



## SPINTOUCH RESELLER AGREEMENT

This Reseller Agreement (the "Agreement") is entered into as of the \_\_\_\_ of \_\_\_\_\_, 2021 (the "Effective Date") by and between spinTouch Inc. ("spinTouch" or "Company"), a company incorporated under the laws of California, USA having its principal place of business at 2323 Main Street, Irvine, CA 92614 USA ("spinTouch") and \_\_\_\_\_, a \_\_\_\_\_ incorporated under the laws of \_\_\_\_\_, having its principal place of \_\_\_\_\_ ("Reseller") (collectively, "Parties").

**WHEREAS**, spinTouch has developed and markets digital display products under the brand name "RapidScreen" (herein referred to as "Products") (as defined below); and

**WHEREAS** spinTouch wishes to sell the Products through the Reseller and provide related services in the Territory through the Reseller in accordance with the terms and conditions hereof; and

**WHEREAS**, the Reseller wishes to promote and sell the Products and provide the related support and service within the specified territory (as defined in attachment hereto);

**WHEREAS**, Reseller represents that it has the requisite knowledge, know-how, connections and expertise necessary in order to market and resell the Products in the Territory and provide the related support and service in accordance with the spinTouch Standards (as defined below).

**NOW THEREFORE**, in consideration of the promises and the mutual covenants herein contained, the parties hereto agree as follows.

### 1. DEFINITIONS

1.1 "Intellectual Property Rights" means any proprietary information of spinTouch, including any ideas, whether or not patentable, inventions, discoveries, processes, works of authorship, marks, names, know-how, industrial designs and any and all rights in such materials on a worldwide basis, including, without limitation, any rights in patents, inventor's certificates, utility models, copyrights, moral rights, trade secrets, mask works, trade names and marks and other analogous rights and any updates, modification, improvements, combinations, enhancements, alterations thereto, and any suggestions to improve Products proffered by either spinTouch or Reseller during the term of the Agreement.

1.2 "Products" all products attached hereto in Schedule D, as may be updated by spinTouch from time to time at its sole discretion. In the event spinTouch makes any changes to Products, whether an update to software, hardware, or otherwise, Reseller shall be notified of said changes by email as soon as practicable after those changes are incorporated into Products. spinTouch shall provide Reseller a thirty (30) day prior notice of any such update.

1.3 "spinTouch Standards" means the service and support requirements for the Products attached hereto in Schedule A, as may be amended from time to time by spinTouch at its sole discretion by delivering to Reseller a thirty (30) day prior notice.

1.4 "Price List" means spinTouch's published price list for the Products attached hereto as Schedule B, as may be updated by spinTouch from time to time at its sole discretion. spinTouch shall provide Reseller a thirty (30) day prior notice of any such update.

1.5 "Territory" means the territory as specified in Schedule C.

1.6 “Documentation” shall mean spinTouch’s user manuals, other user documentation, marketing documentation, training manuals, and other training materials, in each case provided by or under authority of spinTouch to Reseller from time to time under this Agreement.

1.7 “End Customer” shall mean any party within territory that places an order with Reseller for Products, in whatever quantity.

1.8 “Purchase Order” shall mean a document provided to Reseller by spinTouch to be used for the purpose of submitting purchase requests from End Customers and is further defined in Section 6.1 below.

## **2. APPOINTMENT**

For the term of this Agreement and subject to the terms and conditions herein, spinTouch hereby grants Reseller the non-exclusive right to sell and distribute the Products to End Customers within the Territory. Reseller agrees that without the prior written approval of spinTouch, Reseller shall not sell or distribute the Products to anyone outside the Territory or solicit orders for the sale of Products outside the Territory. This appointment is personal to Reseller and may not be assigned or transferred in any way, in whole or in part, nor may Reseller appoint sub-resellers, except with the advance written permission of spinTouch. Except as expressly provided for herein, as between spinTouch and Reseller, spinTouch is the sole and exclusive owner of all rights in, to, and relating to spinTouch or the Products, including, without limitation, any and all Intellectual Property Rights and Reseller shall make no claims to the contrary.

