

SCRATCHD2 TERMS OF SERVICE

1. DEFINITIONS. Any capitalized terms in this Agreement will have the meanings attributed to them below, in other schedules, or as set forth in the Order Form.

1.1 "Access Protocols" means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Subscriber or any Authorized Users to access the Scratchd2 Service.

1.2 "Authorized User" means any individual who is an employee of Subscriber or such other person or entity as may be authorized by an Order Form, to access the Scratchd2 Service pursuant to Subscriber's rights under this Agreement. Subscriber shall not allow any third parties to access the Scratchd2 Service until those parties have entered into signed, written agreements requiring them to protect Confidential Information with at least the same degree of care as the Agreement imposes upon Scratchd2 and Subscriber. See Section 8, CONFIDENTIALITY.

1.3 "Scratchd2 Service" means the on-line service delivered by Scratchd2 to Subscriber using the Scratchd2 System as described in the Order Form.

1.4 "Scratchd2 System" means the technology, including hardware and software, used by Scratchd2 to deliver the Scratchd2 Service to Subscriber.

1.5 "Documentation" means the technical materials provided by Scratchd2 to Subscriber in hard copy or electronic form that describe the features, functionality or operation of the Scratchd2 System.

1.6 "Error" means a reproducible failure of the Scratchd2 Service to substantially conform to the Documentation.

1.7 "Intellectual Property Rights" means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

1.8 "Order Form" means a document, either physical or electronic, signed by both parties identifying the services to be made available by Scratchd2 pursuant to this Agreement.

1.9 "Subscriber Content" means any content developed by or on behalf of Subscriber and used with the Scratchd2 Service.

2. SCRATCHD2 SERVICE

2.1 Subscription to the Scratchd2 Service. Subject to the terms and conditions of this Agreement, Scratchd2 hereby grants to Subscriber, during the term of this Agreement, a non-sublicensable, non-transferable, non-exclusive subscription to access and use the Scratchd2 Service by the number of Authorized Users set forth in the Order Form and in accordance with the limitations set forth

in the Order Form. The terms and conditions of this Agreement are also on the Scratchd2 website (www.Scratchd2.com/tos), and are the exclusive terms and conditions that Subscribers agree to accept by virtue of signing an Order Form.

2.2 Access. Subject to Subscriber's payment of the fees set forth in the Order Form, Scratchd2 will provide Subscriber with access to the Scratchd2 Service during the term of this Agreement. On or as soon as reasonably practicable after the Effective Date, Scratchd2 shall provide to Subscriber the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Subscriber and its Authorized Users to access the Scratchd2 Service in accordance with the Access Protocols. Subscriber shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Scratchd2 Service, and notify Scratchd2 promptly of any such unauthorized use known to Subscriber.

2.3 Authorized Users. Subscriber may permit any Authorized Users to access and use the features and functions of the Scratchd2 Service as contemplated by this Agreement. If a Subscriber wishes to add additional User IDs, Subscriber may order such additional User IDs at any time by executing a new Order Form detailing the number of additional User IDs. Upon written acceptance by Scratchd2 of the Order Form, Scratchd2 shall make the Service(s) available to the additional Authorized Users.

2.4 Limitations. Subscriber will not, and will not permit any Authorized User or other party to: (a) use the Scratchd2 Service to harvest, collect, gather or assemble information or data regarding other Scratchd2 subscribers without their consent; (b) access or copy any data or information of other Scratchd2 subscribers without their consent; (c) knowingly interfere with or disrupt the integrity or performance of the Scratchd2 Service or the data contained therein; (d) harass or interfere with another Scratchd2 subscriber's use and enjoyment of the Scratchd2 Service; (e) reverse engineer, disassemble or decompile any component of the Scratchd2 System; (f) interfere in any manner with the operation of the Scratchd2 Service, or the Scratchd2 System or the hardware and network used to operate the Scratchd2 Service; (g) sublicense any of Subscriber's rights under this Agreement, or otherwise use the Scratchd2 Service for the benefit of a third party or to operate a service bureau; (h) modify, copy or make derivative works based on any part of the Scratchd2 System; or (i) otherwise use the Scratchd2 Service in any manner that exceeds the scope of use permitted under the subsection titled *Subscription to the Scratchd2 Service*.

2.5 Support. Subject to the terms of this Agreement, Scratchd2 shall use commercially reasonable efforts to provide Scratchd2's standard support services.

2.6 Consent to Use of Data. Scratchd2 may collect and use stored information gathered as part of its support services, but may only use this information to improve its products and services. Scratchd2 shall not disclose any of this information in a form that personally identifies Subscriber or its clients.

