

## SERVICE LEVEL OBLIGATIONS & AGREEMENT (SLA)

Scratch Telecom will provide the following measures to ensure uptime:

- Fully redundant and multi-homed network
- Zero packet loss to internal Scratchtelecom.com network
- Switched 100Mbit/s or 1000Mbit/s network
- Uninterruptible power supplies
- Temperature and humidity controlled environment
- Monitoring of all routes and mission critical hardware
- Hot spares for all networking hardware

### Network SLA

Scratch Telecom will provide 99.9% uninterrupted transit to the Internet to all co-location and dedicated hosting customers who have purchased said service from Scratch Telecom. Should transit to the Internet become unavailable for a cumulative period up to one hour in any one calendar month, customers will receive a refund or credit equivalent to one day of the customer's recurring monthly lease or co-location fees on their next invoice. Customers will receive an additional refund of one day of the recurring monthly lease of co-location fees for each additional hour, or portion thereof, of unavailability. All refund calculations will be based on unavailability in one-hour increments. The above agreement does not cover outages caused by equipment or events not under direct control of Scratch Telecom or caused by individuals not directly employed by Scratch Telecom. This agreement does not cover outages during scheduled or emergency maintenance or facility maintenance. Scheduled and facility maintenance warnings will be posted for the customer prior to them happening, and will not exceed that of the guaranteed uptime. Any and all refunds will not exceed 50% of the customer's recurring monthly lease or co location fees for the month in which the refund is paid.

### Hardware SLA

Scratch Telecom guarantees the functioning of all leased servers and their components. Scratch Telecom will replace any faulty hardware at no cost to the customer. Hardware replacement will commence as soon as the faulty component(s) have been identified. All components will be replaced in two hours or less. Should the replacement take longer than two hours, customers will receive a credit equivalent to one day of the customer's recurring monthly lease fees on their next invoice for each hour over the initial two hours allotted to rectify the problem. Hardware problems are defined as processor(s), RAM, hard drives, motherboards, NIC cards and power supplies. This guarantee does not include multi-processor machines. This guarantee also excludes the time required to rebuild a RAID array.

### Power SLA

Scratch Telecom guarantees the availability of power 24/7/365. In the unlikely event power becomes unavailable; we will refund you one day of your recurring monthly lease or co-location fees and an additional refund of one day of the recurring monthly fees for each additional hour, or portion thereof. Any and all refunds will not exceed 50% of the customer's recurring monthly lease or co-location fees for the month in which the refund is paid. Bandwidth fees are not subject to any discounts.

## SCRATCH TELECOM - Master Services Agreement

This Master Services Agreement (the "Agreement") between Scratch Telecom ("Scratch") and the customer which is a signatory hereto ("Customer") is made effective as of the date indicated below the Customer signature on this contract. Each Exhibit(s) is made effective by the date on each Exhibit(s).

1. Overview. - This Agreement states the terms and conditions by which Scratch Telecom will deliver and Customer will receive any or all of the services provided by Scratch, including bandwidth, managed services, professional/support services and content delivery. Each Exhibit(s) submitted, accepted and executed by both parties is hereby incorporated by reference herein. This Agreement is intended to cover any and all Services ordered by Customer and provided by Scratch. Capitalized terms shall have the meanings assigned to them herein or as defined in Section 10.

2. Delivery of Services; Terms; Fees.

2.1 Delivery of Services. - By submitting an Order, whether by phone, fax, in person or online, Customer agrees to take and pay for (i) the Service(s) during

the Initial Term and for any Renewal Term, and (ii) certain limited services and equipment needed by Customer on a "one-off" or emergency basis ("Supplemental Services") where such services are not included within the scope of the Services as described in the Exhibit(s). Customer agrees to pay Scratch Telecom the fees charged by Scratch for Supplemental Services, and hereby authorizes Scratch to perform such services on its behalf. ALL SUPPLEMENTAL SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND EXCLUDE WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED in accordance with Scratch's current policies and prices and exclude the service level guarantees.

