HARDWARE SALE AND SAAS AGREEMENT

1. **DEFINITIONS.**

"**Documentation**" shall mean the specifications, user guides and other materials for the Hardware and the Software made available by TouchSource to Purchaser in written or electronic form.

"**Fees**" means the amounts payable hereunder as more particularly described on the attached Exhibit A, and Exhibit B.

"**Purchaser Materials**" means all images, content, data, software and other materials provided by Purchaser or used by Purchaser in connection with this Agreement and not provided by TouchSource hereunder. For the avoidance of doubt, Purchaser Materials does not include any information or data collected directly by the Software.

"**TouchSource Data**" means anonymous usage information, including statistics, usage data, and any databases produced therein collected by or processed in the Software and does not include any personally identifiable information

"**Software**" means any computer program(s) included, installed, or operated on any Hardware, including updates, enhancements, translations, modifications and derivatives thereof as may be supplied by TouchSource during the term hereof.

"**Hardware**" means the computer equipment and hardware listed on the attached Exhibit B, including any associated components, enclosures, or other tangible personal property.

"**Term**" means the period specified on Exhibit A and renewal periods as subsequently elected by and paid for by Purchaser as shall be specified in writing between the parties hereto. The Term will automatically be extended for two (2) additional 12-month periods following the Initial Term (as defined in Exhibit A) (each such one-year period a "**Renewal Period**" and collectively, the "**Renewal Term**") unless the purchaser provides written notice to TouchSource that it wishes to terminate the Agreement within 30 days of the end of the Initial Term or a Renewal Period. After two (2) subsequent Renewal Terms, the Term will automatically continue until TouchSource or the Purchaser chooses to Terminate. The Initial Term together with the Renewal Term (if any) is referred to herein as the "**Term**."

2. **USAGE/TITLE/FEES.**

(a)   Purchaser is entitled to use the Software during the Term only as set forth herein and on Exhibit A.

(b)   Purchaser may not: (i) rent, loan, tor re-license the Software or Documentation or any portion thereof; (ii) make copies, translations or derivative works of the Software or Documentation; (iii) reverse engineer the Software, except as expressly permitted by applicable law, or create from it any work, whether in tangible or intangible form, that constitutes a "derivative work" within the meaning of the definition set forth in Section 101 of the U.S. Copyright Act.

(c)   Any trade name or trademarks used with the Software and any licenses and rights granted hereunder may not be distributed, sold, sub-licensed, or otherwise made available or transferred, in whole or in part, to any third party without the prior written consent of TouchSource. Purchaser shall not remove or alter any legends, copyright or trade secret notices from Software or Documentation.

(d)   Purchaser agrees to pay the Fees for the use of the Software, as more particularly described on the attached Exhibit A.

3.   **SERVICE LEVEL**. TouchSource shall provide the service level as selected on Exhibit A attached hereto ("**Service Level**"). TouchSource may provide or resell third-party media and information as part of specific subscription or service included in the selected Service Level ("**Content**"). Certain Service Level's may contain lower fees in exchange for allowing TouchSource to display advertisements or other Content from its partners. Purchaser is required to comply with all obligations and restrictions of Purchaser at the selected Service Level.

4.   **UNAUTHORIZED USE.** Purchaser agrees to notify TouchSource immediately of the unauthorized possession, use, or knowledge of any component of the Software to which Purchaser is given access under this Agreement and of other information made available to Purchaser under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge.

5.   **TERMINATION/DEFAULT.**

(a)   This Agreement shall be effective when signed by both parties hereto and is for the Term(s) specified on Exhibit A to this Agreement.

(b)   TouchSource may terminate this Agreement at any time during the Term upon the failure of Purchaser to observe or perform any of the covenants, terms and conditions of this Agreement where such non-performance is not fully remedied by Purchaser within thirty (30) days after written notice by TouchSource (other than as specified in subsection (c)).

(d)   Termination of this Agreement under this Section 5 shall be in addition to, and not a waiver of, any remedy at law or in equity. In the event of any termination, Purchaser shall immediately cease to use the Software, and shall return all Documentation to TouchSource. On the effective date of any termination or expiration of this Agreement, all amounts then owed by Purchaser to TouchSource will become immediately due and payable, even if later payment dates had been mutually agreed upon by the parties.

6.   **WARRANTY.** TouchSource warrants that during the term of the Agreement, the Software will perform substantially in accordance with the Documentation. In the event of any non-conformance of such Software to the specifications, Purchaser shall promptly so notify TouchSource and provide TouchSource with information that allows TouchSource to investigate the claimed error. In any event such notice must be received by TouchSource no later than 30 days from the end of the Term. TouchSource's sole obligation and Purchaser's exclusive remedy under this warranty shall be limited to TouchSource using commercially reasonable efforts to promptly correct such defects or, in TouchSource's sole discretion, terminating this Agreement and refunding any prepaid license fee paid by Purchaser in accordance with Exhibit A. TouchSource's warranty obligations shall be void if the Software is modified by anyone other than TouchSource. THE FOREGOING WARRANTY IS GIVEN IN LIEU OF, AND TOUCHSOURCE HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEMS INTEGRATION AND NONINFRINGEMENT. **PURCHASER EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF COMPUTER SOFTWARE, TOUCHSOURCE CANNOT AND DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE WITHOUT INTERRUPTION OR ERROR-FREE.**