## **3. TERM; RENEWAL**

Unless sooner terminated as hereinafter provided, the term of this Agreement shall be for a period of one (1) year from the date hereof and shall be automatically renewed at the end of said period absent sixty (60 days’ written notice from either party that it intends to terminate the Agreement. Should the relationship between the parties terminate for any reason whatsoever, the Reseller will not be entitled to any rights whatsoever with regard to the spinTouch Products, brand, services or ownership rights, including without limitation any Intellectual Property Rights, nor shall Reseller be entitled to any consideration or compensation whatsoever from spinTouch. Reseller shall also immediately return to spinTouch all documents, software, confidential information and proprietary information related to spinTouch Products and services and Reseller shall then destroy all copies of such information held by Reseller.

## **4. RESELLER’S DUTIES AND GENERAL RESPONSIBILITIES**

4.1 Reseller shall:

(i) Use its best efforts to promote the Products, seek out and identify prospective customers, and obtain orders for the Products in the Territory and promptly and thoroughly follow up inquiries and leads for the Products, including without limitation, any inquiries or leads furnished to Reseller by spinTouch;

(ii) During the warranty period (“Warranty Period”) provided by spinTouch to Resellers to whom Products were sold, as set forth in Section 5.4, Reseller shall provide all of its End Users with service and support for the Products in a timely and professional manner in accordance with the spinTouch Standards.

(iii) Conduct its business in its own name, own all inventories, and pay all the taxes, costs, and expenses of conducting its business, including, but not limited to, salaries, commissions, travel expenses and other compensation of its officers, employees and agents.

(iv) Subject to approval by spinTouch, pay all invoices on the day of shipment (“Invoice Due Date”). Reseller agrees that any invoice not paid of the Invoice Due Date will incur interest at the rate of 1.5% per month from the Invoice Due Date. Reseller shall not withhold payment of any amount due to spinTouch because of any set-off, counterclaim, abatement, or other similar deduction.

(v) Make no warranty to any End Customer except as expressly stated in section 9 or as stated otherwise agreed to in writing by spinTouch, and not assume any liability in the name of spinTouch or represent spinTouch as liable for any obligation incurred by Reseller.

(vi) Provide to spinTouch monthly written reports in a form and format acceptable to spinTouch on all of its marketing and sales activities hereunder, including information regarding malfunctions, support and visits to End Customer sites.

(vii) Participate in quarterly business reviews, sales meetings, and product introduction meetings as reasonably requested by spinTouch.

(viii) Obtain, at Reseller's cost and with spinTouch's reasonable assistance (which will be provided upon request), all necessary governmental approvals, licenses, certifications, permits and consents in connection with the Reseller's obligations to sell the Products within the Territory.

(ix) Use its best judgment to determine whether to invite spinTouch personnel to critical End Customer meetings including, but not limited to, sales presentations and/or technical discussions.

(x) Provide Reseller financial statements as reasonably requested by spinTouch.

(xi) Furnish to End Customers the full Terms and Conditions prepared by spinTouch for use of Product and attached hereto as Schedule F; moreover, Reseller shall include required spinTouch Notice Language to End Customer in any purchase order form that End Customer returns to Reseller in order to acknowledge that, by submitting said Purchase Order for Products, End Customer agrees to and accepts the spinTouch Terms and Conditions.

#### 4.2 Reseller shall not:

(xi) Engage in any conduct which, in spinTouch's reasonable opinion, is prejudicial to spinTouch's business or the marketing or sale of Products.

(xii) Incorporate into Reseller's name any of spinTouch's trademarks (defined as the trademark registration and applications attached as Schedule E), together with any further trademarks which spinTouch may permit or procure permission for the Reseller, by express written notice to Reseller from spinTouch, to use in the Territory), or any trade, brand, business, corporate or other name or part of any such name at any time used by spinTouch.

(xiii) Place or run any advertisements regarding any of the Products, unless the advertisement is approved in advance by spinTouch in writing, nor shall Reseller make any statement, written or otherwise, concerning the ability of the Products to function as medical devices for the purposes of diagnosing or treating any condition, and Reseller may not foster any direct or indirect perception that the Products may be used in patient care.

