

## END-USER LICENSE AGREEMENT

BY USING ANY OF OUR SERVICES (AS DEFINED BELOW), YOU ACKNOWLEDGE AND AGREE TO THIS END-USER LICENSE AGREEMENT (“EULA”) AND TO RECEIVE, WITHOUT FURTHER NOTICE OR PROMPTING, UPDATED VERSIONS OF OUR WEBSITES, APPS AND OTHER SOFTWARE AND TECHNOLOGIES, INCLUDING RELATED THIRD-PARTY SOFTWARE. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS SET FORTH IN THIS EULA, THEN DO NOT USE ANY OF OUR SERVICES.

AirTV L.L.C. (referred to as, “we,” “us,” “our” or “AirTV”) endeavors to provide you and other users of our our applications (“Apps”) with access to a variety of content (such Apps together with any other “AirTV” branded memberships, features, functionalities, products, services, and any and all content contained therein collectively referred to in this EULA, “Services”). You and other users of our Services are collectively referred to in EULA as “you,” “your,” and “Users.” Our Services, including transaction and subscription based Services, were designed to be accessed and used only by those Users for such Services after registering with us and creating a membership account (“Membership Account”) to receive an assortment of audio, video, data, interactive, and other content available (each, an “Authorized User”). Not all devices are compatible, or permissible, for use with our Services. For a current list of devices permitted for use with our Services (“Permitted Devices”) please visit and review the devices listed at: [airtv.net](http://airtv.net)

Please note that this EULA includes embedded hyperlinks that may only be accessed through our Websites, and if you are reviewing this EULA through certain applications or other platforms, then you may need to visit [airtv.net/legal/](http://airtv.net/legal/) in your browser to review any hyperlinked terms incorporated herein.

BY ACCESSING AND/OR USING OUR SERVICES YOU ACKNOWLEDGE YOUR UNDERSTANDING OF, AND HEREBY CONFIRM YOUR AGREEMENT TO, BINDING ARBITRATION AND WAIVING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN ANY CLASS ACTION IN CONNECTION WITH ANY DISPUTE WILL BE DETERMINED IN ACCORDANCE WITH THE “DISPUTE RESOLUTION, BINDING ARBITRATION AND CLASS ACTION WAIVER” PROVISIONS SET FORTH IN THE DISPUTE SECTION HEREIN.

### **Acceptance and Acknowledgement**

The Acceptable Use Policy, and the Privacy Policy (both available on [airtv.net/legal](http://airtv.net/legal)) are incorporated into the terms and conditions set forth in this EULA in their entirety. This EULA contains details on your limited rights and license to use certain of our property, including our software, solely in connection with your use of our Services. The rights granted under this EULA include any software enhancements, upgrades or other modifications that replace and/or supplement the original products. This EULA is made and agreed to by and between you and AirTV and not any other party(ies). **BY ACCESSING, DOWNLOADING AND/OR USING ANY SOFTWARE PROVIDED TO YOU BY OR ON BEHALF OF AIRTV IN CONNECTION WITH YOUR USE OF OUR SERVICES, YOU ACKNOWLEDGE AND**

**AGREE THAT YOU: (A) HAVE READ THIS EULA; (2) UNDERSTAND IT AND THE TERMS AND CONDITIONS SET FORTH HEREIN; (3) ARE BOUND BY SUCH TERMS AND CONDITIONS OF THIS LIMITED END-USER LICENSE AGREEMENT; AND (4) MAY RECEIVE, WITHOUT FURTHER NOTICE OR PROMPTING, UPDATED VERSIONS OF THE SOFTWARE. IF YOU DO NOT AGREE TO ANY OF THE FOREGOING, YOU UNDERSTAND AND AGREE THAT YOU DO NOT HAVE A LICENSE TO, AND YOU WILL NOT USE, ANY OF OUR SOFTWARE.** AirTV reserves the right, at any time and from time to time, in its sole and absolute discretion, with or without notice to you, to change the terms of this EULA. The most current version of this EULA will supersede all previous versions. Your use of any software after changes are made to the EULA means that you agree to be bound by such changes. As such, you should review this EULA regularly.

### **Certain Rights and Restrictions on Use**

1. **Reservation of Rights.** Our software and other Services contain material that is protected by copyright and other applicable intellectual property laws in the United States, other territories and by international treaty provisions. The software is licensed, not sold or given, to you by AirTV for use only under the terms of this EULA and all rights not specifically granted to you herein are reserved to AirTV and to any third party with ownership rights in such software, content and documentation used therein. You may not remove any proprietary notice of AirTV or any other party from any copy of the software, content or documentation.
2. **No Ownership Rights.** You acknowledge and agree you have no ownership rights in any software, content or any Services; and that you have a limited license to use such software and Services, and to view such content only so long as this EULA remains in effect. Ownership of our Services, software and content provided in connection therewith, and all intellectual property rights therein, as between the parties, shall remain at all times with AirTV and/or its applicable licensors. Any other use of the software by any other person, business, corporation, government or any other entity is strictly prohibited and is a material violation of this EULA.
3. **Personal Use Only; Limited License.** Services, and any content viewed through our Services, are solely for private, personal, non-commercial use and not for use in the operation of a business or service bureau, for profit or for the benefit of any other person or entity. You understand and agree that no Services provided to you may be used or viewed in areas open to the public, commercial establishments or other unauthorized locations. So long as you access and use Services in accordance with these Terms of Use, AirTV grants you a limited, personal, non-exclusive, non-transferable, license to access and use certain Services and software and to view the content distributed to you via Services for the sole purpose of privately accessing and viewing such content. Except for the foregoing limited license, no right, title or interest is transferred by AirTV to you. You hereby expressly acknowledge and agree to abide by these EULA provisions governing your right to use our Services. If your Services are used or viewed in an area open to the public, a commercial establishment or another unauthorized location, then we may disconnect your Services and, in addition to all other applicable remedies available to us at law, in equity, under contract and otherwise, all of which are hereby expressly

reserved, you must pay to us the difference between the price actually paid for Services and the full applicable rate for such services, regardless of whether have the right to distribute such Services in such other location.

