



## TERMS AND CONDITIONS FOR USE OF RAPIDSCREEN

The following set forth the Terms and Conditions that govern your purchase and use of RapidScreen ("Device"). RapidScreen is provided by spinTouch, a California corporation ("spinTouch," "we," "us," or "our"). These Terms and Conditions ("Terms" or "Agreement") below are set at the sole discretion of spinTouch and govern and regulate your ("you," "your," or "Customer") use of RapidScreen. In submitting your Purchase Order or Signing the Proposal for Devices, you acknowledge reviewing these Terms, approving and accepting them. Furthermore, in accepting these Terms, you agree to the spinTouch Privacy Policy, which is incorporated into these Terms and can be found in full here: <https://spintouch.com/documents/terms/spintouch-privacy-policy.pdf>

### 1. Purchase Order/Signed Proposal; Delivery and Risk of Loss; Acceptance; Returns; Payments

By submitting your Order, you represent and assert that you are the authorized individual within your organization to do so. Due to the nature of the product and availability, all orders are non-cancellable, non-refundable, and/or non-returnable unless otherwise agreed to in writing by spinTouch.

#### A. Delivery

Delivery will be fulfilled by a common carrier chosen by spinTouch unless Customer makes a special request. The Risk of Loss shall pass to Customer at the moment Devices are placed in the possession of said common carrier. spinTouch will notify Customer of shipment and make all reasonable arrangements for delivery to Customer's chosen location.

#### B. Acceptance

Devices delivered to Customer pursuant to a Purchase Order or Signed Proposal shall be deemed accepted by said Customer unless Customer notifies spinTouch or Reseller of non-conforming Devices and returns such non-conforming Devices within seven (7) calendar days of Devices delivery date. There is no right to inspect goods prior to full payment by Customer. Sales of accepted Devices as provided herein are final, and may not be returned for refund, exchange, or credit to Customer unless as otherwise established in this Agreement. spinTouch or Reseller have an absolute right to cure, within thirty (30) days of notice of nonconformity, any Devices rejected by Customer. Customer acknowledges that Device(s) may have the indicia of minor wear from the manufacturing and quality assurance testing processes ("Pre-Delivery Use"). Such Pre-Delivery use, in and of itself, assuming that said Pre-Delivery Use does not materially impact the performance of any Device as received by Customer, shall not be grounds for a claim under the Limited Warranty or any other provision herein. Upon a request by Customer and in its sole discretion, spinTouch may replace said Device(s) under Section 4, herein. In the event there is a disagreement as to the opinion between spinTouch and Customer with respect to any Device under the previous sentence, the opinion and conclusion of spinTouch shall prevail.

#### C. Shipping to spinTouch

In all events, any Device(s) returned to spinTouch shall be properly addressed as required by Section 19, herein.

#### D. Payment Terms

Unless otherwise agreed to in a written instrument signed by spinTouch, all invoiced amounts shall be paid by Customer within thirty (30) days of receipt of said invoice. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding, including without limitation any deductions related to payment processing fees or any other transaction fees charged by any third parties related to the Services to be provided hereunder.

Customers who have a recurring license fee under this Agreement acknowledge that said fee may be adjusted at the sole discretion of spinTouch for any renewal of said license. Furthermore, from time-to-time, spinTouch may offer promotional pricing to specific Customers. Said promotional pricing shall be referenced in the appropriate invoice or purchase/ordering document and in no circumstance shall said promotional pricing be binding upon spinTouch in determining any fee adjustments for any such license renewal.

#### E. Late Payment

With respect to any unpaid amount of any invoice due that is not paid in full by the due date, a late fee of 4% shall be assessed per month, on the outstanding balance, payable from the invoice due date. In addition, you shall indemnify spinTouch or the Reseller for its costs, including reasonable attorneys' fees and disbursements, incurred to collect any unpaid amount. Payments may not be withheld under any circumstances.