(xiv) Make any statement as to the quality or manufacture of the Products without the prior written approval of spinTouch.

## **5. SPINTOUCH'S DUTIES**

5.1 Training. spinTouch shall provide the Reseller with training for its technical personnel in accordance with Schedule A. Unless otherwise agreed to by spinTouch and specified on an individual basis, training shall be conducted via remote meeting. spinTouch is responsible for the cost of training personnel chosen to administer said training and shall acquire and pay for any venue required, in its sole discretion, for the training event to take place. Reseller shall be responsible for the following costs: travel for personnel chosen to administer training, accommodations for said individuals, all wage and hourly compensation for Reseller's employees it selects to attend said training, and any other expenses reasonably related to the training.

5.2 spinTouch shall furnish the Reseller with catalogues and with technical information with respect to the Products insofar as it may relate to the sales efforts of Reseller. In addition, spinTouch shall provide Reseller with sales aids and materials that spinTouch produces in its regular course of business and it believes will be of benefit to Reseller's sales efforts.

5.3 Assistance. Without derogating from Reseller's obligations herein, spinTouch shall use its best efforts to assist Reseller in the preparation of marketing and exhibition materials. Furthermore, spinTouch shall, in a timely manner, respond to any reasonable written query forwarded by Reseller in connection with the Products.

5.4 spinTouch warrants that if, within one (1) year of purchase ("Warranty Period"), should there be a defect in material or workmanship, and if, as determined by spinTouch in its sole discretion, the product has received normal use and care and no damage or wear has resulted from abuse, neglect, misuse, tampering, or accident, spinTouch will repair or replace the product free of charge.

THE WARRANTY SET FORTH IN SECTION 5.4 IS MADE IN LIEU OF ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND IS THE SOLE AND EXCLUSIVE REMEDY AND SPINTOUCH'S SOLE AND EXCLUSIVE LIABILITY FOR ANY PRODUCT DEFECT OR FAILURE. PRODUCTS ARE PROVIDED HEREUNDER AS IS. RESELLER SHALL DETERMINE THE SUITABILITY OF THE PRODUCT FOR ITS INTENDED USE, AND RESELLER ASSUMES ALL RISK AND LIABILITY WHATSOEVER IN CONNECTION THEREWITH. SPINTOUCH SHALL NOT IN ANY WAY BE LIABLE EITHER IN TORT OR IN CONTRACT FOR ANY LOSS OR DAMAGE, DIRECT OR INCIDENTAL, OR CONSEQUENTIAL, ARISING OUT OF THE USE OR INABILITY OF EITHER RESELLER OR ANY END CUSTOMER TO USE THE PRODUCTS.

## **6. PURCHASE ORDER**

6.1 Reseller will prepare and submit to spinTouch, prior to each shipment of Products, a Purchase Order ("Purchase Order"). The terms and conditions of this Agreement shall apply to all Purchase Orders submitted to spinTouch and supersede any different or additional terms on Reseller Purchase Orders. Purchase Orders issued by Reseller to spinTouch shall include requests for delivery dates and quantities of Products. All Purchase Orders placed with spinTouch for the Products shall be subject to written acceptance by spinTouch. spinTouch shall use reasonable efforts to make deliveries promptly of orders so accepted, but spinTouch shall not be liable for any damages to Reseller or to any other person for spinTouch's failure to fill any Purchase Orders, or for any delay in delivery or error in filling any orders for any reason whatsoever. Any said Purchase Order shall incorporate the language as set forth in section 4(xi) above.

6.2 ANY TERMS OR CONDITIONS OF ANY PRODUCT ORDER OR ACKNOWLEDGMENT GIVEN OR RECEIVED WHICH ARE ADDITIONAL TO OR INCONSISTENT WITH THIS AGREEMENT SHALL HAVE NO EFFECT AND SUCH TERMS AND CONDITIONS ARE HEREBY EXCLUDED. FOR CLARITY, THE PRECEDING SENTENCE SHALL NOT PRECLUDE EITHER PARTY FROM MAKING ANY CHANGES TO ITS POLICIES, REQUIREMENTS AND THE EXHIBITS AS EXPRESSLY CONTEMPLATED IN THIS AGREEMENT.