4. **Copies of Software.** The license grant above includes the right to use documentation accompanying the software for the sole purpose of using Service and the right to make one (1) backup copy of the software, provided that (i) the software is installed on only the number of AirTV ready devices authorized by AirTV (which number shall be **six (6) AirTV ready devices** unless otherwise agreed or modified in writing by AirTV); (ii) the software may NOT be modified; (iii) all copyright notices are maintained on the software; and (iv) you agree to be bound by all the terms of this EULA.
5. **Prohibited Actions.** As a condition of the limited rights to access and use the software granted to you in this EULA, except as and only to the extent expressly permitted in this EULA or by applicable law which cannot be waived by this EULA, you **MAY NOT**:
  1. publish, display, disclose, rent, lease, modify, loan, distribute or create derivative works based on the software or any part thereof;
  2. copy, decompile, reverse engineer, disassemble, translate, adapt or otherwise reduce the software to human readable form;
  3. use the software to obtain unauthorized access to any streaming content, to interfere with the integrity of the functionality of the software to violate any applicable laws;
  4. attempt to access or create the source code from the object code of the software or otherwise from our Services;
  5. transmit or make any software, content or other portion of our Services available over any network where it could be used by multiple computers or unauthorized users or Permitted Devices at the same time;
  6. make any third-party software contained in the software a standalone product;
  7. take any action that will infringe on the intellectual property or other proprietary rights of AirTV or any third party software provider or other licensor;
  8. bypass or breach any security mechanism, device or other protection used for or contained in the software;
  9. remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, term, warranties, disclaimers, symbols, notices, marks, serial number or other information or materials in, on or relating to any software;
  10. use the software for purposes of (1) benchmarking or competitive analysis of the software or our Services, (2) developing, using or otherwise providing a competing software product or service to the applicable software or our Services, or (3) any other purpose that is to AirTV's detriment or commercial disadvantage;
  11. sublicense, transfer or assign any rights to the software or other Services;
  12. access, download or otherwise use the software on any device or other hardware other than Permitted Devices;
  13. view any content provided by AirTV or its suppliers or access AirTV Services anywhere other than within the United States or location authorized by AirTV ("Territory"); and
  14. instantly watch content or access or otherwise use our Services outside of the Territory, and AirTV may use geo-blocking and other similar technologies to

verify your compliance with restrictions related to your use solely within the Territory.

6. **United States Government End Users.** The software and related documentation are “Commercial Items”, as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through §227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to United States Government end users (1) only as Commercial Items and (1) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.
7. **Effect of Uninstalling Software.** If you uninstall our software, then you will no longer be able to use such software to access the Services on the applicable Permitted Device.

## **Software; Third Party Software and Content**

1. **Software Upgrades.** AirTV may issue you an upgraded version of the software automatically upon an instance of your use of the software and other of our Services or otherwise in connection with your use of any Permitted Device. In certain circumstances, we may require you to consent to an upgrade of the applicable software (“Software Upgrades”) before using, installing or accessing such software. If you decline any of our Software Upgrades, then you may not be able to use or access the software or our other Services, including Subscription Services purchased by you.
2. **System Compatibility.** Your ability to use our Services is subject to your and system’s compatibility with our software as such requirements may change from time to time. Compatibility of system requirements with our software is your responsibility. Additional detail related to compatibility of your system can be found at: [airtv.net](http://airtv.net).
3. **Third Party Content.** Title and intellectual property rights in and to any content displayed by or accessed through our software belongs to the respective content owner. Such content is protected by copyright or other intellectual property laws and treaties, and our agreement with such third party providing such content. Save your limited right to view certain third- party content using the software, neither this EULA, nor any other communication or agreement with us, grants to you any other right, including the right to copy, distribute, prepare derivative works, publicly display, transfer, export, assign, access or other use of such content. You are hereby expressly prohibited from engaging in or facilitating any unauthorized file-sharing of any third-party content, such as the unauthorized posting, making available, uploading, downloading or other distribution of such third-party content.
4. **Third Party Software.** There is software contained within our Services that has been licensed directly and indirectly to us by third parties. The term “software” as used in this EULA includes such third-party software and our software; provided that any provisions related to software that refer expressly to our ownership or other specific rights of AirTV are only as between you and us with respect to such third-party software. The same terms and conditions, including all limitations and restrictions, set forth in this EULA apply to third-party software used in our software and other Services. Certain software programs

specified in the licenses referenced in Section 7 (“Software Notices”) below may contain additional grants and/or restrictions. Please review the Software Notices below.