## 2. Intellectual Property Rights and Limited License

All Intellectual Property Rights in or related to the Devices and related documentation, and any related design and manufacturing, as well as any modification, adaptation or derivation thereof, are and will remain the exclusive property of spinTouch and its licensors. Customer hereby irrevocably agrees not to assert against spinTouch or its direct or indirect customers, assignees or sub-licensees, any claim of Intellectual Property Rights relating to the Devices and/or the related documentation.

spinTouch extends to each Customer a limited, non-exclusive, royalty-free license to use its corporate logo and other representations for the purposes as envisioned by this Agreement. Customer may not use corporate trademarks or logos in any manner falling outside of this Agreement. This latter provision includes, but is not limited to, conduct that is directly disparaging of spinTouch and Devices or where the Customer's actions independent of spinTouch and Devices undermine or diminish spinTouch's goodwill or public standing. With respect to Customer's use of Devices, Customer agrees to:

- I. Comply with and abide by all applicable laws and regulations;
- ii. Not infringe upon spinTouch's intellectual property rights;
- iii. Will not disparage either spinTouch or the Device(s) to any third-parties.

By accepting these Terms, you expressly grant spinTouch and/or reseller a limited, worldwide, non-exclusive, and royalty-free license to use for its own purposes your logo and/or company name for the production of, inter alia, marketing materials and case studies, applying Customer's then-existing brand guidelines (if any). See non-disparagement clause, paragraph 14, infra. Customer retains the option to rescind aforementioned license rights to their logo and/or name, by sending an email to spinTouch within 7 days from the invoice date exercising their option to opt-out from this specific logo license provision.

## 3. DISCLAIMER OF ALL IMPLIED WARRANTIES FOR DEVICES

RAPIDSCREEN IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. SPINTOUCH AND RESELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SECURITY OR ACCURACY. TO THE FULL EXTENT PERMISSIBLE BY LAW, SPINTOUCH AND RESELLER DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IN SUBMITTING YOUR PURCHASE ORDER OR SIGNING PROPOSAL DIRECTLY WITH SPINTOUCH OR INDIRECTLY THROUGH RESELLER, YOU EXPRESSLY AGREE TO THE AFOREMENTIONED ONE YEAR LIMITED WARRANTY IN LIEU OF ALL OTHERS

Product images, user interfaces, demonstrations, accessories, packaging shown on the site and marketing materials are for illustrative purposes only, and may not represent specific capabilities or features and may be

different from the actual Device or product that you receive. If there is any specific feature, specification, color, user interface or product capability Customer requires, it's the responsibility of the Customer to address in writing with their spinTouch representative or authorized reseller. Accordingly, and to reiterate the disclaimer above, spinTouch waives all warranties or representations as to fitness for a particular purpose based upon marketing materials and it is the Customer's obligation to ensure that Devices and associated products conform to Customer's expectations and uses.

Additionally, Customer acknowledges that Devices, servers, software and services do not have any specific licenses, certifications, approvals, or authorizations of any kind, whether by a governmental regulatory body or a private industry organization, unless said certifications are included and prominently displayed by SpinTouch in marketing materials that it controls and distributes, or communicated by SpinTouch to Customer in writing. If Customer has questions as to the licenses, certifications, approvals, or authorizations for Devices, servers, software and services, Customer must contact SpinTouch directly by email. Upon submitting a Purchase Order or signing the proposal, Customer expressly accepts this notice and hereby waives any and all possible claims in this regard.

#### **4. EXPRESS LIMITED WARRANTY**

spinTouch warrants the Device against defects in materials and workmanship under normal use for a period of ONE (1) or TWO (2) YEAR(S), based on Device description in the invoice and additional materials provided by spinTouch that describe performance and reliability standards for Devices, from the date of purchase by the original end-user purchaser ("Warranty Period"). If a hardware defect arises and a valid claim is received within the Warranty Period, at its discretion and to the extent permitted by law, spinTouch will either: (1) Repair the hardware defect at no charge, using new or parts equivalent to new in performance and reliability, or (2) Exchange the Device with a Device that is new or equivalent to new in performance and reliability and is at least functionally equivalent to the original Device. Physical damage is not covered unless a separate insurance coverage is purchased at the time of purchase. The Limited Warranty can be found here: [https://spintouch.com/documents/terms/rapidscreen\\_warranty.pdf](https://spintouch.com/documents/terms/rapidscreen_warranty.pdf)

#### **5. Indemnity and Limitation of Liability**

BY AGREEING TO THESE TERMS AND CONDITIONS, YOU AGREE TO INDEMNIFY AND HOLD SPINTOUCH AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, AND RESELLERS HARMLESS AS TO ALL CLAIMS AND/OR DEMANDS ARISING FROM YOUR USAGE OF RAPIDSCREEN.