A work order will be provided and must be approved before any work is done for the Customer by Scratch Telecom.

2.2 Term.

(a) Term Commencement. The term for each Service will commence on the date specified on the Exhibit(s).

(b) Renewal Term(s). Upon expiration of the Initial Term, the term shall be extended automatically for the original term set forth by the agreement ("Renewal Term"), unless and until either party gives the other no less than thirty (30) days' written notice of a termination. The termination of any Service will not affect Customer's obligations to pay for other Service(s).

3. Fees and Payment Terms.

3.1 Fees and Expenses. - Customer will pay all fees due according to the prices and terms listed in the Exhibit(s) and all other fees incurred by Customer related to Supplemental Services, Professional Services, reinstatement of service fees and fees for switching or upgrading servers, all in accordance with then current Scratch prices and policies.

3.2 Payment Terms. - On the Service Commencement Date for each Service, Customer will be billed (the "Initial Bill") an amount equal to (i) all non recurring charges indicated in the Order and (ii) the monthly recurring charges for the first month of the term prorated for the number of calendar days remaining in such month. Subsequent monthly billing will occur on the first day of each calendar month of the term. Monthly recurring charges for all months will be billed in advance of the provision of Services. All other charges for Services received and expenses incurred for Supplemental or Professional Services during a month (e.g., bandwidth usage fees) will either be billed immediately or at the end of the month in which the Services were provided. Payment for all fees is due upon receipt of each Scratch Telecom invoice. All payments will be made in Canadian Dollars unless otherwise specified. Notwithstanding anything to the contrary in this Agreement, Scratch Telecom expressly reserves the right to alter, change or amend its billing practices in its sole discretion, including, but not limited to, the date on which such billing will occur and the types of charges that will be included in such bills.

3.3 Late payments. - Any payment not received within fifteen (15) days of the invoice date of the Initial Bill and thirty (30) days of the invoice date of a Recurring Bill (respectively, a "Payment Default") will accrue interest at a rate of two percent (2%) per month. Customer also shall pay to Scratch Telecom all expenses incurred by Scratch in exercising any of its rights under this Agreement or applicable law with respect to a Payment Default or other breach by Customer, including, but not limited to, reasonable legal fees, costs and the fees of any collection agency retained by Scratch.

3.4 Taxes. - Customer will be responsible for and will pay in full, except for taxes on Scratch net income, all taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of Services.

4. Intellectual Property Ownership. This Agreement does not transfer from Scratch to Customer any Scratch Technology, and all right, title and interest in and to Scratch Technology will remain solely with Scratch. This Agreement does not transfer from Customer to Scratch any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. Scratch and Customer each agree that it will not, directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party and/or its third party vendors.

5. Limited Warranties.

5.1 Limitation. Each of the guarantees in the Order is null and void if Customer fails to follow Scratch's Rules and Regulations and other policies or otherwise breaches the Agreement in any respect, including non-payment.

5.2 No Other Warranty. SCRATCH DOES NOT MONITOR OR EXERCISE CONTROL OVER THE CONTENT OF THE INFORMATION TRANSMITTED THROUGH ITS FACILITIES. USE OF THE SERVICES OR ANY INFORMATION THAT MAY BE OBTAINED THEREFROM IS AT CUSTOMER'S OWN RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. EXCEPT AS PROVIDED IN THE ORDER, SCRATCH DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. SCRATCH DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

5.3 Disclaimer of Actions Caused by and/or Under the Control of Third Parties. SCRATCH DOES NOT AND CANNOT CONTROL THE FLOW OF INFORMATION TO OR FROM SCRATCH'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). SCRATCH CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY SCRATCH DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

## 6. Customer Obligations.

### 6.1 Warranties of Customer.

(a) General. Customer represents and warrants that (i) Customer, if an individual, is at least eighteen (18) years of age; (ii) Customer possesses the legal right and ability to enter into this Agreement, and (iii) the performance of its obligations and use of the Services (by Customer, its customers and users) will not violate any applicable laws, regulations or the Rules and Regulations or cause a breach of any agreements with any third parties or unreasonably interfere with other Scratch customers' use of Scratch services. Customer assumes all risks related to processing of transactions related to electronic commerce. (b) Breach of Warranties. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Scratch will have the right, in its sole discretion, to suspend or terminate immediately any Services.