6.3 For Purchase Orders submitted and accepted as provided in Section 6.1, spinTouch's obligations are as follows: (i) use diligent efforts to expeditiously process Reseller product orders, and (ii) confirm all orders and provide, to the extent possible, an estimated time of delivery upon specific request by Reseller.

6.4 Acceptance of Products. Subject to the exceptions set forth in this Section 6, Products delivered pursuant to an order fulfilled in accordance with the terms hereunder shall be deemed accepted by Reseller unless Reseller returns such Products within seven (5) calendar days of the Product delivery date. Sales of accepted Products as provided herein are final, and may not be returned for refund, exchange or credit to Reseller. spinTouch has an absolute right to cure within a reasonable time any Products rejected by Reseller, whether or not such cure would take place after the date for delivery of any shipment of Products.

6.5 Risk of Loss. The risk of loss shall pass to Reseller at the moment that the Products are placed in the possession of the shipping logistics company at the moment said company takes possession from the manufacturer.

## **7. TERMINATION; NON-EXCLUSIVE REMEDY; SURVIVAL; NO TERMINATION LIABILITY AND EFFECT OF TERMINATION**

7.1 Termination. spinTouch may terminate this Agreement at any time by written notice of termination in the event that (1) spinTouch determines that Reseller has failed to comply with any of its obligations under this Agreement, provided that spinTouch gives Reseller seven (7) days advance notice of any such failure; (2) Reseller is the subject of a petition for a bankruptcy order, or becomes insolvent or enters into any compensation or arrangement with its creditors; (3) a receiver is appointed for Reseller or for any or all Reseller's assets; (4) Reseller begins the process of liquidation or dissolution or is liquidated or dissolved; (5) the Company receives or becomes aware of significant complaints expressing dissatisfaction with the service provided by Reseller; (6) Reseller fails to meet mutually agreed minimum purchase quantities for two (2) consecutive quarters, (any reference to sales goals or sales targets in other documents shall be interpreted as minimum purchase quantities for the purpose of this contract); (7) engages in any conduct which, in the spinTouch's reasonable opinion, is prejudicial to spinTouch's business or the marketing or sale of its products.

7.2 Non-Exclusive Remedy. Termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party.

7.3 spinTouch may, at its sole option, cancel any orders for Products placed by Reseller before termination or expiration if delivery would fall after termination or expiration whether or not the orders have been accepted by spinTouch. spinTouch shall have no liability to the Reseller in respect of such cancelled orders.

7.4 Reseller may terminate this Agreement at any time upon thirty (30) days' written notice to the Company.

7.5 Survival. The rights and obligations of the parties contained in Sections 7, 8, 9, 10, 11 and 12 will survive the termination of this Agreement.

7.6 No Termination Liability. Each party understands that the rights of termination hereunder are absolute. Neither party will incur any liability or compensation obligation whatsoever for any damage (including, without limitation, damage to or loss of goodwill or investment), loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any termination of this Agreement by such party that complies with the terms of the Agreement whether or not such party is aware of any such damage, loss or expenses.

7.7 Effect of Termination. Upon the expiration or earlier termination of this Agreement, Reseller will, within ten (10) days after such expiration or termination: (i) advise spinTouch by notice of all existing indications of interest by, and discussions with, potential End Customers for Products, and (ii) provide spinTouch or any third party designated by it for such purpose, a detailed list specifying any service and support activities that were in process upon the expiration or termination of this Agreement, the status of any such activity and the status of payments due in connection with any service and support agreement. Upon the expiration or earlier termination of this Agreement, Reseller will also: (i) immediately discontinue any use of the name, logotype, trademarks or slogans of spinTouch and the trade names of any of the Products; (ii) immediately discontinue all representations or statements from which it might be inferred that any relationship exists between spinTouch and Reseller; and (iii) cease to promote, solicit orders for or procure orders for Products (but will not act in any way to damage the reputation of spinTouch or any Product). In addition, upon termination of this Agreement, Reseller remains obligated to pay all invoices due spinTouch and will promptly return to spinTouch all sample books, catalogues, samples and other materials furnished to Reseller.

