

## TOUCHSTREAM END USER LICENSE AGREEMENT (EULA)

# Terms & Conditions

### Touchstream Software as a Service Agreement

BY SUBMITTING THIS FORM BELOW OR BY ACCESSING, INSTALLING, DOWNLOADING, COPYING OR OTHERWISE USING THE TOUCHSTREAM SERVICE OR TECHNOLOGY (AS DEFINED BELOW), YOU ARE AGREEING TO ALL OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MAY NOT ACCESS, INSTALL, DOWNLOAD, COPY OR USE THE SERVICE OR ANY OF TOUCHSTREAM'S TECHNOLOGY.

This SOFTWARE AS A SERVICES AGREEMENT is made on the date that you submit this form (the "Effective Date") by and between TOUCHSTREAM INTERNATIONAL PTY LTD, having a principal address of Level 1, 1 Queens Rd, Melbourne, VIC, 3004 Australia ("Touchstream") and the business entity on whose behalf you are acting "Customer".

## RECITALS

The Customer streams live or makes available for download on demand, audio-visual content via the internet.

Touchstream has developed a service which remotely monitors live and on-demand Streams of audio-visual content across the Internet and analyzes and provides reports to providers about the functioning of those Streams in real time.

The Customer wishes to use the Service on and subject to the terms of this Agreement.

Certain capitalized terms herein are defined in Section 14.1.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

# AGREEMENT

## 1. Term

This Agreement commences on the Effective Date and shall continue for the Initial Term unless terminated earlier in accordance with this Agreement; provided however that this Agreement will automatically be renewed for successive one month periods (each, a "Renewal Period" and, together with the Initial Term, the "Term") unless the Customer gives written notice to Touchstream of termination at any time prior to the expiration of the Initial Term or the then current Renewal Period, as the case may be.

## 2. Right To Use Service

### 2.1 Grant of Right to Use

Subject to the terms and conditions of this Agreement, Touchstream hereby grants the Customer the personal, non-exclusive, non-transferable, limited, worldwide right to access to and use the Service, solely for the Authorized Purpose, during the Term. All rights not expressly granted to the Customer hereunder are reserved by Touchstream and its licensors.

## **2.2 Authorized Purpose**

The Customer may use the Service for the internal business purposes of the Customer or Service Beneficiaries.

## **2.3 Restrictions**

Subject to the terms and conditions of this Agreement, Touchstream hereby grants the Customer the personal, non-exclusive, non-transferable, limited, worldwide right to access to and use the Service, solely for the Authorized Purpose, during the Term. All rights not expressly granted to the Customer hereunder are reserved by Touchstream and its licensors.

## **2.4 Authorized Users**

The Service may be accessed only by the Customer's Authorized Users, with each Authorized User to access the Service via a discrete user account (an "Authorized User Account") provided always that only one Authorized User may use the Service under an Authorized User Account at any given time.

## **2.5 Acceptable Use Policy**

The Customer must comply with Touchstream's Acceptable Use Policy, as may be amended from time to time by Touchstream.

# **3. Service**

## **3.1 The Service**

The "Service" comprises:

the monitoring by the Software in real time of the Customer Streams, as described in Exhibit A (the "Service Description Schedule") attached hereto; access to the Dashboard and the Touchstream API by Authorized Users; the making available of Customer Data, via the Dashboard, to the Customer; and the ability of Authorized Users to export Customer Data to Excel spreadsheets, PDF documents or such other format as the parties agree, all via the Supported Browser of Authorized Users and only for the Authorized Purpose, in accordance with instructions and guidelines issued from time to time by Touchstream.

## **3.2 Minimum Customer Streams**

The Parties agree that the Customer must pay for, at a minimum, the number of Customer Streams specified in the Order Form, even if the number of the Customer Streams monitored under this Agreement is less than such number.

## **3.3 Modifications**

The Customer acknowledges and agrees that Touchstream may, but is not obliged to, modify, enhance, improve and/or maintain the Service from time to time.

