

Tachyon End User License Agreement

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE USING THE TACHYON APPLICATION, WEB PORTAL, CONFIGURATION TOOLS, OR ANY OTHER RELATED SERVICES (COLLECTIVELY, “TACHYON SERVICES”).

THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT (“EULA”) ARE HEREBY ESTABLISHED BETWEEN YOU AND KAPRICA SECURITY, INC. (“KAPRICA”), AND GOVERN YOUR USE OF TACHYON. IF YOU DO NOT AGREE TO COMPLY WITH THE TERMS OF THIS EULA, PLEASE DO NOT ACCESS OR MAKE USE OF TACHYON SERVICES. Any license to access or make use of Tachyon Services is conditioned upon the acceptance of all terms and conditions contained in this EULA. By accessing or making use of Tachyon Services, you indicate that you understand this EULA and agree to abide by the terms and conditions herein.

1. Grant

Conditioned upon your compliance with this EULA, Kaprica grants you a limited, non-exclusive and non-transferable license to access and make use of Tachyon Services on devices owned by you or under your legitimate control and to use the Tachyon Application in connection with the online configuration tools provided by Kaprica. Kaprica may update the Tachyon Services remotely and you hereby grant Kaprica your consent to deploy and apply such updates.

2. License Restrictions

Except as expressly specified in this EULA, you agree not to: 1) Modify the Tachyon Services, including without limitation adding new features or otherwise making adaptations that alter the functioning of the Tachyon Services, unless such modification constitutes the creation of new settings modules in the Tachyon configuration tools and has been approved by Kaprica personnel; 2) Transfer, sublicense, lease, lend, rent, or otherwise provide access to Tachyon Services to any third party. You acknowledge and agree that portions of the Tachyon Services, including without limitation source code, configuration servers, and the design and structure of settings modules are proprietary information of Kaprica. Accordingly, you agree not to disassemble, decompile, or reverse-engineer any Tachyon Services or portions thereof, or permit, authorize, or enable a third party to do so, except to the extent that such activities are expressly permitted by law beyond the restriction of this provision.

3. Reservation of Rights

Kaprica reserves all right, title, and interest in Tachyon Services and all associated copyrights, trademarks, and other intellectual property rights therein. Tachyon Services are licensed, not sold, and such licenses are subject to the terms and conditions of this EULA. No title to or ownership of Tachyon Services or any portions thereof is transferred to you, and you are obligated not to take actions inconsistent with Kaprica’s title in Tachyon Services. You agree not to delete or alter in any manner the copyright, trademark, or other intellectual property rights notices or markings associated with Tachyon Services.

4. Transfer and Copies

This license grants permission to copy the Tachyon Application onto additional devices as needed, provided a separate license is purchased for each individual device before accessing or making use of Tachyon Services on said device. In the event that Tachyon Services are copied or otherwise reproduced, you agree to preserve the copyright, trademark, or other intellectual property rights notices or markings attached to Tachyon Services. In no event are you permitted to transfer or assign this license to a third party.

5. Consent to Use of Data

To facilitate the provision of updates, redress of technical issues, authorship of settings modules, creation of configuration tools, and cooperation in IT auditing procedures, you agree that Kaprica may collect, use, store, and transmit technical and related information about the mobile devices on which Tachyon Services are utilized and the contents thereof.

6. Term and Termination

The license granted under this EULA remains in effect until terminated. Your license will terminate immediately without any notice required from Kaprica if you fail to comply with any of the terms or conditions of this EULA or attempt to circumvent any technical protection measures for the Tachyon Application or Kaprica servers. Upon termination of your license, you must, at Kaprica's option, immediately cease use of Tachyon Services and comply with Kaprica in the restriction of your access to said Tachyon Services. Termination will not limit any of Kaprica's rights or remedies at law or in equity. Sections 6 through 8 of this EULA shall survive termination or expiration of your license for any reason.

7. Disclaimer

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS EULA AND TO THE FULLEST EXTENT PERMITTED BY LAW, KAPRICA MAKES NO REPRESENTATIONS, NOR GIVES ANY WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, OR ARISING AS A RESULT OF USAGE, STATUTE, OR OTHERWISE REGARDING ANY MATTER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, UNINTERRUPTED OR ERROR-FREE SERVICE, UPTIME OR RESPONSE TIME, COMPATIBILITY WITH THIRD PARTY SOFTWARE, OR NON-INFRINGEMENT. TACHYON SERVICES ARE PROVIDED TO YOU "AS IS," WITH ALL FAULTS, WITHOUT WARRANTY OF ANY KIND, AND YOUR USE IS AT YOUR SOLE RISK. NO ORAL OR WRITTEN ADVICE PROVIDED BY KAPRICA OR ANY AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY.

8. Limitation of Liability

TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, IN NO EVENT SHALL KAPRICA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, RELIANCE, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF SAVINGS, OR OTHER SIMILAR PECUNIARY LOSS) WHETHER ARISING FROM CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), OR ANY OTHER THEORY OF LIABILITY.

WITH RESPECT TO ALL CLAIMS, ACTIONS, AND SUITS ARISING OUT OF THIS EULA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE), KAPRICA'S LIABILITY SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT PAID TO KAPRICA BY YOU IN THE SIX MONTHS PRECEDING THE CLAIM GIVING RISE TO LIABILITY.

9. Acceptable Use

Tachyon Services are intended for use solely in configuring mobile devices, creating configuration settings, and providing certain IT auditing capacities. Any other use of the capabilities of Tachyon Services, including without limitation unauthorized interference in the use of mobile devices or unauthorized intrusions into the private information contained on mobile devices is strictly prohibited.

10. Export Law

You agree to comply fully with all US export laws and regulations to ensure that neither Tachyon Services nor any technical data related thereto nor any direct product thereof are exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations. You certify that you are not a person or entity with whom Kaprica is prohibited from transacting business under applicable law.

11. Privacy Policy

In the course of the configuration process, Tachyon Services collect certain personally identifiable information and may have access to privileged information stored on the smart device or entered into the Tachyon Web Portal. Kaprica recognizes that the protection and security of said information is of paramount importance. With the exception of data sent to third parties exclusively for diagnostics and error resolution to improve Tachyon Services (including device model, Tachyon username, time of configuration, crash reports, error notifications, and wireless MAC addresses), the information collected by or available to Tachyon Services is strictly safeguarded. Kaprica will not share said information with any third party for any reason other than the aforementioned, except as mandated by relevant law.

12. Miscellaneous

Kaprica reserves the right to amend the contents of this EULA at its own discretion. Such amended forms will require you to accept them once again upon accessing or making use of Tachyon Services.

You acknowledge that any breach of sections 2 through 4 of this EULA shall result in serious and irreparable injury which cannot be adequately compensated by monetary damages alone, and therefore agree that, in addition to any other action that may be available, Kaprica shall be entitled to seek both temporary and permanent injunctive relief to the extent permitted by applicable law without the necessity of proving actual damages in the event of such a breach.

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that, or any other, right. A waiver or consent given by either party on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right herein contained on any other occasion.

In the event that any provision of this Agreement shall be found invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the state of Delaware without regard to any applicable conflict of laws provisions. The parties waive any right to a jury trial with respect to any action brought in connection with this Agreement. The courts of the state of Texas will have jurisdiction over any action or proceeding arising out of or related to this Agreement.

This EULA constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this EULA. In the event that a Master Service Agreement is in place between the parties, that agreement is incorporated herein by reference.

Please direct any inquiries related to this EULA to legal@kaprica.com.