## **8. CONFIDENTIALITY**

8.1 During the term of this agreement and for a period of three (3) years after termination or expiration of this agreement, Reseller shall keep and maintain, and cause its employees to keep and maintain, in strict confidence all "Confidential Information" and shall not use any such Confidential Information of spinTouch other than for the purpose of performing hereunder. For purposes of this agreement, Confidential Information is interpreted broadly and includes: (i) the Products and all Intellectual Property Rights therein; (ii) the terms and conditions of this Agreement; and (iii) any and all information and know-how of a private, secret or confidential nature, in whatever form, that relates to the business, financial condition, products or technical information of spinTouch, their affiliates,



customers, potential customers, suppliers or potential suppliers, provided or disclosed to the receiving party or which becomes known to the receiving party, whether or not marked or otherwise designated as "confidential", "proprietary" or with any other legend indicating its proprietary nature. Notwithstanding any failure to so identify disclosed information as Confidential Information, (a) information pertaining to the Product and documentation including without limitation, the development status of the Product, the functionality of the Product, the appearance, content and flow of the Product's user interface and the documentation will be deemed to be Confidential Information; and (b) any information disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential, including information viewed or learned by a party during a visit to the other party's facilities, will be deemed Confidential Information.

8.2 Exclusions. Notwithstanding the above, neither party will have liability to the other with regard to any Confidential Information of the other which the receiving party can prove such information: (i) was publicly known at the time it was disclosed or has become publicly known through no fault of the receiving party; (ii) was legally known to the receiving party, without restriction, at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) became known to the receiving party, without restriction, from a source other than the disclosing party, without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights; or (v) disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party will provide prompt notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. The exceptions will not permit the receiving party to disregard the obligations of confidentiality herein merely because individual portion(s) of the Confidential Information may be found within such exceptions, or because the Confidential Information is implicitly but not explicitly disclosed in information falling within such exceptions.

8.3 Use and Disclosure Restrictions. Each party will treat as confidential all Confidential Information of the other party, will not use such Confidential Information except as set forth herein, and will use reasonable efforts not to disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties will use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under this Agreement, but in no event will it use less than reasonable efforts. Each party will promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information.

## **9. INTELLECTUAL PROPERTY RIGHTS;**

9.1 Intellectual Property Ownership. (i) All Intellectual Property Rights in or related to the Products 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. Reseller 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 Products and/or the related documentation. Reseller agrees that it will not reverse engineer, decompile or perform any similar type of operation on the Products, in any fashion or for any purpose whatsoever.

(ii) spinTouch, in its sole discretion, will determine what steps, if any, are to be taken with respect to any infringement or unauthorized use of any spinTouch Product, and any damages recovered will be payable firstly to spinTouch, and then to Reseller if the Reseller was damaged as well and spinTouch is fully compensated for its damages. In no event will spinTouch be obligated hereunder to commence legal proceedings. Reseller will not undertake any legal action or other steps of any kind to prevent or restrain any such infringement or unauthorized use or collect damages resulting therefrom without spinTouch's advance written permission.

9.2 Notice of Infringement. Reseller will promptly inform spinTouch in reasonable detail of any alleged infringement of its Intellectual Property Rights in the Territory it is aware of and assist spinTouch at its request in the enforcement of its rights.

9.3 spinTouch may, at its sole discretion, extend to Reseller a limited license for the explicit purpose of generating additional sales and marketing material should Parties conclude that it would be to the benefit of both. Such a license grant may only be extended via a written instrument and must be executed by the appropriate designated authority at spinTouch.