7.   **INDEMNIFICATION.** Purchaser shall, at its own expense, indemnify, defend and hold harmless TouchSource from and against any claim, loss, liability or demand (including reasonable attorneys' fees)

arising out of or in connection with: (i) any negligence or willful misconduct of the Purchaser, its employees and/or agents, (ii) any breach of this Agreement by the Purchaser, (iii) any violation of law by Purchaser associated with Purchaser's failure to meet any regulatory obligations, including any applicable privacy laws, arising from the Purchasers use of the Hardware or the Software, and (iv) any claims that any Purchaser Materials violate or infringe any third party intellectual property or proprietary rights.

8. **LIMITATION OF LIABILITY.** IN NO EVENT WILL TOUCHSOURCE OR BE LIABLE FOR ANY LOSS OF REVENUES, PROFITS, OTHER ECONOMIC LOSS OR GOODWILL OR OTHER INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND, RESULTING FROM THIS AGREEMENT, ITS PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THE TERMS OF THIS AGREEMENT OR ANY OF THE ATTACHMENTS HERETO, OR FROM THE FURNISHING, PERFORMANCE, DELAY IN DELIVERY, OR USE OR LOSS OF USE OF ANY SOFTWARE, HARDWARE, CONTENT, OR OTHER MATERIALS DELIVERED TO PURCHASER HEREUNDER, WHETHER RESULTING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, OR TORT, INCLUDING NEGLIGENCE, EVEN IF TOUCHSOURCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOUCHSOURCE'S AGGREGATE LIABILITY TO PURCHASER UNDER THIS AGREEMENT RESULTING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, AND TORT, INCLUDING NEGLIGENCE, SHALL BE LIMITED TO THE LICENSE FEES ACTUALLY PAID BY PURCHASER TO TOUCHSOURCE IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.

9. **MAINTENANCE/SUPPORT.**

(a)   MAINTENANCE.   Unless otherwise specified, TouchSource has the sole right and responsibility to maintain and update the Software. In connection with such maintenance and update, Purchaser shall provide to TouchSource any testing assistance that TouchSource may reasonably request.

(b)   STANDARD ENHANCEMENTS. TouchSource reserves the right, as reasonably necessary or convenient for TouchSource's own purposes or to improve the quality of the Software, to change access procedures, types of equipment utilized in the TouchSource computing environment, system interfaces, operating and other system and network software, utilities, and database software (collectively "**Standard Enhancements**"), and to implement Standard Enhancements to the Software. Whenever practicable, TouchSource shall give Purchaser advance notice of the scheduled implementation of any Standard Enhancement and will use commercially reasonable efforts to reduce disruption to the Purchaser's software usage.

(c)   ACCESS INTERRUPTIONS.   Purchaser acknowledges and agrees that in order for TouchSource to perform the maintenance services set forth herein, TouchSource may be required from time to time to interrupt Purchaser's ability to access the Software. TouchSource will use commercially reasonable efforts to minimize access disruptions during normal business hours.

10.   **PAYMENTS AND TAXES.** Purchaser shall pay to TouchSource the Fee(s) in accordance with the payment terms specified in Exhibit A and Exhibit B, as applicable. Purchaser shall be responsible for the payment of any and all taxes, fees and duties, including any related value added tax, arising under this Agreement, other than income taxes levied upon TouchSource. In addition to any other sums payable thereunder, Purchaser shall pay to or reimburse TouchSource for all taxes, however designated (except TouchSource income taxes), arising from this Agreement. TouchSource reserves the right, upon seven (7) days' advance written notice to Purchaser, to suspend operation of Software should Purchaser fail to make full payment upon the date said payment is due. TouchSource, at its sole discretion, may charge interest, not exceeding one- and one-half percent (1-1/2%) per month or fraction thereof or eighteen percent (18%) per year, for Purchaser's failure to make any payment in a timely manner. Should TouchSource be required

to begin an action against Purchaser to collect any past due payments, Purchaser shall pay all costs of collection, including accrued interest, court costs and reasonable fees of attorneys and fees of other professionals.

11. **CONFIDENTIAL INFORMATION**.

(a) TouchSource and Purchaser each expressly undertakes to retain in confidence all information transmitted to it by the other party pursuant to this Agreement that the disclosing party identifies as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("**Confidential Information**"), and will make no use of such Confidential Information except under the terms and during the existence of this Agreement. TouchSource and Purchaser shall treat the terms and conditions of this Agreement as confidential; however, either party may disclose such information in confidence to its legal and financial consultants as required in the ordinary course of that party's business.

(b) Confidential Information shall not include any information that: (i) is at the time of disclosure or subsequently becomes publicly available without the receiving party's breach of any obligations owed the disclosing party; (ii) became known to the receiving party prior to the disclosing party's disclosure of such information to the receiving party; (iii) became known to the receiving party from a source other than the disclosing party other than by the breach of an obligation of confidentiality owed to the disclosing party; or (iv) is independently developed by the receiving party. Information that is aggregated or derived from Purchaser's use of the deliverables or the Software shall not be deemed Confidential Information of Purchaser.