YOU EXPRESSLY AGREE THAT SPINTOUCH, RESELLER AND THEIR THIRD-PARTY SUPPLIERS, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES RESULTING FROM USE OF RAPIDSCREEN.

THE MAXIMUM LIABILITY OF EITHER SPINTOUCH AND/OR RESELLER UNDER THESE TERMS AND CONDITIONS IS LIMITED TO THE CUMULATIVE AMOUNT PAID BY CUSTOMER TO SPINTOUCH OR RESELLER FOR THE PURCHASE OF DEVICES AND THE PAYMENT OF SERVICE FEES DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO ANY CLAIM OR CAUSE OF ACTION.

CUSTOMER ACKNOWLEDGES THAT PROCESSING AND ACCEPTANCE OF A RETURN BY SPINTOUCH WITH RESPECT TO A SINGLE DEVICE (OR AN ACCOMODATION WHEREIN SPINTOUCH AGREES TO PROCESS AND RETURN MULTIPLE DEVICES), AND THE FURNISHING BY SPINTOUCH OF THE PURCHASE PRICE PAID BY CUSTOMER LESS ANY RESTOCKING FEES AND/OR COSTS, OR ANY OTHER COMPENSATION, RELEASES SPINTOUCH OF ANY FURTHER OBLIGATION WITH RESPECT TO THE SAME. CUSTOMER AGREES AND ACCEPTS THE COMPENSATION OFFERED BY SPINTOUCH WITH RESPECT TO A DEVICE OR ACCOMODATION IS FINAL AND BINDING.

## **6. Not a Medical Device and Proper Usage**

Referencing and reiterating the waiver of warranties outlined above, you purchase Device(s) on an “as is” basis and with the full knowledge that said Device(s) are not for use in medical settings or purposes.

Accordingly, RapidScreen is not a medical device and should not be used for purposes of diagnosis or treatment of any disease, viral infection, or general medical condition. The Device is not FDA approved. The only function of this Device is to determine an individual's skin surface temperature, indicating a likelihood of a fever, to a certain degree of accuracy. To that point, in no way should the Device be considered 100% accurate in determining an individual's actual body temperature as there are a multitude of variables that can offset the reading. These variables include, but are not limited to: environmental factors, background interference, humidity, airflow, ambient temperature, sunlight, exposure to high/low temperature, ambient lighting, medications, measuring distance, head alignment/position, skintone, lotion, makeup, sunscreen, sunburn, wet skin, alcohol consumption, exercise, misuse, user/operator error, incorrect settings, inaccurate calibration, Device damage, and/or hardware/software malfunctions. For best results, the person being assessed should not wear a hat, scarf, or glasses, and their hair should be pulled away from their face.

The accuracy of the Device depends on careful set-up and operation as well as proper preparation of the person being evaluated. The Device requires onsite calibration once installed and anytime the Device is relocated, moved or adjusted in any way, as well as if the environmental conditions change. The device should not be used near strong light sources, such as sunlight or bright electric lighting. Also, the Device should not be facing anything that can reflect light such as windows or shiny surfaces. It is strongly recommended that Device is not used outdoors or directly near entryways or air vents, due to the high probability of ambient conditions rapidly fluctuating, thereby causing a likelihood of inaccurate readings, even with proper calibration. Device measures skin surface temperature, so the person's skin needs time to adjust to environmental changes, for example when entering a building.

Elevated body temperature in the context of use should be confirmed with secondary evaluation methods that are approved for use in medical settings and approved by all relevant authorities (e.g., an NCIT or clinical grade contact thermometer). Combining their experience, education, and factoring in the use environment for the Device, appropriate medical experts should determine the significance of any fever or elevated temperature based on the skin telethermographic temperature measurement. Visible thermal patterns are only intended for locating the points from which to extract the thermal measurement. Device is intended to only scan one individual at a time, with a minimum of a 3 second delay between each scan. Under no circumstance should Device be used to scan multiple individuals simultaneously.

Under no circumstances shall you make any statement suggesting that Device(s) can operate as medical devices for the purposes of diagnosing or treating any condition or disease, nor are you allowed to foster any direct or indirect perception that the Device may be used in patient care or in such a context.