## **3.4 Customer Data**

The Customer agrees and acknowledges that Customer Data will not contain personally identifiable information of Consumers or information that is capable of identifying Consumers. Customer Data does however identify the Customer and Authorized Users. The Customer acknowledges and agrees that Touchstream may store and process all Customer Data in any country in which the servers and other infrastructure used by Touchstream or its service providers in providing the Service, are located, and may disclose Customer Data to Customer's Content Delivery Networks and cloud services providers solely in connection with providing the Service.

## **3.5 Scheduled and Unscheduled Maintenance**

Touchstream may carry out the following maintenance on the Software and systems providing the Service, on the following terms, during which time access to the Service will not be possible:

Scheduled maintenance – on 14 days' written notice to the Customer. The Customer may request to schedule a different day to that specified in the notice, and Touchstream will use commercially reasonable efforts to accommodate that request. Touchstream will use commercially reasonable efforts to restrict the maintenance to the hours of 12.01am to 6.01 am in the time zone where the Customer's main office is located.

Unscheduled maintenance – from time to time event impact or performance issues may require Touchstream to undertake investigation and correction measures which necessitate the temporary cessation of the Service. In that event, Touchstream will email the Customer's support personnel at the designated email address to advise of the maintenance requirement and provide updates as they become available. Touchstream will use commercially reasonable efforts to minimize the resulting disruption to the Service.

## **4. Customer's Obligations**

### **4.1 Legal Compliance**

The Customer is responsible for all activity occurring through Authorized User Accounts and shall comply, and ensure that Authorized Users comply, with the Customer's obligations under this Agreement and all applicable local, state, national, and foreign, laws, treaties and regulations in connection with its use of the Service.

### **4.2 Co-operation, Access, and Security**

The Customer must and must ensure that Authorized Users:

cooperate with Touchstream in all matters under and in connection with this Agreement and promptly do all things reasonably requested by Touchstream to enable it to provide the Service to the Customer;

provide email addresses for a person authorized by Customer to provide log-in data; and

maintain the security of Authorized User Accounts through best practice password protocols and maintenance.

### **4.3 Reporting**

The Customer shall:

notify Touchstream immediately of any unauthorized use of any password or account or any other known or suspected breach of security or of any violation of Section 2.3;

notify Touchstream immediately and use reasonable efforts to stop immediately any copying or distribution of the Software or Service or any of its components that is known or suspected by the Customer or any of the Authorized Users; and

not impersonate another Touchstream user or provide false identity information to gain access to or use the Service.

## **5. Fees, Billing & Payment**

### **5.1 Service Fee**

The Customer must pay the Fees in accordance with the terms of clause 5.1 of the AWS Customer Agreement as if it were incorporated into this Agreement.

the minimum period for which the Customer must pay the Service Fees is the Initial Term, and, each time this Agreement is renewed, for the applicable Renewal Period.

### **5.2 Taxes**

The terms of clause 5.2 of the AWS Customer Agreement apply as if it were incorporated into this Agreement.

## **6. Intellectual Property**

### **6.1 Touchstream's Intellectual Property**

Touchstream (and, where applicable, its licensors) owns all right, title, and interest, including all related Intellectual Property Rights, in and to the Technology and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by the Customer, Authorized Users or any other person relating to the Service.

### **6.2 The Customer's Intellectual Property**

As between the Customer and Touchstream, the Customer owns all right, title, and interest, including all related Intellectual Property Rights, in and to the Customer Content and the Customer Data.

### **6.3 No Assignment**

Except as expressly set forth herein, this Agreement does not assign, or otherwise grant to either Party any rights, implied or otherwise, in or to the other Party's Intellectual Property Rights.

### **6.4 Touchstream's Marks**

Touchstream's name, Touchstream's logo, and the product names associated with the Service are trademarks of Touchstream or third parties, and no right or license is granted to use them except as necessary to utilize the Services or as permitted in writing by Touchstream.

### **6.5 Injunctive Relief**

In the event of any breach of a Party's Intellectual Property Rights, such Party shall be entitled to injunctive relief without the necessity of posting bond or other security or proving damages.