6.2 Compliance with Law and Rules and Regulations. Customer agrees that it will use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws and regulations and the Rules and Regulations, as updated by Scratch from time to time. The Rules and Regulations are incorporated herein and made a part hereof by this reference. Scratch may change the Rules and Regulations upon fifteen (15) days' notice to Customer, which notice may be provided by posting such new Rules and Regulations at the Scratch Site <http://www.scratchtelecom.com> Customer may request a current copy of the Rules and Regulations by sending or faxing a request to Scratch. Customer agrees that it has received, read and understands the current version of the Rules and Regulations.

6.3 Third Party Rights. Customer shall not (i) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any Third Party Product (as defined in Section 7.4) or that appear during use of any Third Party Product; or (ii) reverse engineer, de-compile, or disassemble any Third Party Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

## 7. Limitations of Liability.

7.1 Delays and Interruptions. SCRATCH SHALL NOT BE LIABLE FOR ANY LOSS OF DATA RESULTING FROM DELAYS, CORRUPTION OF DATA, NONDELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE SERVICES, AND SCRATCH SHALL HAVE NO LIABILITY THEREFOR. EXCEPT TO THE EXTENT OF SCRATCH'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER SCRATCH NOR ITS NETWORK SERVICES SUPPLIER WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO SCRATCH'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR

ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF SCRATCH'S OR ITS NETWORK SERVICE SUPPLIER'S NEGLIGENCE.

7.2 Consequential Damages. EXCEPT FOR THE PARTIES' INDEMNITY OBLIGATIONS IN SECTION 8, IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE.

7.3 Notwithstanding anything else to the contrary contained in this Agreement, Scratch's maximum aggregate liability to Customer for any claim related to, or in connection with, this Agreement, whether in contract, tort or otherwise, shall be limited to the total amount of fees actually paid by Customer to Scratch for the prior three (3) months.

7.4 Scratch may provide Customer access to other third party software and/or services ("Third Party Products") through reseller relationships Scratch has established with certain commercial vendors, including without limitation, Microsoft Corporation ("Third Party Vendors"). Unless otherwise notified, Customer understands that product support for Third Party Products is provided by Scratch and not by the Third Party Vendor. Neither Scratch nor any Third Party Vendor makes any representations or warranties, express or implied, regarding any Third Party Products. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THIRD PARTY PRODUCTS IS AT CUSTOMER'S SOLE RISK AND SUCH THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM SCRATCH OR ANY THIRD PARTY VENDOR, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER SCRATCH NOR ANY THIRD PARTY VENDOR WILL BE LEGALLY RESPONSIBLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OR INABILITY TO USE ANY THIRD PARTY PRODUCT. CUSTOMER AGREES TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS AND THAT CUSTOMER SHALL BE FULLY LIABLE TO THIRD PARTY VENDORS AND SCRATCH WITH RESPECT TO ANY IMPROPER USE OF SUCH THIRD PARTY PRODUCTS OR VIOLATION OF LICENSE AGREEMENTS WITH THEM AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENTS.

8. Indemnification. Each party agrees to indemnify and hold the other harmless against any losses, costs, expenses (including, but not limited to, reasonable legal fees), claims, damages, liabilities, penalties, actions, proceedings or judgments (collectively, "Losses") resulting from any claim, suit, action, or proceeding brought by any third party against the other or its affiliates related to or arising out of (i) any infringement or misappropriation or alleged infringement or misappropriation of any International copyright, trade secret, patent, trademark, or other proprietary right related to any hardware or software utilized in connection with any of the Services (but excluding any infringement contributory caused by the other party) and (ii) any violation of or failure to comply with the Rules and Regulations. Customer further agrees to indemnify Scratch and its affiliates against any Losses, which arise out of, or relate to any content provided by Customer or the customers/clients of Customer, and Customer will reimburse Scratch and its affiliates for all legal expenses, including reasonable legal fees, incurred by Scratch and its affiliates in connection with any such Losses.