## **7. Data and Information Storage with Third Parties; Privacy Indemnification**

Devices, as provided to you by spinTouch, may be enabled at Customer's sole discretion to collect and store certain categories of information that some jurisdictions may consider personally identifying under relevant statutes on a spinTouch provided, cloud-based, and web-accessed interface (“Dashboard”)(collectively, “Services”). Devices shall only collect and retain said information in the event you affirmatively request that they do so. You hereby acknowledge that you take delivery of Devices with the option of managing one or multiple Devices through the above referenced Dashboard, subject to accepting these Terms and continued payment of a subscription fee. If you opt to use Services to associate any individuals with information collected including, but not limited to temperature, through a third-party software platform other than that offered and made available to you by spinTouch, you do so at your own risk and accept all liability risks associated with such data collection and storage through said third-party management or data collection, storage, and processing platforms.

Accordingly, in the event you enable Device(s) to collect, store, and associate personally identifying information with third-parties that offer said aforementioned Services, you are assuming all liability for the secure storage and management of said data under all relevant federal, state, and local regulatory requirements including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, the Americans with Disabilities Act, and the California Consumer Privacy Protection Act (if applicable).

As such: in the event spinTouch or Reseller is named as a defendant due to your alleged breach of any duty or violation of any legal requirement, statutory or otherwise, with respect to failures to safeguard, account for, or properly maintain personally identifiable and protected information, as defined by any governing legal doctrine, that is stored within, managed by, or processed by, any third-party other than spinTouch or a spinTouch designated entity, you agree to indemnify and hold harmless spinTouch, its third-party suppliers, officers, employees, agents, partners, licensors, and Reseller. In such circumstances, you shall undertake financial responsibility for all legal defenses and shall vigorously defend aforementioned parties. Moreover, you shall be responsible for any and all adverse judgments in that regard.

## **8. Data and Information Storage with spinTouch; Indemnification**

As referenced above in Section 7, spinTouch offers to you the option of managing Device(s) and the information collected therefrom through web-based Services. Specifically, should you opt to avail yourself of these Services, you acknowledge that any and all information collected from said Devices and accessible through Services shall be in accordance with the spinTouch Privacy Policy: <https://spintouch.com/documents/terms/spintouch-privacy-policy.pdf>

If you use Services to manage your Device(s), you are solely responsible for ensuring that your employees, agents and representatives who have access to said Services take all reasonable precautions to safeguard the integrity of the account and the information accessible through said Services. This includes, but is not limited to: training said individuals designated by Customer to access Services on applicable rules and regulations for said information, and ensuring that login/security credentials are retained in confidence. In the event that Customer or an employee, agent, or representative thereof believes that login/security credentials to gain access to the spinTouch Services have been compromised, it is Customer's responsibility to take all steps to re-establish control over the access point to Services and to inform spinTouch immediately. spinTouch shall not be held liable for any violations of confidentiality requirements established under this Agreement, the spinTouch Privacy Policy, or any relevant law or regulation due to Customer's breach of this Section.

In the event Customer is named as a defendant due to an alleged breach by spinTouch of any duty or violation of any legal requirement, statutory or otherwise, with respect to failures to safeguard, account for, or properly maintain personally identifiable and protected information, as defined by any applicable law or duty, that is stored within, managed by, or processed by, spinTouch through its web-based Services, spinTouch agrees to indemnify and hold harmless Customer, its officers, employees, agents and representatives. In such circumstances, spinTouch shall undertake financial responsibility for all legal defenses and shall vigorously defend aforementioned parties, provided: (a) use of Services by Customer or Licensee is according to these Terms and all applicable documentation and guidance provided by spinTouch; and (b) the breach is not caused by Customer or Licensee's own violation of these Terms. The indemnification provisions provided by spinTouch are contingent upon the following: (a) Customer or Licensee promptly notifying spinTouch of any such claim by Customer or Licensee; (b) granting spinTouch full decisional authority and control over selection and direction of counsel, prosecution of defense, and settlement of the claim; and (c) cooperating with spinTouch through reasonable assistance, pertinent information, and authority required for the defense and settlement of the claim.

## **9. spinTouch Services; License Agreement; Support Services and Continuation of Services**

As referenced above, spinTouch offers Customer the option to manage Customer's Device(s), and any information collected therefrom, via a web-based interface. Customer shall purchase access to Services through the same spinTouch order form through which it purchases Devices. In the event Customer opts to purchase said Services,

spinTouch reserves the right to deny requested access at its sole discretion. If Customer is given access to Services by spinTouch, Customer shall become a Licensee and spinTouch a Licensor.