**10. WARRANTY DISCLAIMERS**

SPINTOUCH AND ITS THIRD PARTY SUPPLIERS WILL NOT BE LIABLE TO RESELLER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, AND WHETHER OR NOT SPINTOUCH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, (I) FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST DATA, OR (II) FOR ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE DISCOUNTS RECEIVED DURING THE TWELVE (12) MONTH PERIOD THAT PRECEDES THE DATE THE CAUSE OF ACTION AROSE. THESE LIMITATIONS WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SPINTOUCH DOES NOT MAKE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTE, OR OTHERWISE, AND SPINTOUCH SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

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.

The Limited Warranty can be found here: [https://spintouch.com/documents/terms/rapidscreen\\_warranty.pdf](https://spintouch.com/documents/terms/rapidscreen_warranty.pdf)

**11. NOT A MEDICAL DEVICE**

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. 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.

## **12. INDEMNIFICATION**

Reseller will indemnify and hold harmless spinTouch and spinTouch's officers, directors, agents, and employees from and against any and all third party claims, actions, demands, losses, liabilities, damages, or expenses (including, without limitation, reasonable attorneys' fees, experts' fees, and other reasonable costs of litigation) brought against spinTouch, arising out of or otherwise related to: (i) any breach of this Agreement by Reseller; (ii) Reseller's warranties or representations, whether express or implied, which were not authorized by spinTouch or any additional liability assumed by Reseller with respect to the Products in excess of that assumed by spinTouch in this Agreement; or (iii) any misrepresentation, fraud, negligence or willful misconduct of Reseller, or its employees, contractors, or agents, with respect to any prospective or existing Customer or other third party or in connection with Reseller's performance under this Agreement. spinTouch agrees to: (a) promptly notify Reseller in writing of any such action or claim; and (b) provide Reseller with all assistance, information and authority required for the defense and settlement of the action or claim. Reseller will not be responsible for any settlement made without Reseller's prior written consent, not to be unreasonably withheld, and Reseller will have no right to bind spinTouch or admit liability by spinTouch in any claim, or settlement thereof, without spinTouch's prior written consent. Reseller will have the option in its sole discretion to assume the defense of any such action or claim. If Reseller does not assume the defense within ten (10) days after spinTouch's notice to Reseller of any third party action or claim, then spinTouch may undertake the defense of such third party action or claim at Reseller's expense.

## **13. BINDING ARBITRATION AGREEMENT**

Parties agree that all claims and disputes arising under or relating to this Agreement 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 contract breach 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.

PARTIES 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 BETWEEN THE PARTIES TO THIS AGREEMENT. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THIS AGREEMENT, NEITHER PARTY WILL BE PERMITTED TO PURSUE COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION.



Notwithstanding the foregoing, in order to prevent irreparable harm, either party has 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.

#### **14. LIMITATION OF LIABILITY.**

SPIN TOUCH'S MAXIMUM LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT PAID BY RESELLER TO SPIN TOUCH UNDER THE TERMS OF THIS AGREEMENT.

#### **15. MISCELLANEOUS PROVISIONS**

15.1 Assignment. This Agreement may not be assigned, by operation of law or otherwise, by Reseller without the prior written consent of spinTouch. Any purported assignment is null and void. spinTouch may assign or transfer this Agreement without Reseller's consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

15.2 Waiver and Amendment. No modification, amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by the parties duly authorized representatives. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

15.3 Third Party Rights. No person who is not a party to this Agreement (including any employee, officer, agent, representative or subcontractor of either party) shall have the right to enforce any provision of this Agreement which expressly or by implication confers a benefit on that person without the express written agreement of spinTouch and Reseller. Any such authorizing document must reference the proper waiver under provision contained within this Section. The Contracts (Rights of Third Parties) Act of 1999 shall not apply to this Agreement.

15.4 Governing Law; Forum. This Agreement will be governed by the laws of the state of California, USA, without reference to conflict of laws principles. The sole jurisdiction and venue for actions related to the subject matter of this Agreement will be the Superior Court in the County of Orange, California, USA. Both parties consent to the jurisdiction of such courts with respect to any actions arising from this Agreement.

