, You shall at all times engage in ethical business practices and comply with all Law applicable to You in connection with the use of the Cloud & IoT Services, including the [CAN-SPAM Act](#) of 2003, the Personal Information Protection and Electronic Documents Act ([PIPEDA](#)) (Canada), the [EU Data Protection Directive](#), The [Privacy Act 1988](#) (Australia) and other Laws related to privacy, publicity, data protection, electronic communications and anti-spamming.
- 6.3 **Capability:** You shall develop and maintain sufficient knowledge of the IoT industry, the Cloud & IoT Services and competitive offerings (including specifications, features and functions) to be able to effectively market, promote and demonstrate the Cloud & IoT Services and provide such Services.
- 6.4 **Problems:** You shall promptly notify Kaleidoscope in writing of any problems encountered with the Cloud & IoT Services and any resolutions arrived at for those problems and any claim or proceeding involving the Cloud & IoT Services that comes to Your attention.
- 6.5 **Suspension / Termination of Service:** If Your account is thirty (30) days or more overdue, You breach any term or condition of this Partner Agreement, or Kaleidoscope reasonably believes a breach is threatened by You (including non-payment of fees), in addition to any other rights and remedies hereunder, Kaleidoscope shall, in its sole discretion, have the right to suspend and/or terminate Your access to the Cloud & IoT Services without liability to Kaleidoscope until such account is paid in full or You effect a cure of any such breach, as applicable.

## 7 PARTNER FUNDING PROGRAMS

- 7.1 **Funding Program:** Kaleidoscope may, at its sole discretion, provide You with funding to support your proof-of-concept projects, market development activities, customer migrations, or other similar projects ("Projects").
- 7.2 **Your Claim:** You will only request funding from us for a Project if you have
- (a) successfully completed the Project in accordance with your Project proposal to Kaleidoscope, any applicable Program guidance, and any conditions imposed in our preapproval confirmation for the Project,
- (b) only performed work on the Project in jurisdictions approved by Kaleidoscope, and
- (c) completed the Project in compliance with these Terms.
- 7.3 **Kaleidoscope's Liability:** You agree that Kaleidoscope and its affiliates, and their respective employees, officers, directors, and representatives will have no liability, and will be held harmless by you to the maximum extent permitted by law for any liability, loss, injury, or damage to property or to person, and reasonable attorney's fees and court costs, arising in connection with a Project.

## 8 FEES

- 8.1 **Fees:** You shall pay to Kaleidoscope all of the fees specified in the executed Partner Registration Document(s) and associated Schedule of Fees and Commissions within thirty (30) days after Kaleidoscope's delivery of an invoice therefor. Except as otherwise provided in the Partner Registration Document all
- (a) fees are quoted in United States currency,
- (b) fees are not dependent upon actual usage of the Cloud & IoT Services,

- (c) payment obligations are non-cancellable, and
- (d) fees are non-refundable, non-creditable and there shall be no right of set-off therefore.

You shall be responsible for, and all amounts payable by You to Kaleidoscope hereunder are exclusive of, any and all sales, use and other taxes or duties, however designated (collectively, "Taxes"), other than Kaleidoscope's income taxes, and if Kaleidoscope pays any such taxes on behalf of You, then You shall reimburse Kaleidoscope promptly for such payment. You will not withhold any Taxes from any amounts due to Kaleidoscope.

- 8.2 **Records and Audits:** During the Term and for a period of three years thereafter, Kaleidoscope shall have the right, through its designated representatives, to audit, during normal business hours, Your records directly related to Kaleidoscope and the Kaleidoscope IoT platform to verify compliance with the payment and other obligations set forth herein. No audit shall be made more than twice in every twelve (12) month period.