Accordingly, upon payment by Licensee of the license fee designated by spinTouch on applicable order forms and through subsequent communications, Licensor shall grant to Licensee a non-exclusive, non-transferrable, non-assignable, time-limited license ("License") to access and use Services. All title, copyright, intellectual property rights, and distribution rights of the Services remain exclusively with spinTouch. This Agreement establishes a license for use only and in no way is a transfer of ownership in the Services.

Customer acknowledges that it accepts said License on an "AS IS" basis. spinTouch will not be liable for any general, special, incidental, or consequential damages including, but not limited to, loss of production, loss of profits, loss of revenue, loss of data, or any other business or economic incurred by Licensee arising out of use or failure to use Services. spinTouch DOES NOT WARRANT that use of Services will be uninterrupted or error-free. Licensee accepts that web-based services are, in general, prone to bugs and flaws within an acceptable level as determined in the industry.

Notwithstanding the foregoing, spinTouch will not be liable for any breach of this License agreement in the event of the unavailability to Customer of Services that: (i) are caused by factors outside of spinTouch's reasonable control, including any force majeure event or Internet access or related problems beyond spinTouch's controlled system; (ii) result from any act or omission of Customer or any third party, including, without limitation, incorrect use or incorrect configuration performed by Customer; (iii) result from Customer's or Customer's equipment, software or other technology and/or the same of third-parties (other than third-party equipment, software or other technology within spinTouch's direct control); (iv) result from failure by Customer to maintain consistent and adequate internet access of at least 5 megabytes per second download speed and 1 megabyte per second upload speed. Interruptions in network connectivity can cause some services to stop functioning.

spinTouch does not warrant or guarantee that Services will be available at all times. In the event that Services are unavailable to Customer for a material amount of time during any thirty (30) day time period for reasons other than planned maintenance by spinTouch, spinTouch may award credits, at the full discretion of spinTouch, to said Customer to be applied to future invoices for Services. In order to claim said credits, Customer must contact spinTouch at its designated customer support email address ([support@spintouch.com](mailto:support@spintouch.com)) and include the following subject line: "REQUEST FOR CREDITS AGAINST SERVICES". In this notice email, Customer must include a factual basis to establish the unavailability of said Services including: dates and times of unavailability as supported by server logs. Upon receipt and confirmation, spinTouch may award credits against future Services invoices in an amount solely based on spinTouch's discretion of Services fees to be invoiced for that period. This remedy is the sole and exclusive remedy available to Customer under this License.

spinTouch warrants and represents that it is the copyright holder in the Services. spinTouch warrants and represents that granting the License to Licensee is not a violation of any agreement, copyright, or applicable statute. With respect to any intellectual property claims made by a third-party against Licensee for use of Services, spinTouch agrees to indemnify Licensee against any third-party claim for infringement or misappropriation of any U.S. patent, copyright, trademark, trade secret, or other intellectual property rights according to those same conditions set forth in Section 8.

Licensee accepts that spinTouch does not guarantee or provide any particular level or availability of customer or user support under this Agreement. For support services of any kind sought by Customer, and provided by spinTouch, Customer is obligated to initiate any such support services request by emailing spinTouch directly at [support@spintouch.com](mailto:support@spintouch.com). This is to ensure that spinTouch support staff fully understands the issue as experienced by Customer, the context for said issue, and can begin providing sought support services through assigning of a support ticket. Any request for said support services that does not commence through Customer emailing spinTouch at the email address directly above may not be responded to. In the event Customer makes a direct phone call to spinTouch and speaks with a spinTouch representative, this alone is insufficient to commence the provision of support services by spinTouch. spinTouch is not at all responsible for requests for support services that were not first

submitted via the email address above. Furthermore, at all stages of spinTouch's provision of support services to Customer, Customer is obligated to timely respond to spinTouch communications. To any such support services correspondence, Customer is obligated to respond within a commercially reasonable time, not to exceed three (3) business days from the date of the most recent spinTouch email. Failure to respond within that timeline may result in the closing by spinTouch of the request for support services and the matter as resolved.

Customer is required to continue payment for Services as invoiced by spinTouch. Payment for Services is due prior to the provision of said Services by spinTouch to Customer for any billable period; payment is due under these Terms. In the event Customer ceases to remit payment to spinTouch under the applicable payment terms contained in an invoice, spinTouch may, at its sole discretion, terminate or otherwise suspend Customer's access to Services until such time as Customer has paid any and all outstanding amounts due to spinTouch. In the event spinTouch chooses to terminate or otherwise suspend Customer's access to Services under this paragraph, such an action shall not constitute a breach of these Terms by spinTouch.