(c) Notwithstanding anything to the contrary herein, Purchaser grants to TouchSource the right to use Purchaser Materials, information, data and records solely in connection with making the Software available and in performance or provision of the Services under this Agreement, and the right to use such materials, information, data and records in perpetuity in an anonymized and/or aggregated fashion, to, among other things, enhance the Software and services provided by the Company to its customers and users of the Software.

12. **INTELLECTUAL PROPERTY**

(a) All inventions, copyright work, design right work, business methods, patents or other intellectual property created by TouchSource, individually or jointly with the Purchaser and specifically relating to the Hardware, Software, or any Services, excluding any Purchaser Materials (collectively, the "**System**"), shall be the sole and exclusive property of TouchSource.

(b) The Purchaser also acknowledges that TouchSource owns and retains all intellectual property rights relating to the System including without limitation trademarks, copyrights, patents and trade secrets. The Purchaser shall not acquire any right, title and interest in or to the System (other than any Hardware sold to Purchaser pursuant to this Agreement), and except as expressly provided otherwise in this Agreement, the Purchaser may not translate, disassemble, reverse engineer, decompile or create derivative works based on the System.

(c) All right, title and interest without limitation, including all intellectual property rights, in and to the System, related materials and any copies thereof and any changes, modifications or corrections to the System, and all documentation, code and logic which describes and/or comprises the System belongs to

TouchSource. Unless otherwise agreed to in writing by the parties hereto, if the Purchaser conceives of or introduces any modifications or corrections of any type or nature to the System, then the Purchaser hereby irrevocably assigns to TouchSource all such rights, title and interest to such modifications or corrections and agrees to execute all documents necessary to implement such assignment as requested by TouchSource.

(d)   All ownership rights, title and interest in the TouchSource Data shall be and remain solely vested with TouchSource. TouchSource, in its sole discretion, may license, sell, or provide the TouchSource Data to third parties for any purpose. Notwithstanding anything to the contrary herein, including Section 11 of this Agreement, Purchaser hereby waives any right to restrict TouchSource's use in any manner of the TouchSource Data, except as otherwise required by law.

(e)   The provisions of this Article 11 shall survive the termination or expiration of this Agreement.

13.   **HARDWARE PURCHASE**

(a)   The Purchaser agrees to purchase from TouchSource the Hardware detailed in Exhibit B, at the price provided for therein (the "**Hardware Price**"). The Purchaser agrees to pay the specified fees plus any applicable taxes for the hardware by the dates listed and as otherwise required on Exhibit B (the "**Hardware Price Terms**").

(b)   Upon receipt of the Hardware Price by TouchSource and satisfaction of the Hardware Price Terms, TouchSource shall transfer to the Purchaser good, clear and marketable title to the Hardware.

(c)   TouchSource provides a limited warranty against manufacturing defects of the Hardware as follows: (i) two (2) years from the Purchase Date (as defined in Exhibit B) on all Hardware installed within a TouchSource enclosure, and (ii) 1 year from the date Purchase Date on all Hardware not installed within a TouchSource enclosure. TouchSource makes no other warranty or guarantee for any other defects, failures, damages or limitations, caused for any reason other than as stated above. THE FOREGOING WARRANTY IS GIVEN IN LIEU OF, AND TOUCHSOURCE HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SYSTEMS INTEGRATION AND NONINFRINGEMENT. PURCHASER EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF COMPUTER HARDWARE, TOUCHSOURCE CANNOT AND DOES NOT WARRANT THAT THE OPERATION OF THE HARDWARE WILL BE WITHOUT INTERRUPTION OR ERROR-FREE.

14.   **SHIPPING AND INSTALLATION**.

(a) Purchaser is responsible for providing a complete and accurate delivery address for any Hardware required to be shipped. A representative of Purchaser must be available to sign for any deliveries. Failure to accept delivery may result in additional charges. TouchSource reserves the right to charge restocking fees at market rate if the customer does not accept shipment on the delivery date.

(b) Installation of any Hardware Purchased shall not be included unless indicated on Exhibit B. Purchaser is responsible for preparing the install location and providing the required services, power, internet connectivity, permits, licenses, access and the like, including any such requirements as identified in any Hardware schematics, drawings, or similar documentation made available by TouchSource. Failure to provide adequate site preparation may result in service charges by TouchSource at its standard hourly rates to cover lost time of its service personnel.

15.   **MISCELLANEOUS.**

(a)   CHOICE OF LAW/VENUE. The validity and performance of this Agreement shall be governed by the laws of the State of Colorado. Determination of any disputes shall be in the state or federal courts in Boulder or Denver, Colorado, and the parties hereby consent to exclusive personal jurisdiction in such courts for all matters arising under this Agreement.

(b)   ENTIRE AGREEMENT. This Agreement together with any Exhibit(s) and mutually designated Appendices that may be attached hereto constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all other prior communications written or verbal.

(c)   MODIFICATIONS. Any modification to this Agreement must be agreed to in writing by both parties.