## 9 REFERRALS OF PROSPECTIVE CLIENTS

- 9.1 **Submission of Leads:** You shall identify each potential customer ("Proposed Lead") and relevant commercial conditions relating to such Proposed Lead to Kaleidoscope through our Kaleidoscope Lead Form ("LF"), a standard form generated by Kaleidoscope (and available online via a link provided to You by Kaleidoscope), or via some other method at Kaleidoscope's option. At Kaleidoscope's request, You shall
- (a) supply any additional information reasonably requested by Kaleidoscope,
  - (b) discuss each completed Kaleidoscope LF in detail with Kaleidoscope,
  - (c) assist Kaleidoscope in making contact with the Proposed Lead by arranging an introduction, meeting, conference call or other means of communication with the Proposed Lead if deemed appropriate by Kaleidoscope.
- 9.2 **Acceptance of Leads:** Within a reasonable period of time following Your submission of a LF, Kaleidoscope shall review the LF to determine whether to accept the Proposed Lead as commissionable, or reject the Proposed Lead pursuant to this Section 9.2 and will provide You with a notification of its acceptance or rejection of a Proposed Lead ("Referral Confirmation"). Kaleidoscope will be under no obligation to accept any LF submitted by You and may reject or decline to accept LFs for any or no reason at its sole discretion, including, without limitation, because:
- (a) the Proposed Lead was an existing customer of Kaleidoscope's at the time of submission of the LF;
  - (b) Kaleidoscope was already involved in preliminary or advanced discussions relating to the sale of a subscription to the Proposed Lead at the time of submission of the LF;
  - (c) an LF (or similar document) has previously been submitted to Kaleidoscope by You or any third party with respect to the Proposed Lead;
  - (d) the Proposed Lead
    - (i) does not meet Kaleidoscope's credit requirements,
    - (ii) is on a list of restricted or prohibited parties issued by the government or any other jurisdiction, or
    - (iii) is located in a country that is subject to a trade embargo or that is deemed a terrorist supporting country by the Government; or
  - (e) the Proposed Lead is located outside the Territory, or is located in an area in which Kaleidoscope has an exclusive arrangement for the sale of Products or which Kaleidoscope is otherwise prohibited by agreement from accepting.

- 9.3 **Pursuit of Leads by Kaleidoscope:** The method of contacting and following up with Proposed Leads will be determined in Kaleidoscope's sole discretion; provided, however, that You shall actively support Kaleidoscope in the sales process with Proposed Leads when requested by Kaleidoscope. Kaleidoscope shall have sole discretion to refuse to offer any Products to any third party without liability to You.

## 10 COMMISSIONS

- 10.1 **Commissionable Leads:** A Proposed Lead qualifies as commissionable ("Commissionable Lead") only if:
- (a) You have submitted an LF for the Proposed Lead in accordance with Section 9.1; and
  - (b) Kaleidoscope has accepted the Proposed Lead as a Commissionable Lead (i.e., not rejected the Proposed Lead as set forth in Section 9.2, or otherwise).
- 10.2 **Commissions and Payment:** Subject to Your compliance with all terms and conditions of this Agreement, Kaleidoscope will pay You commissions (defined in the "Schedule of Fees and Commissions"). Commission payments (less any applicable withholding taxes or other levies) will be due on the last day of the month following the quarter in which Kaleidoscope receives payment of the Lead Referral Revenue.
- 10.3 **Modifications:** Kaleidoscope may modify the LF submission process and the percentage amounts and conditions relating to commissions at Kaleidoscope's discretion. Such changes will only affect newly submitted LFs.
- 10.4 **Commissions After Termination:** Except in the event of termination for breach by You, Kaleidoscope will continue to pay You commissions for the duration of the applicable referral payment period in accordance with Section on Lead Referral Revenue received following termination of the Agreement for Commissionable Leads accepted prior to such termination.
- 10.5 **No Other Payments:** Except as expressly provided in this Section, and Section 7 You are not entitled to any fees, reimbursements or other payments from Kaleidoscope. You shall promptly refund to Kaleidoscope or deduct from your next commission, any overpayments (e.g., Referral Fees on Lead Referral Revenue that was reduced due to returns by the customer).
- ## 11 CONFIDENTIALITY
- 11.1 **Confidential Information:** For purposes hereof, "Confidential Information" means, subject to the exceptions set forth in the following sentence, any information or data disclosed by either Party (the "Disclosing Party") that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other Party (the "Receiving Party"), that
- (a) reports and/or information related to or regarding a Disclosing Party's business plans, strategies, technology, customers, prospective customers, billing records, products, and services shall be deemed Confidential Information of the Disclosing Party,
  - (b) the Program Documentation and any other information relating to the Cloud & IoT Services shall be deemed Confidential Information of Kaleidoscope and
  - (c) the terms and conditions of this Partner Agreement shall be deemed the Confidential Information of both Parties, in each case even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in the following sentence.
- Information will not be deemed Confidential Information hereunder if such information:
- (i) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source

other than one having an obligation of confidentiality to the Disclosing Party;

- (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party;
- (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Partner Agreement by the Receiving Party; or
- (iv) is independently developed by the Receiving Party.