## **7. Confidentiality**

### **7.1 Obligation of Confidentiality**

Each Party:

must protect the other Party's Confidential Information with at least the same standard of care it uses to protect its own Confidential Information (and in any event at least a reasonable standard of care);

must not disclose the other Party's Confidential Information, except to its employees, agents, Affiliates, and the employees and agents of its Affiliates, who need to know it and who have agreed in writing to keep it confidential on terms at least as protective as this Section 7.1 ("Recipients");

must not use and must ensure that all Recipients do not use the other Party's Confidential Information except to exercise its rights and fulfill its obligations under this Agreement; and

is liable for and must defend and indemnify the other Party against any loss or damage suffered by the other Party arising from or in connection with its own acts and/or omissions which are in breach of this Section 7, and the acts and/or omissions of any of its Recipients, which acts and/or omissions are in breach of this Section 7.

### **7.2 Exceptions**

The obligations in Section 7.1 do not apply to information that

the Recipient proves by written evidence was known by it prior to disclosure of the relevant information, or that was subsequently independently developed by it;

becomes public through no fault of the Recipient;

was given to the Recipient by another party without breaching any obligation of confidence.

### **7.3 Required Disclosure**

Each Party may disclose the other Party's Confidential Information when required by law but only to the minimum extent required by law and only after it, to the extent permitted by law, notifies the other Party and gives the other Party a reasonable opportunity to challenge the disclosure.

## **8. Representations & Warranties**

### **8.1 Mutual Representations and Warranties**

Each Party represents and warrants that:

it has full power and authority to enter into and be bound by this Agreement; and

it will comply with all laws and regulations to which it is subject applying to the provision, or use, of the Service, as the case may be.

### **8.2 Touchstream's Representations and Warranties**

Touchstream represents and warrants that

the Service will perform substantially in accordance with the specifications set forth in the Service Description Document under normal use and circumstances; and

it has implemented reasonable systems and procedures, designed to protect the security of the Customer Data, in accordance with the standards set forth in the Security Document.

### **8.3 The Customer's Representations and Warranties**

The Customer represents and warrants that:

it has not provided and will not provide any false information to gain access to the Service, and

its billing information is and will be correct.

### **8.4 Disclaimer of Warranties**

TOUCHSTREAM MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. NEITHER TOUCHSTREAM NOR ITS LICENSORS REPRESENT OR WARRANT THAT:

THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA;

THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS;

ANY STORED DATA WILL BE ACCURATE OR RELIABLE; OR

ERRORS OR DEFECTS WILL BE CORRECTED.

EXCEPT AS SET FORTH IN SECTION 8.2, THE SERVICE AND ALL CONTENT IS PROVIDED TO CUSTOMER STRICTLY ON AN AS IS BASIS AND ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY TOUCHSTREAM AND ITS LICENSORS.

## **9. Indemnities**

### **9.1 By the Customer**

The Customer shall indemnify, defend and hold harmless Touchstream and its Indemnified Persons from and against all third party Claims of any nature whatsoever which Touchstream may suffer or incur arising from or out of the breach of this Agreement, any negligence or default hereunder of the Customer or any of the agents or employees, except to the extent such loss was caused by any negligence or default of Touchstream or any of Touchstream's agents or employees. This indemnity is a continuing obligation and survives any termination or expiration of this Agreement.

## **9.2 By Touchstream**

Touchstream shall indemnify, defend and hold harmless the Customer and its Indemnified Persons from and against all third party Claims of any nature whatsoever which the Customer may suffer or incur arising from or out of the breach of this Agreement, any negligence or default hereunder of Touchstream or any of the Touchstream's agents or employees, except to the extent such Claim was caused by any negligence or default of the Customer or any of the Customer's agents or employees. This indemnity is a continuing obligation and survives any termination or expiration of this Agreement.

