

SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT (this "*Agreement*") is between **DIGITAL TOUCH SYSTEMS, INC.**, a Texas corporation, located at 8500 Shoal Creek Blvd., Austin, Texas 78757 ("*DTS*"), and _____, whose principal place of business is (street, city, state, zip code) ("*Customer*" or "*Subscriber*").

RECITALS:

- A. DTS has developed and is the owner of software and other proprietary technology currently known as "SNAP TOUCH MENU", a web-based tool (snaptouchmenu.com) designed for content management system as a Software as a Service (SaaS) *see* www.digitaltouchsystems.com/products ("*the System*").
- B. Customer desires to license and use the System and has requested that DTS grant Customer the right and license to use the System .
- C. DTS is willing to grant to Customer a non-exclusive right and license to use the System on the terms and conditions set forth in this Agreement.
- D. This Agreement contains the parties' entire agreement concerning the License (defined below) and the other matters addressed herein, and supersedes all negotiations, proposals or prior agreements between the parties concerning such matters.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual terms, conditions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Section 1. License.

(a) *Grant of License.* DTS grants to Customer, and Customer accepts, a non-exclusive license (the "*License*") to use the System and associated software. The grant of the License and this Agreement shall be effective upon the parties' full execution and delivery of this Agreement and DTS's receipt of the subscription fee specified on attached exhibit "A" ("*Exhibit "A"*") for each of Customer's physical locations where the System will be accessed or used.

(b) *Access to System; Support.* Throughout the term of the License,

(i) *Access.* DTS will make the System available to Customer on its web server (www._____.com) and, upon Customer's completion of the online registration at that site, will provide password access to the System for Customer's Designated Submitters (defined below); and

(ii) *Support.* DTS will support Customer in its use of the System by providing the services (the "*Support Services*") described on attached Exhibit "B" ("*Exhibit "B"*").

(c) *Limitations on License.* Customer shall not assign, rent, lease, sell or otherwise convey or attempt to convey any right to use the System to anyone else. Customer shall designate to DTS in writing in the System the person(s) ("*Designated Submitters*") who are authorized to access the System on behalf of Customer, and will assure that the System is used only by those Designated Submitters. Customer's use of the System shall be limited to the physical location(s) for which

subscription/renewal fees have been paid, and such use shall be effected only by Customer's Designated Submitters from time to time.

(d). *Restrictions on Use and Access.* Customer shall not attempt to disassemble, de-compile, reverse engineer, derive or otherwise reproduce any part of the source code of the System and shall not modify, alter, translate or create derivative works based upon the System.

Section 2. **Term Renewals.** The initial term of this Agreement is:

___1___ year
___ month to month.

Thereafter, this Agreement shall be deemed automatically renewed for successive one-year/monthly terms upon Customer's payment to DTS of the applicable subscription fee under Exhibit "A".

Section 3. **Ownership; Intellectual Property Rights.** **The System is licensed, but not sold. This Agreement gives Customer only the license to use the System as provided herein, and does not convey to Customer any ownership rights in the System.** Instead, DTS alone owns all worldwide rights, title, and interest in and to the System and all worldwide patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, and any other intellectual property rights therein. DTS's rights in and to the System are protected by copyright, trademark and other intellectual property laws and treaties.

Section 4. **Fees.** Customer shall pay the following fees under this Agreement:

(a) *Subscription/Renewal Fee.* The subscription fee (upon DTS's initial grant of the License hereunder) or the renewal fee (upon any renewal of this Agreement) specified on Exhibit "A". The subscription fee is due and payable contemporaneously with Customer's execution and delivery of this Agreement to DTS, Renewal fees are due and payable on or before each anniversary of this Agreement.

Section 5. **Warranties; Limitations on Damages.**

(a) *Disclaimer of All Other Warranties.* To the maximum extent legally permitted, DTS provides the System and the Support Services **AS IS AND WITH ALL FAULTS. DTS HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF LACK OF VIRUSES, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, AND OF LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT, ALL WITH REGARD TO THE SYSTEM AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES.**

(b) *Exclusion of Certain Damages.* **THE ENTIRE LIABILITY OF DTS FOR ALL CLAIMS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO SUCH CLAIM. SUBJECT TO APPLICABLE LAW, IN NO EVENT SHALL DTS BE LIABLE FOR (AND DTS HEREBY DISCLAIMS ANY AND ALL LIABILITY FOR) ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO CUSTOMER'S LICENSE HEREUNDER, CUSTOMER'S USE OF OR INABILITY TO USE THE SYSTEM, OR DTS'S PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES.**

Section 6. **Confidentiality.** In this section, the term " *Protected Information* " shall refer to the

following (except as the same is generally known in the public domain prior to the date of this Agreement or may become common knowledge within the public domain or industry after the date of this Agreement): (a) information about the System and its applications; (b) any other confidential or proprietary information or trade secrets that DTS discloses to Customer; and (c) information which is marked by DTS as "proprietary."

During the term of the License and thereafter, Customer (x) shall use, review, examine, discuss, inspect, obtain and hold all Protected Information obtained from or on behalf of DTS in trust and confidence; (y) shall use the Protected Information only for the purposes expressly allowed by this Agreement; and (z) shall not at any time, directly or indirectly, disclose, use or reproduce or authorize anyone else to disclose, use or reproduce, any of the Protected Information or any matter relating to any aspect of the Protected Information.