11.2 **Confidentiality Obligations:** The Receiving Party agrees not to use the Confidential Information of the Disclosing Party for any purposes except as necessary to fulfill its obligations or exercise its rights under this Partner Agreement. The Receiving Party agrees not to disclose the Confidential Information of the Disclosing Party to any person or entity, except for

- (a) its employees and consultants who are required to have access to the Confidential Information in connection with the exercise of its rights and performance of its obligations under this Partner Agreement,
- (b) actual or potential investors, acquirers and lenders, and
- (c) professional advisers; provided that such employees and consultants, investors, acquirers and lenders are bound by written Partner Agreements or, in the case of professional advisers, such advisers are bound by ethical duties and with respect to clauses (a) and (b), such disclosure is limited solely to the terms of this Partner Agreement, in each case respecting such Confidential Information in accordance with the terms of this Section 13.

The Receiving Party agrees that it shall treat the Disclosing Party's Confidential Information with the same degree of care as it accords to its own similar Confidential Information, provided that in no event shall the Receiving Party exercise less than reasonable care. The Receiving Party agrees to promptly advise the Disclosing Party in writing of any misappropriation or misuse by any person of the Disclosing Party's Confidential Information of which the Receiving Party may become aware.

Upon termination or expiration of this Partner Agreement or upon the Disclosing Party's request, any materials or Confidential Information of Disclosing Party which are furnished to the Receiving Party, and all copies thereof will, at the Disclosing Party's option, either be:

- (i) promptly returned to the Disclosing Party; or
- (ii) destroyed by the Receiving Party (with the Receiving Party providing written certification of such destruction).

If the Receiving Party is compelled by Law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

## 12 REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

12.1 **Functionality Warranty:** Subject to Your compliance with the terms and conditions hereof, Kaleidoscope warrants to You that the Cloud & IoT Services will perform in substantial conformity with the then-current version of the Program Documentation.

12.2 **Compliance Warranty:** You shall comply with Kaleidoscope's Partner Code of Conduct located on the Kaleidoscope Website.

### 12.3 **Warranty Disclaimer and Exclusions:**

- (a) KALEIDOSCOPE DOES NOT GUARANTEE THAT
  - (i) THE CLOUD AND IOT SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT KALEIDOSCOPE WILL CORRECT ALL SERVICES ERRORS

- (ii) THE CLOUD AND IOT SERVICES WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY KALEIDOSCOPE, AND
- (iii) THE CLOUD AND IOT SERVICES WILL MEET YOUR REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS.

YOU ACKNOWLEDGE THAT KALEIDOSCOPE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. KALEIDOSCOPE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. KALEIDOSCOPE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE CLOUD OR IOT SERVICES THAT ARISE FROM YOUR SENSOR DATA, CONTENT, YOUR APPLICATIONS OR THIRD PARTY CONTENT AND/OR IOT DATA. KALEIDOSCOPE DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.

- (b) YOU SHALL BE SOLELY RESPONSIBLE FOR, AND KALEIDOSCOPE SHALL HAVE NO OBLIGATION TO HONOR, ANY PROMISES, GUARANTEES OR WARRANTIES THAT YOU MAY PROVIDE TO ANY OTHER THIRD PARTY WITH RESPECT TO THE CLOUD AND IOT SERVICES, OR CLOUD AND IOT SERVICES WHICH DIFFER FROM OR ARE INCONSISTENT WITH THOSE MADE BY KALEIDOSCOPE HEREUNDER.
- (c) FOR ANY BREACH OF THE WARRANTIES SET FORTH HEREIN, YOUR EXCLUSIVE REMEDY AND KALEIDOSCOPE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT CLOUD OR IOT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF KALEIDOSCOPE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES.
- (d) TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 13 INDEMNIFICATION

13.1 **Indemnification by Kaleidoscope.** Kaleidoscope shall indemnify, defend, protect and hold You, Your directors, officers, employees, affiliates, agents, and contractors, harmless at its expense from any losses, liabilities, damages, costs and expenses (inclusive of Your reasonable attorneys' fees) arising from any claim, suit or proceeding (each, a "Claim") brought against You by any third party to the extent such Claim is based upon a claim that the Cloud & IoT Services infringes such third party's Intellectual Property rights. If the Cloud & IoT Services constitutes or, in Kaleidoscope's sole opinion, might be held to constitute infringement as set forth above, Kaleidoscope may, at its option and sole discretion,

- (a) modify the Cloud and IoT Services so as to avoid infringement,

- (b) procure the right for You to continue to use the Cloud & IoT Services, or any IoT integrations in connection with its provision of the You, or
- (c) terminate any Subscriptions and/or this You Agreement and refund You any fees prepaid by You for any portion of the terminated subscription term(s) for which the Cloud & IoT Services is no longer made available by Kaleidoscope.