## 9. Termination.

9.1 Termination without Cause during Renewal Term. This Agreement may be terminated by either party at any time during any Renewal Term for any or

no reason upon either party giving to the other no less than thirty (30) days' prior written notice of termination. No matter which party terminates the Agreement pursuant to this Section 9.1, any and all payment obligations of Customer under this Agreement for Service(s) provided through the date of termination will immediately become due, and Customer shall be required to prepay for any portion of the Services that have not been paid for and are to be rendered during such thirty (30) day period.

9.2 Termination for Cause. In addition to any other rights it may have under this Agreement or applicable law, Scratch may immediately terminate this Agreement or suspend service, effective without notice, in the event of (i) a Payment Default, or (ii) Customer's breach or failure to comply with any other obligation of Customer under this Agreement including, but not limited to, its failure to comply with any of the terms of the Rules and Regulations or other policies of Scratch. Customer may terminate this Agreement if Scratch breaches any material term or condition of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice of same. If this Agreement is terminated by Scratch under this Section 9.2, all remaining monthly recurring and other charges specified on the applicable Order for the balance of the then current term shall immediately become due and payable. In addition to the foregoing, Scratch reserves the right to prohibit any conduct or to remove any materials or content in violation of the Rules and Regulations or which Scratch believes in its sole discretion to be illegal or potentially harmful to others or may expose Scratch to harm or liability.

9.3 No Liability for Termination. Neither party will be liable to the other for any termination or expiration of any Service or this Agreement in accordance with its terms.

9.4 Survival. The following provisions will survive any expiration or termination of the Agreement: Sections 3, 4, 5, 7, 8, 9, 10 and 11.

9.5 IP Addresses: Upon expiration, cancellation or termination of this Agreement, Customer shall relinquish any Internet protocol ("IP") numbers, addresses or address blocks assigned to Customer by Scratch or its network services supplier (but not the URL or top level domain connected therewith). Scratch reserves, in its sole discretion, the right to change or remove any and all such IP numbers, addresses or address blocks.

9.6 Bandwidth Overuse: All customers agree to pay an overuse fine of double the bandwidth rate in 95<sup>th</sup> percentile if they exceed their bandwidth commitment in a 30 day period unless otherwise agreed upon in writing.

## 10. Definitions.

(a) "Customer Technology" means Customer's proprietary technology, including Customer's Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the term of this Agreement by Customer.

(b) "Initial Term" means the minimum term for which Scratch will provide the Service(s) to Customer, as indicated on the Exhibit(s).

(c) "Professional Services" means any non-standard professional, consulting or support service provided by Scratch to Customer, including, without limitation, those services and fees indicated on the Scratch website at <http://www.scratchtelecom.com>

(d) "Scratch Technology" means Scratch's proprietary technology, including Scratch Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network and any related intellectual property rights throughout the world (whether owned by Scratch or licensed to Scratch from a third party) and also including any derivatives, improvements, enhancements or extensions of Scratch Technology conceived, reduced to practice, or developed during the term of this Agreement by either party that are not uniquely applicable to Customer or that have general applicability in the art.

(e) "Renewal Term" means any service term following the Initial Term, as specified in Section 2.2.

(f) "Rules and Regulations" means the Scratch general rules and regulations governing Customer's use of Services, including, but not limited to, online conduct and Scratch's Acceptable Use Policy, which can be found at the bottom of this agreement.

(g) "Service(s)" means the specific service(s) provided by Scratch pursuant to this Agreement.

(h) "Service Commencement Date" means the date Scratch will begin providing the Service(s) to Customer as indicated in the Exhibit(s).