#### **10. Binding Arbitration for non-government customers**

For non-government Customers, you agree that all claims and disputes arising under or relating to use of Devices are to be settled by binding arbitration in the County of Orange in the State of California. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in terms and conditions for the use of similar devices and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction.

YOU AGREE THAT THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH CALIFORNIA LAW, INCLUDING THE CALIFORNIA CODE OF CIVIL PROCEDURE AND THE CALIFORNIA EVIDENCE CODE, AND THAT THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL CALIFORNIA LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO RULES OF CONFLICT OF LAW.

ARBITRATION SHALL BE THE SOLE, EXCLUSIVE, AND FINAL REMEDY FOR ANY DISPUTE OR CLAIM TO ARISE FROM YOUR USE OF DEVICES. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THIS AGREEMENT, NEITHER YOU NOR SPINTOUCH WILL BE PERMITTED TO PURSUE COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION.

Notwithstanding the foregoing, in order to prevent irreparable harm in the event of an infringement or possible infringement upon Intellectual Property rights, both you and spinTouch have the right to pursue injunctive relief in the state and federal courts located in Orange County, California, and the parties agree to the exclusive jurisdiction and venue of such courts for that purpose.

#### **11. Alternative Dispute Resolution for government entities**

In the event Customer is a federal, state, or local government, or otherwise a public entity, both spinTouch and Customer shall collaborate to resolve a matter prior to filing of any litigation by either party. Accordingly, nothing in these Terms, or future schedules, exhibits, amendments, or addenda, is intended to be or shall be construed as a waiver of the Customer's sovereign immunity. However, should a dispute arise under this Agreement, and if Customer is authorized by state statute to engage in alternative dispute resolution, Customer agrees to submit any such claim or controversy to the appropriate dispute resolution process for public agencies as set forth in applicable state statute and implemented or administered by that state's attorney general, department of education, or any other similarly tasked or jurisdictional agency. For such alternative dispute resolution proceedings, the law to be applied shall be that defined by the applicable state statute.

## **12. Entire Terms**

These Terms constitutes the entire Agreement of the parties with respect to the subject matter hereof, and supersedes and cancels all prior and contemporaneous agreements, claims, representations, and understandings of the parties, whether by spinTouch or an authorized spinTouch reseller, in connection with the subject matter hereof, written, oral, or otherwise. In the avoidance of doubt, these Terms shall supersede and control as against all other proposed terms, in part or in whole, submitted by Customer whether through a Purchase Order or in any other manner. In the event Customer requests any amendments to these Terms, such proposals must be submitted to SpinTouch and, if in its sole discretion said proposed terms are accepted by SpinTouch, SpinTouch may only do so through a signed, written instrument. If SpinTouch does not accept said proposed terms through a signed, written instrument within fifteen (15) days of receipt, said proposed terms are deemed rejected by SpinTouch.

## **13. Applicable Law**

This Agreement will be governed by the laws of the state of California, without reference to conflict of laws principles. The sole jurisdiction and venue for actions related to the use of Devices will be the Superior Court in the County of Orange, California. You consent to the jurisdiction of such courts with respect to any actions arising from your use of Devices. Both Customer and spinTouch agree that this paragraph shall not apply in the event Customer is a government agency; rather, the law to be applied shall be that prescribed according to Section 11 for alternative dispute resolution purposes.

## **14. Interpretation**

The provisions contained within these Terms will be interpreted according to the laws of the State of California. The section and paragraph headings in these Terms are for convenience only and shall not affect their interpretation.

## **15. Severability**

If any provision of these Terms shall be deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.

## **16. No Waiver**

spinTouch will not be considered to have waived any of its rights or remedies described in these Terms unless the waiver is in writing and signed by the appropriate corporate representative or agent. No delay or omission by spinTouch in exercising its rights or remedies will impair or be construed as a waiver.

## **17. Non-Disparagement Clause**

Neither party shall, at any time during the course of this contractual relationship or after, make statements or representations, or otherwise communicate, directly or indirectly, in writing, orally or otherwise, or take any action which may, directly or indirectly, disparage or be damaging to the other party (including any of either party's subsidiaries, other affiliates, officers, directors, employees, partners or stockholders); provided that nothing in this paragraph shall preclude either party from making truthful statements or disclosures that are required by applicable law, regulation or legal process.