The foregoing indemnity shall not apply to any Claim based upon or arising from

- (i) any use of the Cloud & IoT Services or provision of the Cloud & IoT Services outside the scope of this Partner Agreement,
- (ii) any use of the Cloud & IoT Services;
- (iii) any use of the Cloud & IoT Services with equipment, hardware, software or services not supplied by Kaleidoscope or in a manner inconsistent with Kaleidoscope's instructions; or
- (iv) any combination of the Cloud & IoT Services with non-Kaleidoscope products or services not authorized by Kaleidoscope, but solely to the extent the alleged infringement is caused by such combination.

This Section 8 represents the sole and exclusive remedy of You and the entire liability and obligation of Kaleidoscope with respect to infringement of any Intellectual Property relating to the Cloud & IoT Services, or any provision of the Cloud & IoT Services.

**13.2 Indemnification by You:** You shall indemnify, defend, protect, and hold Kaleidoscope, its directors, officers, employees, affiliates, agents, and contractors, harmless from any losses, liabilities, damages, costs and expenses (inclusive of Kaleidoscope's reasonable attorneys' fees) arising from any Claims resulting from

- (a) Your use of the Cloud & IoT Services or provision of the Cloud & IoT Services (including with respect to the promises, guarantees, representations, warranties or results described in Section 12.3), except to the extent covered by Kaleidoscope's indemnification of You pursuant to Section 13.1,
- (b) any breach of this Partner Agreement by You, or
- (c) any negligence, misrepresentation, error or omission on the part of You or any subcontractor or other personnel of You.

**13.3 Procedure:** Each Party's indemnity obligations are subject to the following:

- (a) the aggrieved Party will promptly notify the indemnifier in writing of the Claim;
- (b) the indemnifier will have sole responsibility for and control of the defense and all related settlement negotiations with respect to the Claim (provided that the indemnifier may not settle or defend any Claim unless it unconditionally releases the aggrieved Party of all liability); and
- (c) the aggrieved Party will cooperate fully to the extent necessary, and execute all documents necessary for the defense of such Claim.

**13.4 LIMITATION OF LIABILITY:** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL KALEIDOSCOPE OR ITS LICENSORS BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, SALES, REVENUE OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, IN EACH CASE EVEN IF A REPRESENTATIVE OF KALEIDOSCOPE HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 13.1, KALEIDOSCOPE SHALL NOT BE LIABLE FOR ANY DIRECT DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE FEES FOR SUBSCRIPTIONS PURSUANT TO THE EXECUTED PARTNER REGISTRATION DOCUMENTS THAT KALEIDOSCOPE HAS RECEIVED FROM YOU UNDER THIS PARTNER AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE APPLICABLE CLAIM AROSE. KALEIDOSCOPE'S LICENSORS DISCLAIM ALL LIABILITY TO YOU, WHETHER DIRECT OR INDIRECT, INCIDENTAL OR CONSEQUENTIAL (INCLUDING LOST PROFITS), ARISING IN CONNECTION WITH THIS PARTNER AGREEMENT.

## 14 TERM; TERMINATION

**14.1 Term:** This Partner Agreement shall continue in force for a term of one (1) year from the Effective Date, and shall continue in effect until terminated, unless terminated earlier under the provisions of this Section 14 (the "Term").

**14.2 Early Termination:** Either Party may terminate this Partner Agreement for any reason or no reason upon thirty (30) days prior written notice to the other Party, this is included at renewal. Kaleidoscope may additionally terminate this Partner Agreement at Kaleidoscope's discretion immediately on written notice if:

- (a) You make any unauthorized use or disclosure of Kaleidoscope's Confidential Information or Kaleidoscope's trademarks, or breaches any applicable Law; or
- (b) if You are acquired (whether by merger, sale of assets or other change of control) by an entity which Kaleidoscope considers a competitive threat.

**14.3 No Liability for Termination:** In the event of expiration or termination of this Partner Agreement, each Party shall not be liable to the other Party, solely because of such expiration or termination, for compensation, reimbursement damages or payments on account of the loss of prospective profits or revenue or on account of expenditures, investments, leases or commitments in connection with the business or goodwill of the other Party.

**14.4 Effects of Termination:** Upon any expiration or termination of this Partner Agreement: You shall return all Kaleidoscope IP, Program Documentation, Confidential Information and other materials provided hereunder within thirty (30) days.