3. OWNERSHIP

3.1 Scratchd2 Technology. Subscriber acknowledges that Scratchd2 retains all right, title and interest in and to the Scratchd2 System, Documentation and all software and all Scratchd2 proprietary information and technology used by Scratchd2 or provided to Subscriber in connection with the Scratchd2 Service (the "**Scratchd2 Technology**"), and that the Scratchd2 Technology is protected by Intellectual Property Rights owned by or licensed to Scratchd2. Other than as expressly set forth in this Agreement, no license or other rights in the Scratchd2 Technology are granted to Subscriber. Subscriber hereby grants to Scratchd2 a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Scratchd2 Service any suggestions, enhancement requests,

recommendations or other feedback provided by Subscriber, including Users, relating to the Scratchd2 Service. Scratchd2 shall not identify Subscriber as the source of any such feedback.

3.2 Subscriber Content. The Subscriber Content hosted by Scratchd2 as part of Scratchd2 Service, and all worldwide Intellectual Property Rights therein, is the exclusive property of Subscriber. Subscriber hereby grants to Scratchd2 a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Subscriber Content as necessary for purposes of providing the Scratchd2 Service to Subscriber and (b) to use the Subscriber trademarks, service marks, and logos as required to provide the Scratchd2 Service to Subscriber. All rights in and to the Subscriber Content not expressly granted to Scratchd2 in this Agreement are reserved by Subscriber.

4. FEES AND EXPENSES; PAYMENTS

4.1 Fees. In consideration for the access rights granted to Subscriber and the services performed by Scratchd2 under this Agreement, Subscriber will pay to Scratchd2 the fees set forth in the Order Form. In the event that Subscriber wishes to increase the number of Authorized Users beyond the maximum number of Authorized Users for which fees have been paid, Subscriber shall be required to pay additional fees associated with the increased number of Authorized Users, prorated for the remainder of the term. Except as otherwise provided in the Order Form, all fees for are billed in advance and are due and payable to Scratchd2 within thirty (30) days of receipt of invoice. Scratchd2 shall be entitled to (in addition to any other rights or remedies Scratchd2 may have) discontinue the Scratchd2 Service and suspend all Authorized Users" and Subscriber's access to the Scratchd2 Service if any fees are overdue until such amounts are paid in full.

4.2 Taxes. The fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Subscriber will be responsible for payment of all such taxes (other than taxes based on Scratchd2's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the provision of access to the Scratchd2 Service to Subscriber. Subscriber will make all payments of fees to Scratchd2 free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Scratchd2 will be Subscriber's sole responsibility, and Subscriber will provide Scratchd2 with official receipts issued by the appropriate taxing authority, or such other evidence as the Scratchd2 may reasonably request, to establish that such taxes have been paid. Subscriber shall indemnify and defend Scratchd2 in connection with any proceedings brought by any taxing authorities in connection with this Agreement.

4.3 Expenses. Subscriber shall reimburse Scratchd2 for all costs that are pre-approved by Subscriber, including Scratchd2's reasonable out-of-pocket (including travel and living) expenses incurred in performing its obligations hereunder. All costs and expenses incurred by Subscriber in connection herewith are the sole responsibility of Subscriber.

4.4 Interest. Any amounts not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less.

4.5 Audit. Subscriber will permit Scratchd2 or its representatives to review Subscriber's relevant records and inspect Subscriber's facilities to ensure compliance with this Agreement. Scratchd2 will give Subscriber at least ten (10) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Subscriber's normal operations. If any such audit should disclose any underpayment of fees, Subscriber shall promptly pay Scratchd2 such underpaid amount, together with interest thereon at the rate specified in this section.

If the amount of such underpayment exceeds five percent (5%) of fees actually paid during the audited period, Subscriber shall also pay Scratchd2 for Scratchd2's expenses associated with such audit.

5. SUBSCRIBER CONTENT AND RESPONSIBILITIES

5.1 Subscriber Warranty. Subscriber represents and warrants that any Subscriber Content hosted by Scratchd2 as part of the Scratchd2 Service shall not (a) infringe, misappropriate or violate any Intellectual Property Rights, publicity/privacy rights, law or regulation; (b) be deceptive, defamatory, obscene, pornographic or unlawful; (c) contain any viruses, worms or other malicious computer programming codes intended to damage, surreptitiously intercept or expropriate any system, data or personal or personally identifiable information; or (d) otherwise violate the rights of a third party. Scratchd2 is not obligated to back up any Subscriber Content; the Subscriber is solely responsible for creating backup copies of any Subscriber Content at Subscriber's sole cost and expense. Subscriber agrees that any use of the Scratchd2 Service contrary to or in violation of the representations and warranties of Subscriber in this section constitutes unauthorized and improper use of the Scratchd2 Service.