## **9.3 Conduct of Claims subject to Indemnity**

Where a Party or any of its Indemnified Persons (the "Indemnified Party") receives a Claim by a third party, that is subject to an indemnity by the other Party (the "Indemnifying Party") under this Agreement, then the Indemnified Party

must give written notice of the Claim promptly to the Indemnifying Party, provided, however, that failure to promptly notify the Indemnifying Party shall not affect the Indemnifying Party's indemnification obligations hereunder except to the extent that the Indemnifying Party is actually prejudiced by such failure;

must give the Indemnifying Party sole control of the defense and settlement of the Claim (provided that the Indemnifying Party may not settle any Claim without the prior written consent of the Indemnified Party which consent must not be unreasonably withheld or delayed; and provided, further, that if the Claim concerns the Intellectual Property Rights of the Indemnified Party, the Indemnified Party may elect to assume control of the defense thereof at the Indemnifying Party's sole cost and expense);

must provide to the Indemnifying Party all reasonably available information and assistance;

may join in the defense of the Claim with its own counsel at its own expense; and

must not compromise or settle such Claim without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

## **9.4 Possible Infringement**

Suspension or Termination. If Touchstream does not believe the foregoing options are commercially reasonable, then Touchstream may suspend or terminate the Customer's use of the impacted Service. If Touchstream terminates the impacted Service, then Touchstream will provide a pro-rata refund of the unearned Fees actually paid by the Customer applicable to the unexpired period following such termination.

obtain the right for the Customer, at Touchstream's expense, to continue using the Service;

provide a non-infringing functionally equivalent replacement service; or

modify the Service so that it no longer infringes.

Suspension or Termination. If Touchstream does not believe the foregoing options are commercially reasonable, then Touchstream may suspend or terminate the Customer's use of the impacted Service. If Touchstream terminates the impacted Service, then Touchstream will provide a pro-rata refund of the unearned Fees actually paid by the Customer applicable to the unexpired period following such termination.

# **10. Exclusions & Limitation of Liability**

## **10.1 Internet Delays**

TOUCHSTREAM'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. TOUCHSTREAM IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **10.2 Loss of Customer Data**

TOUCHSTREAM SHALL NOT BE RESPONSIBLE OR LIABLE FOR THE DELETION, CORRECTION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY CUSTOMER DATA.

## **10.3 Exclusion of Indirect Loss or Damage**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE OR THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR, OR OMISSION, REGARDLESS OF CAUSE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **10.4 Limitation of Liability**

OTHER THAN WITH RESPECT TO CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

## **10.5 Subject to Law**

The above exclusions and limitation of liability are subject to any applicable law restricting any such exclusion or limitation.

# **11. Termination**

## **11.1 Termination by non-renewal**

The Customer may terminate this Agreement by giving notice of its non-renewal of the Agreement pursuant to Section 1. Touchstream may terminate this Agreement by giving the Customer 30 days notice of termination.

## **11.2 Termination for Cause**

Either Party may terminate this Agreement if:

the other Party materially breaches this Agreement and does not rectify such breach within 14 days of receipt of a notice thereof from the other Party; or

the other Party enters into any form of bankruptcy or insolvency administration or ceases to conduct business.

## **11.3 Consequences of Termination**

Upon termination, all the Customer's rights under this Agreement immediately terminate and the Customer remains responsible for all unpaid Fees or other Fees that it may incur in the post-termination period. Touchstream reserves the right to withhold, remove, and/or discard the Customer Data without notice if this Agreement is terminated by it for breach of this Agreement by the Customer. Upon such termination for breach, the Customer's right to access or use the Customer Data immediately ceases, and Touchstream shall have no obligation to maintain or forward any Customer Data to the Customer.

## 12. Notices

Any communication under or in connection with this Agreement:

must be sent by email to the address set forth in the Order Form (or as otherwise specified in writing by that Party to the other Parties from time to time); and

will be deemed to be received by the addressee:

when received if during regular business hours and if not, then on the next business day.

For purposes hereof, "business day" means a day (not being a Saturday or Sunday) on which banks are generally open for business in the place of receipt of that communication.

## 13. Miscellaneous

### 13.1 Governing Law

This Agreement, and all matters arising out of it, is governed by and will be construed according to the laws of the State of New York, without regard to any conflict of laws principles of that or any other jurisdiction.