5. **Prohibited Export.** You may not use or otherwise export or re-export the software except as authorized by United States law and the laws of the jurisdiction in which the software was legally obtained and authorized by AirTV. In particular, but without limitation, the software may not be exported or re-exported (i) into (or to a national or resident of) any United States embargoed countries or (ii) to anyone on the United States Treasury Department’s list of Specially Designated Nationals or the United States Department of Commerce Denied Person’s List or Entity List. By using the Services (including our software), you represent and warrant that you are not located in any such country or on any such list.
6. **Reporting Claims.** If you have a reasonable belief that your or any other’s protected works have been reproduced or distributed in a way that constitutes copyright infringement, or are otherwise aware of any content available in connection with the Services that may be infringing, violating, or otherwise misappropriating the your rights or such other party’s rights, then please notify us immediately by sending us a written statement to the Notice Address below, which written statement must set forth as much detail as is available, including, at a minimum: (i) your name; (ii) your address; (iii) your Membership Account number (if any); and (iv) a clear and detailed statement about the applicable concern of copyright infringement and/or related claim.
7. **Warning against Piracy and Infringement.** Receiving any portion of the Services without paying for them, and/or any direct or indirect act or attempted act to engage or assist in any unauthorized interception, reception, display, or other transmission or access of any portion of our Services, is a violation of various U.S. federal and state laws and of this EULA. The penalties for violating applicable laws can include imprisonment and civil damage awards of up to \$110,000 per violation. Section 605(e)4 of Title 47 of the United States Code makes it a federal crime to modify your device or our Services to receive encrypted (scrambled) television programming without payment of required subscriptions (e.g., Subscription Services). Conviction can result in a fine of up to \$500,000 and imprisonment for five years, or both. Any person who procures any hardware or software that has been so modified is an accessory to that offense and may be punished in the same manner. Investigative authority for violations lies with the Federal Bureau of Investigation. In the event that we learn that you are using any Service in a manner that constitutes infringement of third-party intellectual property rights, including rights granted by U.S. copyright law, your Membership Account will be terminated.
8. **Compliance with Law.** You agree to use our Services, including all features and functionalities associated therewith, in accordance with all applicable laws (e.g., public performance limitations or other restrictions on any use of our Services or contents therein). You agree not to archive, download (other than through caching necessary for personal use), reproduce, distribute, modify, display, perform, publish, license, create derivative works from, offer for sale, or otherwise use or gain access to all or any portion of our Services, except as explicitly authorized in this EULA, without express written permission from AirTV. You also agree not to: circumvent, remove, alter, deactivate, degrade, thwart or otherwise interfere with any of our Services; use any robot, spider, scraper or other automated means to access our Services; decompile, reverse engineer or

disassemble any of our Services (e.g., software or other products); insert any code or product, or otherwise manipulate or interfere with our Services (e.g., running any of our Services on a device not permitted for use by us); or, use any data mining, data gathering, or extraction method. In addition, you agree not to upload, post, e-mail, or otherwise send or transmit any material designed to interrupt, interfere with, destroy, or limit the functionality of any of our Services, or other software, hardware, or telecommunications equipment associated with our Services (e.g., any software viruses or any other computer code, files, or programs). In the event that we learn that you are using any Service in a manner that constitutes infringement of third-party intellectual property rights, including rights granted by U.S. copyright law, your Membership Account will be terminated.

9.

### **Consent to Collection, Processing and other Use of Data**

Our software may provide us with limited access to the Permitted Device(s) used by you in connection with our Services. Among other things, the software may provide and/or enable us to transmit information related to your use of our Services, including programs and content (and portions thereof) viewed, date, timing and length of time spent viewing, information regarding your computer system, such as a unique device identifier, your operating system, existing software, amount of available storage space and internet connectivity, content and campaign information about advertisements selected for delivered to you and your interaction with the software and other activities related to our Services. This information will, among other things, enable AirTV to manage rights associated with the content, to help you use the software more effectively, enforce this EULA and otherwise help us to enhance and improve the software and our Services. Information obtained by AirTV will be treated in accordance with our [Privacy Policy](#). By using our Services, you acknowledge and agree to AirTV's access to, collection of such data and information and any subsequent use of such data and information by AirTV or the Protected Group as further described in our [Privacy Policy](#).

### **DISCLAIMER OF WARRANTIES**

**YOU EXPRESSLY UNDERSTAND AND AGREE THAT:**

A. EXCEPT FOR THE LIMITED PRODUCT WARRANTY ACCOMPANYING YOUR PRODUCT, YOUR USE OF OUR SERVICES IS AT YOUR SOLE RISK. OUR SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THESE TERMS OF USE, AIRTV (ON BEHALF OF ITSELF AND THE OTHER CONTRIBUTORS) HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF SATISFACTION, ENJOYMENT, QUALITY, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. AIRTV DOES NOT TAKE ANY RESPONSIBILITY WHATSOEVER OR OTHERWISE WARRANT THE PERFORMANCE OF ANY DEVICE, INCLUDING THE CONTINUING COMPATIBILITY OF THE DEVICE (OR ITS OPERATING SYSTEM) WITH ANY OF OUR SERVICES, OR ANY INTERNET CONNECTION, INCLUDING ITS SPEED, BANDWIDTH OR COMPATIBILITY WITH

ANY DEVICE OR AIRTV SERVICE. FURTHERMORE, WE DO NOT MAKE ANY PROMISES ON BEHALF OF ANY THIRD PARTY, INCLUDING THE OTHER CONTRIBUTORS, AND YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE NOT RELIED ON ANY PROMISES MADE BY US RELATED TO SUCH PARTIES OR THE PRODUCTS AND SERVICES PROVIDED BY THEM. WE DO NOT WARRANT THAT ANY ISSUES, ERRORS, OR OTHER DEFECTS OR FAILURES IN OR RELATED TO THE SOFTWARE OR OUR SERVICES WILL BE CORRECTED.

