



## DIALOGS SOFTWARE LICENSE AGREEMENT

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. CONTENT OF LICENSED MATERIALS AND GRANT OF LICENSE.

1.1. The owner of Dialogs, including all rights and protections afforded by law and as defined in this license Agreement, is Kaleidoscope Information Services, Inc., d.b.a. Dialogs, (hereinafter referred to as the “Licensor”), P.O. Box 670985, Dallas, Texas, USA 75367. Any use of the terms “us” or “we” or “our” refer to the Licensor. Any individual or company entity purchasing a license of Dialogs will hereinafter be referred to as the “Licensee”. Any use of the terms “you” or “your” refer to the Licensee. The materials that are the subject of this Agreement shall consist of Dialogs development software (hereinafter referred to as the “Licensed Materials”).

1.2. Licensee and its authorized users acknowledge that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with Licensor and/or its suppliers. Neither Licensee nor its authorized users shall have right, title, or interest in the Licensed Materials except as expressly set forth in this Agreement.

1.3. Licensor hereby grants to Licensee non-exclusive use of the Licensed Materials and the right to provide the Licensed Materials to authorized users in accordance with this Agreement.

2. DELIVERY/ACCESS OF LICENSED MATERIALS TO LICENSEE. Licensor will provide the Licensed Materials to the Licensee via file transfer. Copies of the Licensed Materials will be provided to the Licensee through electronic transfer by means of file transfer protocol (ftp) or otherwise.

3. FEES. Licensee shall make payment to Licensor for use of the Licensed Materials pursuant to the terms negotiated.

### 4. SPECIFIC RESTRICTIONS ON USE OF LICENSED MATERIALS.

4.2. USE OF LICENSED MATERIALS FOR MULTIPLE DOMAINS. Licensee is permitted to use one instance of the Licensed Materials for up to and including five unique domains only if the Licensee owns all rights to all of the domains and the associated companies, corporations, and/or business entities. If the Licensee desires to include more than five domains within the website built with the Licensed Materials, additional License Fees must be paid by the Licensee to the Licensor at the rate of one License Fee for each complete or partial block of five domains.

4.3. MODIFICATION OF LICENSED MATERIALS. The Licensed Material installs as “open” code. Licensee may modify the source code of the Licensed Materials. If Licensee makes such modifications, Licensor shall be released from all past, present, and future warranty claims for the Licensed Material including any remedies for bugs that may have existed prior to such modification.

4.4. CREATION OF DERIVATIVE WORK. Licensee shall not create a derivative work from parts of the Licensed Material or from the whole Licensed Material or resell the Licensed Materials whether or not for profit or gain.

- 4.5. REMOVAL OF COPYRIGHT NOTICE. Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.
- 4.6. CREDITS. All internet sites and applications created with or supported by Licensed Materials will include, at Licensor's sole discretion, a "Developed by Kaleidoscope" or a "Powered by Dialogs" link, logo, and/or tagline, and a credit line in the header code, for the duration of this Agreement.
5. TERM. This Agreement shall continue in effect perpetually commencing on the effective date.
6. TERMINATION.
- 6.1. In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the license, such party shall so notify the breaching party in writing. The breaching party shall have 90 days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the 90 days, the non-breaching party shall have the right to terminate the Agreement without further notice.
- 6.2. Upon termination of this Agreement for cause, Licensee must remove Licensed Materials from all Licensee computers and/or servers.
- 6.3. In the event of early termination permitted by this Agreement, Licensee shall not be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee.
7. PERPETUAL LICENSE. Except for termination for cause, Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use Licensed Materials. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.
8. WARRANTIES. Subject to the limitations set forth elsewhere in this Agreement, the Licensed Materials are provided on an "as is" basis, and Licensor disclaims any and all other warranties, conditions, or representations (expressed, implied, oral, or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability, or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, or other such computer program. Licensor further expressly disclaims any warranty or representation to authorized users, or to any third party.
9. LIMITATIONS ON WARRANTIES.
- 9.1. Notwithstanding anything else in this Agreement, neither party shall be liable for any indirect, special, incidental, punitive, or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.
- 9.2. Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.
10. INDEMNITIES. Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made

under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement.

11. **ASSIGNMENT AND TRANSFER.** Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

12. **GOVERNING LAW.** This Agreement shall be interpreted and construed according to, and governed by, the laws of The State of Texas, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in Dallas, Texas shall have jurisdiction to hear any dispute under this Agreement.

13. **DISPUTE RESOLUTION.** In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement that are not affected by the dispute.

13.1. **MEDIATION.** In the event that the parties cannot by exercise of their best efforts resolve the dispute, they shall submit the dispute to mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement that are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within 90 days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within 90 after such meeting, the dispute shall be submitted to binding arbitration in accordance with the arbitration provision of this Agreement.

13.2. **ARBITRATION.** Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties or otherwise mutually agreed upon by the parties.

13.3. All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than 30 days after the notice of arbitration is served.

13.4. The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The Agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

14. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, and/or any other cause beyond the reasonable control of the party whose performance is affected.

15. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

16. **AMENDMENT.** No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

17. **SEVERABILITY.** If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

18. **WAIVER OF CONTRACTUAL RIGHT.** Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

19. **NOTICES.** All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within 30 days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by mail or hand delivery to the specified address. Either party may from time to time change its notice address by written notice to the other party.

**BY SIGNING THIS AGREEMENT I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND, AND AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT.**

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Date: \_\_\_\_\_

Company: \_\_\_\_\_

Street: \_\_\_\_\_ Suite: \_\_\_\_\_

City: \_\_\_\_\_ State/Prov. \_\_\_\_\_

Country: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_