### 13.2 Jurisdiction

Each Party irrevocably submits to the non-exclusive jurisdiction of the state and federal courts of competent jurisdiction located in the County of New York, New York, USA with respect to any proceedings which may be brought at any time relating in any way to this Agreement and each Party irrevocably waives any objection it may now or in the future have to such venue.

### 13.3 Amendments

This Agreement may only be amended in writing signed by each of the Parties.

### 13.4 Waiver

Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any Party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.

Any waiver or consent given by any Party under this Agreement will only be effective and binding on that Party if it is given or confirmed in writing by that Party.

No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

### 13.5 Assignment

Except as provided for in this Agreement, a Party cannot assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided however that Touchstream may assign its rights under this Agreement to any Affiliate or in connection with the sale of its business, whether by sale of assets, equity or merger and in such case the Customer must do all such things and sign all such documents as may be required by law or reasonably requested by Touchstream in connection with such assignment.

### 13.6 No Representation or Reliance

Each Party acknowledges that no Party (nor any person acting on its behalf) has made any representation, warranty or other inducement to it to enter into this Agreement, except for representations, warranties or inducements expressly set out in this Agreement.

Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other inducement by or on behalf of any other Party, except for any representation, warranty or inducement expressly set out in this Agreement.



## 13.7 Entire Agreement

This Agreement embodies the entire understanding of the Parties, and supersedes any prior written or other agreement between the Parties.

## 13.8 Electronic Acceptance

This Agreement may be executed either electronically or on paper. If this Agreement is executed electronically, by filling this form you represent and warrant that this Agreement is legally binding upon Customer.

## 13.9 Severance

If any provision or part of a provision of this Agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular Party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

# 14. Definitions & Rules Of Construction

## 14.1 Definitions

In this Agreement:

Acceptable Use Policy means the policy published at <http://www.touchstream.media/tsp-aup> from time to time or such other URL as Touchstream may provide, and in the absence of any such published policy means the policy for use of the Service as provided by Section 2.5 above.

Agreement means this document, together with any exhibits and schedules attached hereto, and any other documents or policies referenced in this document.

Affiliate in relation to a Party means any entity that directly or indirectly controls, is controlled by, or is under common control with, that Party.

Authorized Purpose means the purpose described in Section 2.2 subject to Sections 2.3 and 2.4.

Authorized User means an employee or independent contractor of the Customer who is authorized by the Customer to use the Service on behalf of the Customer in accordance with this Agreement.

Authorized User Account has the meaning ascribed in Section 2.4.

AWS Customer Agreement means the customer agreement at <https://aws.amazon.com/agreement/>

Marks means the trade names, trademarks, service marks, logos, domain names, and other distinctive Marks of each Party, respectively, as owned or controlled by such Party from time to time.

Claim means any demand, claim, action, suit or proceeding, and unless the context otherwise requires, any judgment, order, decree, determination, penalty, cost, damages, loss, liability, and/or expense (including reasonable attorneys' fees and costs).

Confidential Information means information disclosed by a Party to the other Party in connection with this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Without limiting the generality of the foregoing, the Customer Data is the Confidential Information of the Customer, and information concerning the Technology is the Confidential Information of Touchstream.

Consumer means a person who receives and views Customer Content.

Content means the literary, artistic and musical works and cinematograph films and sound recordings carried in digital form by a Stream.

Customer Data means the data outputted by the Software in relation to the Customer Streams.

Customer Content means Content of the Customer.

Customer Streams means Streams of the Customer monitored using the Service.

Dashboard means the graphical user interface by which Authorized Users view Customer Data.

Effective Date means the date of the Order Form.

Fees means the Service Fee, third party charges and any other fee, charge or expense payable by the Customer under or in connection with this Agreement.

Indemnified Persons in relation to a Party means that Party's parent organizations, subsidiaries, Affiliates, officers, directors, shareholders, employees, attorneys, and agents.