Upon the termination of the License, Customer shall return to DTS all Protected Information, in any form. In addition to the foregoing, DTS shall be entitled to full protection for Protected Information under unfair competition law, common law or otherwise.

Further, Customer expressly agrees to refrain from, and to not undertake in any way, any direct or indirect reverse engineering efforts in connection with the System.

The covenants in this section shall survive any termination of the License.

Section 7. **Termination.**

(a) *Default.* Among other available remedies, DTS may terminate this Agreement if Customer defaults in any payment or other obligation under this Agreement and fails to cure such default within ten days after written notice from DTS.

(b) *Bankruptcy.* In the event of any adjudication of bankruptcy, appointment of a receiver, assignment for benefit of creditors, liquidation or levy of execution involving Customer, the License shall thereupon terminate automatically.

(c) *Waiver.* The exercise of the right of termination shall not impose any liability on DTS by reason of termination and shall not have the effect of waiving any damages to which DTS might otherwise be entitled.

(d) *Unpaid Fees.* Termination of the License, for any cause whatsoever, shall in no manner interfere with, affect or prevent the collection by DTS of any and all sums of money due to DTS under this Agreement. Upon termination of the License for any reason, Customer's payments required hereunder, but not yet due, shall become immediately due and payable.

Section 8. **Further Actions.** At any time after the date hereof, if any further action if necessary or desirable to carry out the purposes of this Agreement, Customer shall take such further action (including, without limitation, executing and delivering further documents) as DTS may reasonably request.

Section 9. **General Provisions.** The following provisions also are integral to this Agreement:

(a) *Binding Agreement.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) *Captions.* The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) Counterparts This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the State of Texas. Venue of any action or proceeding hereunder shall be in Travis County, Texas.

(i) Attorneys' Fees. In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(j) Notice. Except as otherwise specified herein, all notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses shown above or at such other address(es) as may be designated by a party from time to time in writing.

(k) Time of Essence. Time is the essence of this Agreement.

(l) Electronic Execution and Delivery. Any party may execute and deliver this Agreement through electronic means such as facsimile or e-mail transmission, with the same legal effect as manual execution and physical delivery of this Agreement.

(m) Relationship. This Agreement shall not be deemed to create a partnership between DTS and Customer in their respective businesses or otherwise, nor cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any person or entity unless expressly otherwise provided. Customer's relationship to DTS shall be that of licensee and not that of employee, agent, partner or joint venture. As a licensee, Customer shall have no right, power or authority (a) to enter into any agreement on behalf of DTS; (b) to incur any expense or other obligation for which DTS would or might be responsible; (c) to accept engagements on behalf of DTS; or (d) in any other way to bind DTS.

(n) Force Majeure. DTS shall not be responsible for any failure or delaying its performance under this Agreement 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.

(o) Exhibits. The terms and provisions of the attached exhibits are hereby

incorporated in this Agreement by reference.

DATED effective the date last written below.

CUSTOMER:

(Name _____)

By: _____

Name: _____

Office/Title/ Capacity: _____

Date: ____ - ____ 20 ____

DTS:

DIGITAL TOUCH SYSTEMS, INC. A Texas corporation

By: _____

Name: _____

Office/Capacity: _____

Date: _____

Exhibit "A" to License Agreement

Subscription & Submission Fee Schedule*

Services	Description	Fee
Annual/Monthly SAAS	Original License(s)	\$(____) per license (annual)/(monthly) See Reseller Pricing
Annual/Monthly Renewal of a Current SAAS	Renewal of Original License(s)	\$____ per license (annual)/ (monthly) See Reseller Pricing

* The fees specified on this schedule are subject to modification by DTS upon notice to Customer in connection with any renewal of this Agreement.

Exhibit "B" to License Agreement

SYSTEM/SOFTWARE SUPPORT*

* The support services specified on this schedule are subject to modification by DTS upon notice to Customer in connection with any renewal of this Agreement.

DTS will provide the following support to Customer for its use of the System:

1. Application Processing. DTS will provide a web application to assist Customer in applying for a license to use the System.
2. Account Management Utility. DTS will provide an Account Management Utility at its web site for Customer's use in managing its account. The Account Management Utility will include:
 - (a) Management of user roles, passwords and logon user identification requirements; and
 - (b) Selection of options to control the operation of the System by Customer.
3. Telephone and E-mail Support. Telephone and e-mail support will be provided twelve (9) hours each business day from 8:00 a.m. to 5:00 p.m., Central Time, for questions regarding the functionality of the System, and helping Customer identify, verify and resolve incidents occurring on or with respect to the Licensed Material.
4. Training, Implementation, Customization and Integration Services.
 - (a) Training. Subject to the terms and conditions set forth in this Agreement, DTS will provide online training support of the System to the Customer's designated users. Customer may request and DTS may provide additional training, customization, and integration services on terms and conditions as the parties may mutually agree.
 - (b) Use of any other services. Customer acknowledges and agrees that DTS will in no way be responsible for any losses that may result from Customer's use of any other services, other systems, hardware or software, despite the fact that the same may interface with the System or that DTS may have provided integration services with respect to the same.