B. NEITHER AIRTV NOR ANY OTHER CONTRIBUTOR MAKES ANY WARRANTY WHATSOEVER THAT: (i) THE SERVICE WILL MEET YOUR REQUIREMENTS OR REASONABLE SATISFACTION; (ii) THE SERVICE WILL ALLOW YOU TO COPY, RECORD, VIEW, SKIP, OR TRANSFER ANY PARTICULAR MEDIA, PROGRAMMING, OR PART THEREOF, OR PROVIDE OR CONTINUE TO PROVIDE ANY OTHER PARTICULAR FUNCTIONALITY; (iii) THE SERVICE WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH, OR DATA-THROUGHPUT RATE, BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (iv) INFORMATION RELATED TO YOUR ACCOUNT OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; OR (v) THE VARIETY, QUANTITY, OR QUALITY OF ANY MEDIA, PRODUCTS, SERVICES, ACCESSORIES, INFORMATION, OR OTHER MATERIAL RENTED OR OBTAINED BY YOU THROUGH OUR SERVICES WILL MEET YOUR EXPECTATIONS, OR ANY ERRORS IN THE SERVICE WILL BE CORRECTED.

C. AIRTV MAY RECOMMEND CERTAIN LEVELS OF INTERNET CONNECTION FOR USE WITH CERTAIN OF OUR SERVICES; PROVIDED, HOWEVER, THAT YOU HEREBY AGREE AND UNDERSTAND THAT AIRTV WILL HAVE NO RESPONSIBILITY WHATSOEVER FOR YOUR INTERNET CONNECTIVITY AND AIRTV DOES NOT WARRANT OR GUARANTEE THE AVAILABILITY OR PERFORMANCE OF ANY INTERNET CONNECTIVITY, INCLUDING THE SPEED, BANDWIDTH, COMPATIBILITY, SUFFICIENCY, EQUIPMENT, OR DELIVERY OF ANY INTERNET CONNECTION OR THAT ANY CERTAIN INTERNET CONNECTIVITY WILL IMPROVE OUR SERVICE(S). PLEASE BE AWARE THAT CERTAIN OF OUR SERVICES MAY REQUIRE THE USE OF ADDITIONAL DATA, AND THAT ANY INCREASED COSTS, FEES, OR OTHER AMOUNTS DUE TO BE PAID BY YOU AS A RESULT OF ANY INCREASE IN USAGE (E.G., USAGE OF DATA) IN CONNECTION WITH THE SERVICES WILL BE YOUR SOLE RESPONSIBILITY.

D. AIRTV MAY RECOMMEND OR LIST THE NAMES OF CERTAIN DEVICES PERMITTED FOR USE WITH CERTAIN OF OUR SERVICES, BUT YOU HEREBY AGREE AND UNDERSTAND THAT AIRTV DOES NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR AND AIRTV DOES NOT WARRANT THE PERFORMANCE OF ANY DEVICE OR GUARANTEE THAT SUCH DEVICE (OR THE APPLICABLE OPERATING SYSTEM OR VERSION) WILL BE (OR REMAIN) COMPATIBLE WITH ANY OF OUR SERVICES. YOU MAY ONLY USE OUR SERVICES ON PERMITTED DEVICES.

E. WE HEREBY DISCLAIM ANY, AND YOU AGREE THAT WE HAVE, NO OBLIGATION WHATSOEVER TO REPLACE OR SUPPLEMENT ANY SERVICES, PACKAGE OF SERVICES, OR PORTION OF ANY SERVICE(S) THAT WE CHANGE. WE ARE NOT OBLIGATED, AND YOU ARE NOT ENTITLED AND HEREBY WAIVE ANY RIGHT, TO ANY CREDIT, REFUND, PRICE ADJUSTMENT, OR ANY OTHER DISCOUNT, COMPENSATION OR RECOMPENSE FOR ANY AMOUNT PAID BY YOU TO RECEIVE REPLACEMENT, SUPPLEMENTAL OR ALTERNATE SERVICES, PACKAGES OF SERVICES AND/OR PORTION OF SERVICES AS A RESULT OF ANY CHANGE.

F. ANY MEDIA, SOFTWARE, OR OTHER MATERIAL OR CONTENT DOWNLOADED, STREAMED OR OTHERWISE OBTAINED THROUGH USE OF OUR SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR TELEVISION, RECEIVER, DEVICE OR OTHER HARDWARE, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD, STREAMING OR OBTAINING OF ANY SUCH MEDIA, SOFTWARE OR OTHER MATERIAL OR CONTENT. NEITHER AIRTV NOR ANY OTHER CONTRIBUTOR ASSUMES ANY RESPONSIBILITY, AND WILL NOT BE LIABLE FOR ANY DAMAGES TO, OR VIRUSES THAT MAY INFECT, CORRUPT, OR OTHERWISE HARM ANY OF YOUR PROPERTY OR THE PROPERTY OF ANY THIRD PARTY, INCLUDING YOUR SOFTWARE, DEVICE OR OTHER HARDWARE.

G. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM AIRTV OR THE OTHER CONTRIBUTORS, OR VIA YOUR MEMBERSHIP ACCOUNT OR USE OF THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.

#### LIMITATION OF LIABILITY

A. Indirect Damages. YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER AIRTV NOR ANY OTHER CONTRIBUTORS WILL BE LIABLE TO YOU FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES (E.G., INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER INDIRECT DAMAGES, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES EVEN IF AIRTV OR ANY OF SUCH OTHER CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM, OR OTHERWISE RESULTING DIRECTLY OR INDIRECTLY FROM: (i) USE OF ANY OF OUR SERVICES; (ii) ACTIONS, OMISSIONS, AND OTHER ACTIVITY UNDER YOUR MEMBERSHIP ACCOUNT (INCLUDING USE NOT AUTHORIZED BY US); (iii) THE PERFORMANCE OR NON-PERFORMANCE OF OUR SERVICES; OR (iv) THE INSTALLATION, MAINTENANCE, REMOVAL, OR TECHNICAL SUPPORT OF OUR SERVICES, EVEN IF SUCH DAMAGES RESULT FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF AIRTV OR THE OTHER CONTRIBUTORS.

B. Force Majeure. NEITHER AIRTV NOR ANY OTHER CONTRIBUTORS WILL BE LIABLE TO YOU FOR ANY FAILURE TO PERFORM THAT IS CAUSED BY OR



OTHERWISE RESULTS FROM ANY ACTS OF GOD, FIRES, EARTHQUAKES, FLOODS, POWER OR TECHNICAL FAILURE, SERVER, INTERNET, SATELLITE OR UPLINK FAILURE, ACTS OF ANY GOVERNMENTAL BODY, OR ANY OTHER CAUSE BEYOND OUR REASONABLE CONTROL.

C. Limitation of Liability. IN ADDITION TO ANY OTHER LIMITATIONS SET FORTH IN THESE TERMS OF USE, NEITHER AIRTV NOR THE OTHER CONTRIBUTORS, WILL BE LIABLE FOR ANY ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE AND/OR ELIMINATION IN ANY SERVICES OR FOR ANY DELAY, FOR THE AVOIDANCE OF DOUBT, INCLUDING: (i) IF SUCH ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE AND/OR ELIMINATION, OR DELAY ARISES IN CONNECTION WITH THE TERMINATION OR SUSPENSION OF AIRTV'S ACCESS TO ALL OR ANY PORTION OF OUR SERVICES FOR ANY REASON WHATSOEVER; (ii) THE RELOCATION OF ALL OR ANY PORTION OF OUR SERVICES TO DIFFERENT SERVER(S); (iii) ANY ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE AND/OR ELIMINATION IN THE FEATURES AND/OR FUNCTIONALITY AVAILABLE WITH YOUR PERMITTED DEVICE(S) OR OUR SERVICES; (iv) ANY SOFTWARE OR OTHER DOWNLOADS INITIATED BY US OR OUR CONTRIBUTORS; OR (v) ISSUES RESULTING FROM YOUR DEVICE OR INTERNET CONNECTION, INCLUDING, LACK OF SUFFICIENT BANDWIDTH. FURTHERMORE, NONE OF AIRTV, ITS PROVIDERS, DEVICE PROVIDERS OR SERVICE PROVIDERS, OR ANY OF ITS OR THEIR THIRD-PARTY LICENSORS WILL BE LIABLE FOR ANY ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE AND/OR ELIMINATION OF OR TO ANY DEVICE(S), FOR THE AVOIDANCE OF DOUBT, INCLUDING REMOVING OR DISABLING SOFTWARE, FEATURES AND/OR FUNCTIONALITY.

D. Limitation of Direct Damages. EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN SECTION 11, THE MAXIMUM AGGREGATE LIABILITY OF AIRTV FOR ANY AND ALL CLAIMS UNDER OR RELATING TO EACH: (i) MEMBERSHIP ACCOUNT INCLUDING ALL AUTHORIZED USERS THERE UNDER (IF MORE THAN 1 IS PERMITTED BY US), or (ii) YOU ONLY, IF YOU ARE NOT AN AUTHORIZED USER UNDER ANY MEMBERSHIP ACCOUNT, IS LIMITED TO AN AMOUNT EQUAL TO THE AGGREGATE OF THE FEES THAT WERE PAID BY YOU UNDER THESE TERMS OF USE DURING THE 6 MONTHS BEFORE THE APPLICABLE CLAIM, OR IF DURING THE FIRST 6 MONTHS OF ANY ACCESS OR USAGE TERM, THEN THE FIXED FEES TO BE PAID BY YOU UNDER SUCH TERMS OF USE DURING THE FIRST 6 MONTHS OF SUCH USAGE TERM.

E. Applicability. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU, BUT ONLY TO THE EXTENT SUCH LIMITATIONS ARE EXPRESSLY DISALLOWED UNDER THE APPLICABLE LAW(S).