15.5 Notices. All notices, demands or consents required or permitted under this Agreement will be in writing. Notice will be considered effective on the earlier of actual receipt or: (i) the day following transmission if sent by facsimile followed by written confirmation; (ii) one (1) day (two (2) days for international addresses) after posting when sent via an express commercial courier; or (iii) five (5) days after posting when sent via certified mail. Notice will be sent to the address for each respective party's principal place of business, which is identified at the top of the document.

15.6 Relationship between the parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

15.7 No Conflicts. Reseller represents and warrants that neither this Agreement (or any provision hereof) nor the performance of or exercise of rights by Reseller under this Agreement, is restricted by, contrary to, or in conflict with any other agreement to which Reseller may be a party.

15.8 Severability. If for any reason a court of competent jurisdiction or appointed arbitrator finds that any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

15.9 Force Majeure. Neither party will be liable to the other party for any failure or delay in performance due to causes beyond its reasonable control, including but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action.

15.10 Entire Agreement; Headings. This Agreement, including all Schedules and referenced documents, contains the complete understanding and agreement of the parties and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. Section headings are for convenience only and will not affect their interpretation.

15.11 Expenses. Except as otherwise expressly set forth herein, each party will bear its own costs and expenses incurred in connection with its activities under this Agreement.

By signing below, the parties agree to be bound by the terms and conditions of this Agreement. Any executed copy of this Agreement made by reliable means (e.g. photocopy or facsimile) is considered an original.

Reseller:

spinTouch:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**SCHEDULE A - SPINTOUCH'S STANDARDS****1. Sales & Service Personnel.**

- Reseller shall train at least one service personnel to provide service and support for the Products. spinTouch shall schedule the time of training.
- Reseller shall allocate at least one sales personnel dedicated for the sales efforts and promotion of the Products.
- Reseller can supply an account for protection from direct sales and pricing from spinTouch. Account name, address and point of contact will be provided.
- Reseller will not advertise below the MAP (Minimum Advertised Pricing) shown for each of the products and its respective bundles. However, reseller is permitted to sell the products at any price they deem appropriate based on their market.

**2. Installation on Customer's Site:**

- Reseller personnel may perform installation of new PRODUCTS in the Territory.
- Reseller personnel may perform installation of new software versions, systems and upgrade kits in the Territory.
- Reseller may offer additional services to its customers with connection with the PRODUCTS

**3. Service Call Opening – Work Flow**

- Customer calls Reseller for service (“Malfunction Notice”).
- Reseller shall update service personnel about the call - service personnel shall return a call to the Customer no later than two (2) hours after the Malfunction Notice. Based on working hours
- The Reseller's service personnel shall define the problem and report to spinTouch's technical department as soon as possible. Reports shall be performed by filling spinTouch official form (will be provided)
- If it is not possible to solve the problem by phone, then: delivery guy or Service personnel shall arrive to Customer's site no later than one business day from the time of the Malfunction Notice.
- In a case where service personnel fails to overcome the problem, service personnel should call spinTouch contact personnel immediately.

**SCHEDULE B - PRICE LIST**

Current pricing will be provided on a separate document.

**SCHEDULE C - TERRITORY**

There are no current restrictions on the Territory and the Reseller is allowed to pursue sales opportunities throughout North America. Moreover, spinTouch is not offering to Reseller, and Reseller acknowledges that it is not receiving exclusive access to any particular market or jurisdiction.

spinTouch reserves the right to amend, at its sole discretion, the scope of Reseller's territory including, but not limited to: the geographic region in which it may operate and the grant of an exclusive right to serve a particular market or jurisdiction. In the event spinTouch elects to amend Reseller's Territory as defined herein, spinTouch will afford Reseller thirty (30) day's written notice prior to such amendment taking effect.

**SCHEDULE D - THE PRODUCTS**

- RapidScreen

**SCHEDULE E - Trademarks**

- RapidScreen

**SCHEDULE F - Terms and Conditions for End Customer**

Full terms can be found in the following web address:

[https://spintouch.com/documents/terms/rapidscreen\\_terms\\_conditions.pdf](https://spintouch.com/documents/terms/rapidscreen_terms_conditions.pdf)