Intellectual Property Rights means any and all intellectual and industrial property rights throughout the world including rights in respect of, or in connection with any confidential information; copyright (including future copyright and rights in the nature of, or analogous to, copyright); performers' protection; inventions (including patents); trademarks; service marks; and designs, whether or not now existing and whether or not registered or registrable, and includes any right to apply for the registration of such rights and includes all renewals and extensions;

Initial Term means the period specified as such in the Order Form.

Online Help Documentation means the user guides and help documentation available from time to time at <http://www.touchstream.media/tsp-help> or such other URL as is provided to the Customer or published by Touchstream on its website, from time to time.

Order Form means the order form completed by the Customer at [aws.touchstream.media/vn-mp-signup](http://aws.touchstream.media/vn-mp-signup) or [aws.touchstream.media/mp-cdn-signup](http://aws.touchstream.media/mp-cdn-signup) as provided by Touchstream or via the AWS Marketplace, and accepted by submitting this form or by accessing the Service through AWS Marketplace.

Party means each of Touchstream and Customer and includes their respective successors and permitted assigns.

Payment Cycle means the period specified as such in the Order Form.

Privacy Policy means the policy published at <https://www.touchstream.media/privacy-policy>; from time to time or such other URL as is provided to the Customer or published by Touchstream on its website.

Renewal Period has the meaning ascribed in Section 1 and in the Order Form.

Security Document means the document entitled "Touchstream Security Schedule" annexed to this Agreement as Exhibit B, the terms of which may be varied from time to time by Touchstream sending the updated version to the Customer by email.

Service has the meaning given in Section 3.1.

Service Description Document means the document entitled "Touchstream Service Description Schedule" available on request from Touchstream, the terms of which may be varied from time to time by Touchstream.

Service Fee means the fee payable by the Customer for use of the Service calculated in accordance with Section 5.1 above.

Software means software that monitors, analyses and outputs data about Streams developed and maintained by Touchstream.

Stream means a series of digital data packets that is disseminated across the internet either continuously or by way of download on demand.

Supported Browser means an internet browser that is supported by the Service from time to time and includes those browsers listed in the Service Description Document.

Taxes means any duties, customs charges, or taxes (other than Touchstream's income tax) associated with the use of the Service, and/or payment of Fees, including any penalties or interest in respect of such duties, charges and taxes.

Technology means all software (including the Software), hardware, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information disclosed to and/or made available by Touchstream for use by the Customer in the provision of the Service.

Term means the period from the Effective Date to the date this Agreement expires or is terminated.

Touchstream API means the application program interface that may be used by the Customer to retrieve the current status of all monitored Streams from Touchstream.

Website means the website located at URL touchstream.media or such other URL as Touchstream provides Customer from time to time.

## **14.2 Interpretation**

In this Agreement unless the context indicates a contrary intention:

an obligation or a liability assumed by, or a right conferred on, two or more Parties binds or benefits all of them jointly and each of them severally;

the expression person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

a reference to any Party includes that Party's executors, administrators, successors and permitted assigns, including any Person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

a reference to any document (including this document) is to that document as modified from time to time;

a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;

references to Parties, Sections, schedules, exhibits or Exhibits are references to Parties, Sections, schedules, exhibits and Exhibits to or of this document, and a reference to this document includes any schedule, exhibit or Exhibit to this document;

where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

references to payments to any Party to this Agreement include payments to another person upon the direction of such Party;

the word includes in any form is not a word of limitation and shall be deemed to be immediately followed by "without limitation"; and

a reference to \$ or dollar is to United States currency

a reference to a month or a monthly period is to a calendar month. If the period begins on a date other than the 1st of the month, it ends at midnight on the day before the same date in the immediately succeeding calendar month.

## **14.3 Headings**

The headings in this document are for convenience only and do not affect interpretation.

## **14.4 Notices, Consents and Approvals**

Except as otherwise provided herein, where this Agreement requires or allows a notice, consent or approval to be given, it must be given in writing.

Each of the Parties hereby executes this Agreement by its authorized officer as of the Effective Date.

Touchstream

Touchstream



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