5.2 Subscriber Responsibility for Data and Security. Subscriber and its Authorized Users shall have access to the Subscriber Content and shall be responsible for all changes to and/or deletions of Subscriber Content and the security of all passwords and other Access Protocols required in order to access the Scratchd2 Service. Subscriber shall have the ability to export Subscriber Content out of the Scratchd2 Service and is encouraged to make its own back-ups of the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Content.

5.3 Copyright Policy. Scratchd2 reserves the right to terminate its agreement with any subscriber who repeatedly infringes third party copyright rights upon prompt notification to Scratchd2 by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if Subscriber believes that a copyrighted work has been copied and posted via the Scratchd2 Service in a way that constitutes copyright infringement, Subscriber shall provide Scratchd2 with the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyrighted work; (b) an identification and location in connection with the Scratchd2 Service of the copyrighted work that Subscriber claims has been infringed; (c) a written statement by Subscriber that Subscriber has a good faith belief that the disputed use is not authorized by the owner, its agent, or the law; (d) the name and contact information, such as telephone number or e-mail address, of Subscriber; and (e) a statement by Subscriber that the above information in Subscriber's notice is accurate and, under penalty of perjury, that Subscriber is the copyright owner or authorized to act on the copyright owner's behalf. Contact information for Scratchd2's Copyright Agent for notice of claims of copyright infringement is as follows:

Scratchd2
Attn: Copyright Agent
731 N Jackson, Suite 900
Milwaukee, WI 53202
copyright@Scratchd2.com

6. WARRANTIES AND DISCLAIMERS

6.1 Limited Warranty. Scratchd2 warrants to Subscriber that, when used as permitted by Scratchd2 and in accordance with the Documentation, the Scratchd2 Service will operate free from Errors

during the term of the Agreement. Provided that Subscriber notifies Scratchd2 in writing of any breach of the foregoing warranty during the term hereof, Scratchd2 shall, as Subscriber's sole and exclusive remedy, provide the support set forth in the Order Form. This warranty gives Subscriber specific legal rights, and Subscriber may also have other rights which vary from jurisdiction to jurisdiction.

6.2 Disclaimer. THE LIMITED WARRANTY SET FORTH IN THIS SECTION IS MADE FOR THE BENEFIT OF SUBSCRIBER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SCRATCHD2 SERVICE, SCRATCHD2 SYSTEM AND DOCUMENTATION ARE PROVIDED "AS IS," AND SCRATCHD2 MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SCRATCHD2 SERVICE, SCRATCHD2 SYSTEM OR DOCUMENTATION (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO SUBSCRIBER BY SCRATCHD2. SCRATCHD2 DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SCRATCHD2 SERVICE AND SCRATCHD2 SYSTEM SHALL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

7. LIMITATION OF LIABILITY

7.1 Types of Damages. TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, NEITHER SCRATCHD2 NOR ITS SUPPLIERS SHALL BE LIABLE TO SUBSCRIBER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH SCRATCHD2'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE SCRATCHD2 SERVICE, SCRATCHD2 SYSTEM OR DOCUMENTATION OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SCRATCHD2 HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

7.2 Amount of Damages. THE MAXIMUM LIABILITY OF SCRATCHD2 ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY SUBSCRIBER TO SCRATCHD2 DURING THE SIX (6) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL SCRATCHD2'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE SCRATCHD2'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SCRATCHD2 OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO SUBSCRIBER.

7.3 Basis of the Bargain. The parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

8. CONFIDENTIALITY

8.1 Confidential Information. During the term of this Agreement, each party (the "**Disclosing Party**") may provide the other party (the "**Receiving Party**") with certain information regarding the Disclosing Party's business, technology, products, or services or other confidential or proprietary information (collectively, "**Confidential Information**"). The Disclosing Party will mark all Confidential Information in tangible form as "confidential" or "proprietary" or with a similar legend, and identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information within thirty (30) days after such oral disclosure. Regardless of whether so marked or identified, the Scratchd2 Service, Scratchd2 System or Documentation, and all enhancements and improvements thereto will be considered Confidential Information of Scratchd2.