## INDEMNIFICATION

You hereby agree to indemnify, defend and hold AirTV and its parents and affiliates, each of its and their present and future media providers, device providers, business partners, service providers, licensors, contractors, subcontractors, authorized distributors, authorized subdistributors, authorized retailers, directors, members, managers, officers, agents, employees, and other Users, and each of their respective assigns, heirs, successors, and legal representatives (the “Protected Group”) harmless from, against and with respect to any and all actions, claims, disputes or demands, including reasonable attorneys’ fees and costs, that are incurred in connection with, arising out of or relating to access to or use of our Services by you or in connection with your Membership Account including any User thereof, your connection to our Services, your devices, your violation of this EULA or your violation of any rights of another User.

## **DISPUTE RESOLUTION, ARBITRATION AGREEMENT AND CLASS ACTION WAIVER (“Dispute Section”)**

A. **Mandatory Binding Arbitration and Class Action Waiver.** Subject the provisions of this Dispute Section below, if you access or use any of our Services, then you and us hereby agree that any and all past, present and future disputes, claims, actions or other controversies arising out of or relating in any way to our Services, and/or your relationship with the Protected Group except any Dispute relating to the enforcement of AirTV’s, its affiliates’ or any of the Protected Group’s intellectual property rights and without limiting our and your rights to resolve disputes using various informal dispute resolutions (each, a “Dispute”) will be determined exclusively on an individual (non-class) basis by binding arbitration or, within the scope of its jurisdiction, in small claims court. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts under the U.S. Federal Arbitration Act (“FAA”). Use of a neutral arbitrator is designed to provide you and us with a fair proceeding. Arbitrators may award the same damages and relief that a court may award, and judgment on any such award may be entered in any court of competent jurisdiction. **YOU HEREBY ACKNOWLEDGE YOUR UNDERSTANDING AND AGREE THAT BY ACCEPTING THIS EULA AND THE ARBITRATION PROVISIONS HEREIN, THE FAA WILL GOVERN THE INTERPRETATION AND ENFORCEMENT OF THIS PROVISION, AND THAT YOU AND AIRTV AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND AIRTV ARE EACH HEREBY IRREVOCABLY WAIVING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN ANY CLASS OR REPRESENTATIVE ACTION IN CONNECTION WITH ANY DISPUTE BETWEEN US. YOU AND AIRTV ALSO AGREE THAT ANY ARBITRATION CONDUCTED HEREUNDER WILL BE BROUGHT ONLY ON AN INDIVIDUAL BASIS, AND WILL NOT BE BROUGHT OR PROCEED ON BEHALF OF A CLASS OR IN A REPRESENTATIVE CAPACITY. A “Dispute” includes those based in contract, any applicable current or future federal, state, local or international law, statute, rule, or government or quasi-government order or action or regulation, tort (including fraud, misrepresentation, fraudulent inducement, negligence, willful misconduct or any other intentional tort) or any other legal or equitable theory. The meaning of “Dispute” is to be interpreted to have the broadest possible meaning permitted by law, and will only be modified to**

the extent necessary to be legal, binding and no longer in conflict with any law as further provided in Dispute Section B. immediately below. For example only, Disputes also include your billing disputes, claims involving or relating to telephone calls, direct marketing, advertisements or electronic communications that you claim you received from AirTV and/or a party acting on our behalf or any actions or other controversies in connection with our Privacy Policy.

B. Dispute Resolution. If a Dispute arises and you or we wish to seek arbitration or file any action in small claims court, then the party wishing to seek arbitration or file an action must first send to the other party, by certified mail, notice of the applicable Dispute (“Dispute Notice”), and you and AirTV hereby agree to attempt to resolve any such Dispute through informal dispute resolution for at least 60 days following the date on which the applicable Dispute Notice is properly sent. Your Dispute Notice must include a written statement that sets forth: (i) the name, address and preferred contact information of the party giving the notice; (ii) a description of the nature and basis of the applicable Dispute; (iii) the facts giving rise to such Dispute; and (iv) the specific relief sought by you in connection therewith. You must send, any and all Dispute Notice(s) to: **AirTV L.L.C., Attn: Office of the General Counsel, 9601 South Meridian Boulevard, Englewood, Colorado 80112 (“Notice Address”)**, by certified mail; and we must send any Dispute Notice to you at the contact information we have for you (e.g., to your Membership Account, the email address you provided to register your Membership Account or your billing address). If we and you do not agree to a resolution of a Dispute during the required informal dispute resolution period above, then either party may commence arbitration or a small claims court proceeding in accordance with this Dispute Section to resolve such Dispute. To initiate arbitration proceedings the party seeking such arbitration must open a case by filing with the American Arbitration Association (“AAA”) a demand for such arbitration, paying the administrative filing fee and providing a copy of the applicable arbitration agreement (collectively, the “Demand for Arbitration”); you will only be responsible for paying an arbitration initiation fee equal to the amount that you would pay to file a lawsuit against us in the appropriate court of law in your state, not to exceed \$125.00, and we will pay any excess fees or deposit(s) required to initiate such arbitration proceeding. If you are entitled to reimbursement pursuant to this Dispute Section and would like us to reimburse you for the actual amount of fees paid by you to initiate an arbitration proceeding, then you must send written notice to AirTV at the Notice Address, by certified mail, of: (a) the amount requested; (b) the name of the payee; (c) the return address for the payment; and (d) a copy of the receipt or other documentation evidencing the amount paid by you. You must download or copy a form to initiate arbitration [www.adr.org](http://www.adr.org). A Demand for Arbitration must be made through “AAA WebFile,” at [www.adr.org](http://www.adr.org), or by filing such demand with any AAA office, regardless of the intended location of the requested proceeding. During the arbitration, the amount of any settlement offer made by us or you may not be disclosed until after the arbitrator determines the amount, if any, to which you or we are entitled in connection with the applicable Dispute.