## **18. Amendments to Terms**

spinTouch may, at its sole discretion, update or otherwise amend these terms on an as-needed basis. In the event spinTouch elects to do so, it shall provide seven (7) days' notice to Customer through a generalized communication

announced on the Dashboard. In the event Customer does not agree to said updated Terms, it may opt to discontinue Services or otherwise cease use of spinTouch Device(s) by directly contacting spinTouch through its authorized representatives in writing. If Customer does not inform spinTouch of its desire to discontinue Services or use of Device(s) under the updated Terms, then those Terms shall be binding on Customer as of the effective date.

## **19. Physical Notices and Return Shipping**

In the event Customer seeks to communicate via regular postage mail with spinTouch, or return any Device to spinTouch under the RMA process set forth in these Terms, Customer shall address all said parcels to the following address with associated tracking information to a member of spinTouch sales or support team, unless otherwise directed by spinTouch per section this Section, above:

SPINTOUCH  
2323 MAIN STREET  
IRVINE, CA 92614

Any return shipping of any Device(s) must be conducted following the SpinTouch Return Merchandise Authorization (“RMA”) protocol. The specific RMA protocol to be applied depends on the Device itself. Accordingly, in order to return any spinTouch Device to spinTouch, you must follow the appropriate RMA protocol as contained in the Warranty Return Materials Authorization Process and RMA Packaging Slip documentation. Prior to undertaking return shipping, Customer must contact spinTouch by email to initiate said process. The subject line for said email shall be: “RMA Initiation Request”. The body of the email shall contain the purchasing entity name, contact phone number, and product model number. In the event Customer cannot determine the model number itself, please contact spinTouch for assistance. Any Customer who fails to properly notify spinTouch in advance prior to sending out product and fails to adhere to the above RMA protocol shall be liable for any lost, damaged, or stolen Device(s). In its response to Customer, spinTouch will either approve or deny the RMA request submitted by Customer. If approved, spinTouch will provide the proper RMA protocol to be applied to any Device, including address to which any such Device is to be shipped.

If Customer fails to properly address said parcel, Customer shall be solely responsible for any fees and/or costs associated with properly routing said Device to the address listed in this Section. Under no circumstances shall the Customer send any units or parts to spinTouch without obtaining a Return Merchandise Authorization (RMA) and going through the outlined RMA processes as outlined above. If Customer does not follow the RMA process in its entirety, the package could be denied and/or returned back to the Customer and Customer shall be solely responsible for any fees and/or costs associated as well as any damage resulting from improper packaging of the equipment. In the event Customer initiates return shipping of any Device(s) to spinTouch without adhering to the process described above, and any the package containing such a Device is unknowingly accepted by spinTouch, Customer shall be notified upon discovery by spinTouch and informed that Customer has a period of ten (10) days in which to arrange shipping for the Device, at their own expense, back to Customer’s place of business or another location of Customer’s choosing. If, at the conclusion of this ten (10) day grace period, Customer has failed to arrange such return shipping, Customer shall be responsible for a monthly storage fee of \$75 per Device until such time as Customer removes said Device(s) from the possession of spinTouch, whether through common or by agents directly under the control and employ of Customer.

## **20. Termination**

In the event Customer determines, at its sole discretion, to discontinue its use of Devices and/or cease its use of Services, it may do so with thirty (30) days’ prior notice to spinTouch. spinTouch may, at its sole discretion, terminate this Agreement with respect to Customer if it reasonably believes that Customer has materially breached these Terms. In the event spinTouch reasonably believes that Customer is breaching any applicable data privacy law, spinTouch may suspend Customer’s account without prior notice.

In the event either party terminates this Agreement under this Section, Customer shall be obligated to pay all amounts it owes to spinTouch. Furthermore, the following Sections shall continue to remain in full force following said termination: 1, 2, 5, 7, 8, 9, 10, 11, 16, 17, and 19.

I ACKNOWLEDGE THAT, BY SUBMITTING MY PURCHASE ORDER, SIGNING PROPOSAL OR PAYING INVOICE, I HAVE REVIEWED, AGREE TO, AND ACCEPT THE TERMS AND CONDITIONS THAT CONDITION MY PURCHASE AND USE OF RAPIDSCREEN.