8.2 Protection of Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Subscriber) or to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to Scratchd2). In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

8.3 Exceptions. The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

9. INDEMNIFICATION

9.1 By Scratchd2. Scratchd2 will defend at its expense any suit brought against Subscriber, and will pay any settlement Scratchd2 makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Scratchd2 Service or Scratchd2 System infringes, misappropriates or violates any U.S. Intellectual Property Rights. If any portion of

the Scratchd2 Service or Scratchd2 System becomes, or in Scratchd2's opinion is likely to become, the subject of a claim of infringement, Scratchd2 may, at Scratchd2's option: (a) procure for Subscriber the right to continue using the Scratchd2 Service or Scratchd2 System; (b) replace the Scratchd2 Service or Scratchd2 System with non-infringing software or services which do not materially impair the functionality of the Scratchd2 Service or Scratchd2 System; (c) modify the Scratchd2 Service or Scratchd2 System so that it becomes non-infringing; or (d) terminate this Agreement and refund any fees actually paid by Subscriber to Scratchd2 for the remainder of the term then in effect, and upon such termination, Subscriber will immediately cease all use of the Scratchd2 Service, Scratchd2 System, and Documentation. Notwithstanding the foregoing, Scratchd2 shall have no obligation under this section or otherwise with respect to any infringement claim based upon (w) any use of the Scratchd2 Service or Scratchd2 System not in accordance with this Agreement or as specified in the Documentation; (x) any use of the Scratchd2 Service or Scratchd2 System in combination with other products, equipment, software or data not supplied by Scratchd2; or (y) any modification of the Scratchd2 Service or Scratchd2 System by any person other than Scratchd2 or its authorized agents. This subsection states the sole and exclusive remedy of Subscriber and the entire liability of Scratchd2, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.

9.2 By Subscriber. Subscriber will defend at its expense any suit brought against Scratchd2, and will pay any settlement Subscriber makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim arising out of or relating to Subscriber's breach or alleged breach of the subsections titled *Subscriber Warranty and Copyright Policy*. This subsection states the sole and exclusive remedy of Scratchd2 and the entire liability of Subscriber, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for the claims and actions described herein.

9.3 Procedure. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

10. TERM AND TERMINATION

10.1 Term. This Agreement commences on the Effective Date and remains in effect for the License Term set forth in the Order Form. This Agreement shall be automatically renewed for consecutive one (1) year terms unless either party provides written notice to the other of its intention not to renew at least thirty (30) days prior to the expiration of the then-current term.

10.2 Termination. Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

10.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; (b) within ten (10) days after the effective date of termination, each party shall comply with the obligations to return all Confidential Information of the other party, as set forth in the section titled *Confidentiality*; and (c) within ten (10) days after the effective date of termination, Scratchd2 shall discontinue all use of Subscriber Content and destroy all copies of Subscriber Content in its possession. The sections and subsections titled *Definitions, Limitations, Warranties and Disclaimers, Limitation of*

Liability, Confidentiality, Indemnification, Effect of Termination, and Miscellaneous will survive expiration or termination of this Agreement for any reason.

11. MISCELLANEOUS

11.1 Governing Law and Venue. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Subscriber hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for the county in which Scratchd2's principal place of business is located for any lawsuit filed there against Subscriber by Scratchd2 arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The laws of the jurisdiction where Subscriber is located may be different from Delaware law. Subscriber shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Scratchd2 Service, Scratchd2 System or Documentation.

11.2 Export. Subscriber agrees not to export, re-export, or transfer, directly or indirectly, any U.S. technical data acquired from Scratchd2, or any products utilizing such data, in violation of the United States export laws or regulations.

11.3 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Subscriber agrees that the section titled *Limitation of Liability* will remain in effect notwithstanding the unenforceability of any provision in the subsection titled *Limited Warranty*.

11.4 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.5 Remedies. Except as provided in the sections titled *Limited Warranty* and *Indemnification*, the parties' rights and remedies under this Agreement are cumulative. Subscriber acknowledges that the Scratchd2 Service, Scratchd2 System or Documentation contain valuable trade secrets and proprietary information of Scratchd2, that any actual or threatened breach of the sections titled *Intellectual Property* or *Confidentiality* or any other breach by Subscriber of its obligations with respect to Intellectual Property Rights of Scratchd2 will constitute immediate, irreparable harm to Scratchd2 for which monetary damages would be an inadequate remedy. In such case, Scratchd2 will be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any software, Documentation, or any portions thereof, that Subscriber attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

11.6 No Assignment. Neither party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without the consent of the other party. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.

11.7 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the

control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

11.8 Independent Contractors. Subscriber's relationship to Scratchd2 is that of an independent contractor, and neither party is an agent or partner of the other. Subscriber will not have, and will not represent to any third party that it has, any authority to act on behalf of Scratchd2.

11.9 Notices. Each party must deliver all notices or other communications required or permitted under this Agreement in writing to the other party at the address listed on the first page of the Agreement by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.

11.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

11.11 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Subscriber and the Scratchd2.

[End of Document]