C. Arbitration Procedures and Forum. All arbitration proceedings will be administered by the AAA and governed under its [Consumer Arbitration Rules](#) (including any amendments thereto or successor rules thereof published by the AAA) (collectively, the “AAA Rules”), as supplemented and modified by this EULA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at [1 \(888\)-309-0838](tel:18883090838), by clicking the hyperlinks above. The arbitrator will be bound by the terms and conditions of this EULA. Subject only to the limited exceptions expressly set forth in this Dispute Section, the arbitrator, and not any federal, state or local court,

agency or other authority, will have the exclusive authority to resolve any and all Disputes, including issues relating to the scope, interpretation, applicability and enforceability of this arbitration agreement (e.g., any claim that all or any part of this EULA (including, for example, this Dispute Section) is void or voidable). Unless you and AirTV agree otherwise, any arbitration hearing will be held in the county (or parish) of your billing address or if no billing address is provided, then of your primary residence.

D. **Costs of Arbitration; Compelling Arbitration.** Subject to the exceptions expressly set forth in this Dispute Section, if you or we decide to initiate arbitration and seek less than \$75,000 in damages, then we will pay all costs and fees of the applicable arbitration proceeding for any such proceeding initiated in accordance with the notice requirements unless the arbitrator finds that the arbitration was brought for an improper purpose; and if you or we initiate any arbitration proceeding seeking more than \$75,000 in damages, then the payment of such costs and fees will be governed by the applicable AAA Rules. Except as otherwise expressly permitted pursuant to Dispute Section 11, if either party attempts to have a Dispute reviewed by a court (e.g., files a judicial or administrative action asserting a claim that is subject to arbitration), and the other party successfully compels arbitration of the applicable Dispute, then the party attempting (or that attempted) to have such Dispute reviewed by such court in violation of this EULA must pay the other party's costs and expenses incurred in seeking to compel arbitration, including reasonable attorneys' fees.

E. **Class Action Waiver.** NEITHER YOU NOR WE SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER INDIVIDUALS OR ENTITIES, OR ARBITRATE ANY CLAIM AS A REPRESENTATIVE MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY IN CONNECTION WITH ANY DISPUTE (AS DEFINED ABOVE). Further, unless both you and AirTV specifically agree otherwise in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that individual party's individual claim. In the event that this Dispute Section E. or any other material provision of this Dispute Section is held to be unenforceable, void or voidable, then this Dispute Section in its entirety will be void, ab initio.

F. **Rights to Opt-Out.** If you do not wish to be bound to resolve all Disputes exclusively through arbitration proceedings and small claims courts as set forth in this Dispute Section, then you must notify AirTV in writing within 30 days following the date on which you initially accept our then-current EULA for our Services (as further described in Dispute Section 1 above (e.g., upon creating a Membership Account)) by sending written notice to AirTV at the Notice Address, by certified mail, of your election to reserve arbitration as a non-exclusive means of resolution of Disputes ("Opt-Out Notice"). You must download or copy a form for your [Opt-Out Notice by clicking here](#), which Opt-Out Notice must include a written statement that sets forth: (i) your name; (ii) your address; (iii) your Membership Account number (if any); and (iv) a clear statement that you do not wish to resolve all Disputes with AirTV exclusively through arbitration. Please be aware that your decision to provide us with an Opt-Out Notice will automatically terminate any obligation that AirTV would have had to resolve disputes exclusively through arbitration (i.e., any Opt-Out Notice will remove the applicable obligations from both parties), and constitutes a waiver of any financial amounts that would have been paid by us in connection with arbitration proceedings as provided in this Dispute Section. Your

delivery of an Opt-Out Notice to us will not result in our termination of your access or use of our Services, and we will not provide you Services inferior to other Authorized Users, or otherwise adversely affect the Services we provide, as a result of our receipt of an Opt-Out Notice from you. Your right to reserve arbitration as an alternative means of resolution of Disputes rather than an exclusive one is limited; and any notice requesting to opt-out not received within 30 days following the date on which you first accept this EULA will be void, ab initio, and will constitute your understanding and agreement to resolve all Disputes exclusively through arbitration or small claims court proceedings as described in this Dispute Section.

G. Miscellaneous. Notwithstanding our rights to make future changes to this EULA, if any such future change made by us to the provisions in Dispute Section materially limit or alter your then-current rights, then you may reject such changes by sending written notice to AirTV at the Notice Address, by certified mail, of your rejection of the applicable changes: (i) within 30 days following the date on which we notify you of such modified EULA; or (ii) in the event we do not provide notice of such future change, then within 30 days following the date on which you become aware of such modified EULA. The dispute resolution, binding arbitration and class action waiver agreements and provisions will survive the expiration or earlier termination of your Membership Account, Subscription Services or other access to or use of our Services. Please be aware that this agreement does not preclude you from bringing issues to the attention of federal, state or local agencies, including the Federal Communications Commission, and such agencies can, if the law allows, seek relief against us on your behalf. We also each agree that this agreement evidences a transaction in interstate commerce, and thus the FAA governs the interpretation and enforcement of the provisions and agreements set forth in this Dispute Section.