**14.5 Survival:** Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, infringement indemnity, payment, commissions (Section 10.4) and others which by their nature are intended to survive.

## 15 GENERAL

**15.1 Entire Agreement; Interpretation.** This Partner Agreement (which consists of the Partner Registration Document, these Master Partner Terms and Conditions and all Partner Registration Documents accepted by Kaleidoscope) constitutes the entire Partner Agreement and sets forth the entire understanding between the Parties with respect to the Cloud & IoT Services, and supersedes all prior Partner Agreements and discussions with respect thereto.

In the event of an inconsistency among these Master Partner Terms and Conditions, the Partner Registration Document or any mutually executed Partner Registration Documents, the following shall be the order of priority:

- (a) a mutually executed Partner Registration Documents; and
- (b) these Master Partner Terms and Conditions. This Partner Agreement will control over any different or additional terms of Your purchase order or other non-Kaleidoscope ordering document, and no terms included in any You purchase order or other non Kaleidoscope ordering document will

apply.

Headings contained in this Partner Agreement are inserted for convenience of reference only and will not in any way define or affect the meaning or interpretation of any provision of this Partner Agreement. For purposes hereof, "including" means "including without limitation". The Cloud & IoT Services and Program Documentation is licensed, and not sold, notwithstanding references herein to "sales" or "resales" (or their correlatives).

- 15.2 **Relationship:** The parties to this Partner Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
- 15.3 **Ratings & Feedback:** Kaleidoscope may use mechanisms that rate, or allow customers to rate, your products or services, and may make these ratings and feedback publicly available at Kaleidoscope's sole discretion.
- 15.4 **No Assignment:** This Partner Agreement and any rights or obligations hereunder may not be assigned, sublicensed or otherwise transferred by the Parties without the prior written consent of the non-assigning Party, except that Kaleidoscope may assign this Partner Agreement without the consent of You to a corporation or other business entity succeeding to all or substantially all of the assets or business of Kaleidoscope to which this Partner Agreement relates, whether by merger or purchase.
- 15.5 **Amendment and Waiver:** No modification of, amendment or addition to this Partner Agreement is valid or binding unless set forth in writing and fully executed by both Parties hereto. Any waiver of any right or remedy under this Partner Agreement must be in writing and signed by each Party. No delay in exercising any right or remedy will operate as a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be construed as a waiver of any right or remedy on any future occasion.
- 15.6 **Severability:** If any provision of this Partner Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision will be modified to the extent necessary to render it enforceable, or will be severed from this Partner Agreement, and all other provisions of this Partner Agreement will remain in full force and effect.
- 15.7 **Governing Law, Jurisdiction:** This Partner Agreement is governed by the substantive and procedural laws of the Republic of the Philippines. The Parties submit to the exclusive

jurisdiction of the courts of Manila, Philippines and any courts competent to hear appeals from those courts.

- 15.8 **Notices:** Any notice required under this Partner Agreement shall be provided to the other party in writing. If Customer has a dispute with Kaleidoscope or if Customer wishes to provide a notice under the Indemnification section of this Partner Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send notice to: Kaleidoscope IoT Systems, Inc. [legal@kaleidoscopeiot.com](mailto:legal@kaleidoscopeiot.com), Attention: General Counsel, Legal Department.
- 15.9 **Force Majeure:** Neither Party to this Partner Agreement will be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labor difficulties, governmental action or terrorism, provided that
- (a) the Party seeking to rely on such circumstances gives written notice of such circumstances to the other Party hereto and uses reasonable efforts to overcome such circumstances and
- (b) this Section 15.9 shall not apply to any failure to make payments when due.
- 15.10 **Electronic Signatures/Self Service Signup:** This Partner Agreement will be deemed executed upon mutual execution of the Partner Registration Document, which may be executed and delivered by facsimile, email, or other forms of digital transportation, and upon receipt such transmission will be deemed delivery of an original, and which may be executed in several counterparts each of which when executed will be deemed to be an original, and such counterparts will each constitute one and the same instrument.
- The Parties consent to electronic signatures and/or when you check the box during Self Service Signup that is presented with these terms or, if earlier when you receive any Program benefits for the purpose of executing this Partner Agreement by email or other electronic means, subject to compliance with any applicable laws, rules or regulations.
- Any such documents that are delivered electronically and accepted are deemed to be "in writing" to the same extent and with the same effect as if the Partner Agreement had been signed manually. In no event will electronic execution expand such assent to include any terms other than those explicitly set forth in this Partner Agreement.