## Notices

**AirTV Copyright Notice.** © 2017 AirTV L.L.C. All content herein is protected by copyright and other applicable intellectual property laws in the U.S. and other territories and may not be modified, copied or used in any manner without the prior express written permission of AirTV L.L.C., which hereby reserves all rights in and to such property. Use and reuse of any of this content for any purpose without our express written permission is strictly prohibited.\

## MISCLEANOUS

A. Entire Agreement. These Terms of Use, including those terms hyperlinked and incorporated herein, constitute the entire agreement between AirTV and you regarding the subject matter hereof. If you are an existing User of any websites, products or other services provided by our affiliates (e.g., direct broadcast satellite programming services), then your acceptance and agreement to these Terms of Use is independent of, and without modification to, any such other agreement and will not amend, modify or otherwise affect any such relationship governed thereby. With respect to any of our Services, this EULA govern your use of such Services, and supersede any prior agreements or understandings between you and AirTV with respect to the subject matter hereof. For clarity, if you access, use or purchase our Services from a third party or through any third-party platform (e.g., Services sold by our business partners) or use any third-party device (e.g., Television, Tablet, PC, Mac, Android, iPhone, Amazon Fire TV, Chromecast, Xbox, Roku or any combination thereof), then their terms and conditions (or other

agreements agreed to by you) governing those devices will govern your use of such device and relationship with such third party.

B. **Applicable Law.** This EULA, including all matters relating to their validity, construction, performance and enforcement, and any claim, complaint or dispute arising out of or related to this EULA, your relationship to AirTV and/or otherwise related to our Services will be governed by the laws of the State of Colorado without giving effect to its conflict of law provisions. If any provision in this EULA is declared to be illegal, invalid or is otherwise in conflict with any law, then such provision will automatically be considered modified to the minimum extent necessary to make such provision legal, binding and no longer in conflict with such law, without affecting the validity of any other provisions of such Terms of Use, and any and all other provisions will remain in full force and effect to the fullest extent permitted by law.

C. **Choice of Forum.** You agree that any action at law, in equity, under contract (including under this EULA) or otherwise that is excluded from, or otherwise not subject to arbitration or small claims court must be filed, and that venue properly lies, only in the state or federal courts located in the city and county of Denver, Colorado, United States of America and you hereby irrevocably consent and submit to the personal jurisdiction of such courts for the purpose of litigating such action.

D. **Assignment.** You agree that AirTV may assign or otherwise transfer (e.g., sell) your agreement to this EULA with AirTV to any third party without your prior consent. You may not assign or otherwise transfer (e.g., via the sale of any Permitted Device) any agreement(s) with us without first obtaining our prior written consent, which consent may be withheld, delayed or conditioned for any reason whatsoever (e.g., your Membership Account reflects an outstanding unpaid balance).

E. **No Waiver; Remedies Cumulative.** Except as otherwise expressly provided in this EULA, the failure of a party to exercise or enforce any right or provision of this EULA will not constitute a waiver of such right or provision. The rights and remedies provided under this EULA to AirTV in case of your default or breach of this EULA are cumulative and without prejudice to any other rights and remedies that AirTV or you may have at law, in equity, under contract (including under this EULA) or otherwise, all of which are hereby expressly reserved.

F. **No Third-Party Beneficiaries; Claim Limitation.** You agree that, except as otherwise expressly provided in this EULA, there are no third party beneficiaries to your agreement to this EULA. You agree that regardless of any law to the contrary, any claim, Dispute or cause of action by you arising out of or related to our Services pursuant to this EULA must be filed within 1 year following the date on which such claim, Dispute or cause of action arose; and if not filed within such 1-year period, then you hereby irrevocably waive any and all rights to pursue such claim(s), Disputes or other cause(s) of action.

G. **Headings.** The section titles and paragraph headings in this EULA are for convenience only and have no legal or contractual effect. Any and all examples or references to “include,” “includes” or “including” set forth in this EULA are by way of example only and will be interpreted as non-limiting. Any reference in this EULA to the singular form of a word will

include the plural form of the word, if applicable, and any reference to the plural will include the singular, if applicable. In addition, the term “days” when used in this EULA, unless specified as a ‘business day’ means a calendar day. For the purposes of this EULA, a ‘business day’ means a weekday (other than a Saturday or a Sunday) excluding any national (United States) holiday.

H. Survival. Any provision of this EULA that logically would be expected to survive the suspension, completion, expiration or earlier termination of your Membership Account, Subscription Services and/or other Services or your agreement to this EULA will survive such suspension, completion, expiration or earlier termination, including any and all representations and warranties contained in this EULA and any and all provisions and agreements regarding indemnification obligations, confidentiality obligations, dispute resolution, binding arbitration and class action waivers, the “Miscellaneous” provisions in this Section 12, limitations of liability and disclaimers.

## **Contact Us**

For any questions, concerns or other issues or claims that arise in connection with this EULA or any software or other intellectual property related to the Services, please contact Customer Service by calling us at: [1-866-974-1354](tel:1-866-974-1354); or you may write to us at the following address: AirTV L.L.C., 9601 South Meridian Boulevard, Englewood, Colorado 80112, U.S.A. Attn: Office of the General Counsel – AirTV EULA.