11. Use of Customer's Name for Marketing and Promotion. Customer agrees that during the term of this Agreement Scratch may publicly refer to Customer, orally and in writing, as a Customer of Scratch in resumes, client lists and in other promotional materials and communications, including, but not limited to, press releases, brochures, reports, letters and electronic media such as e-mail or Web pages with the written consent of the customer.

12. Miscellaneous Provisions. Scratch shall not be deemed to be in default of any provision of this Agreement or be liable for any delay, failure of performance or interruption of the provision of Services to Customer resulting, directly or indirectly, from any unforeseen or force majeure event. Scratch and Customer agree that, except as otherwise expressly provided in this Agreement, the Order or the terms and conditions of use of any third party software products, there shall be no third party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Customer. THIS AGREEMENT IS MADE UNDER AND WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE PROVINCE OF ONTARIO (EXCEPT THAT BODY OF LAW CONTROLLING CONFLICTS OF LAW) AND SPECIFICALLY EXCLUDING FROM APPLICATION TO THIS AGREEMENT THAT LAW KNOWN AS THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. EXCLUSIVE VENUE FOR ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE THE PROVINCIAL AND FEDERAL COURTS IN ONTARIO, AND EACH PARTY IRREVOCABLY CONSENTS TO SUCH PERSONAL JURISDICTIONS AND WAIVES ALL OBJECTIONS THERETO. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. Customer may not sell, assign or transfer its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Scratch, and any attempted assignment or delegation without such consent will be void. Scratch may assign this Agreement in whole or part. Scratch also may delegate the performance of certain Services to third parties, including Scratch's wholly owned subsidiaries. All notices, demands, requests or other communications required or permitted under this Agreement shall be deemed given when delivered personally, sent by facsimile upon confirmation, sent and received by return receipt email, or upon receipt of delivery of overnight mail. Scratch and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Scratch and Customer. Neither Scratch nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein. This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original. Except as expressly provided in this Agreement, this Agreement may be changed only by a written document signed by authorized representatives of Scratch and Customer in accordance with this agreement. Authorized representatives of Customer and Scratch have read the foregoing and all documents incorporated therein and, by executing the Exhibit(s), agree and accept such terms effective as of the date indicated below the Customer signature on this contract.

### **SCRATCH TELECOM - Acceptable Use Policy (AUP)**

From time to time Scratch Telecom (Scratch) may impose reasonable rules and regulations regarding the use of its services. Such rules and regulations are called Acceptable Use Policies (AUPs) and are available upon request. The AUPs are not exhaustive and Scratch reserves the right to modify the AUPs at any time, effective upon either the posting of the modified AUPs to <http://www.scratchtelecom.com> or notification of the modified AUPs. By registering for and using the services, and thereby accepting the terms and conditions of the Master Services Agreement or its equivalent, you agree to abide by the AUPs as modified from time to time. Any violation of the AUPs may result in the suspension or termination of your account or such other action, as Scratch deems appropriate. An unlisted activity may also be a violation of the AUPs if it is illegal, irresponsible, or disruptive use of the Internet. No credits are issued for any interruption in service resulting from policy violations.

**VIOLATION OF ANY AUP IS STRICTLY PROHIBITED AND MAY RESULT IN THE IMMEDIATE TERMINATION OR SUSPENSION OF THE SERVICES YOU RECEIVE FROM SCRATCH TELECOM. YOU SHALL REMAIN SOLELY LIABLE AND RESPONSIBLE FOR YOUR USE OF THE SERVICES AND ANY AND ALL CONTENT THAT YOU DISPLAY, UPLOAD, DOWNLOAD OR TRANSMIT THROUGH THE USE OF THE SERVICES. "CONTENT" INCLUDES, WITHOUT LIMITATION, YOUR E-MAIL, WEB PAGES, PERSONAL HOME PAGES, AND DOMAIN NAMES. IT IS SCRATCH TELECOM'S POLICY TO TERMINATE REPEAT INFRINGERS. SCRATCH TELECOM RESERVES THE RIGHT TO REFUSE SERVICE TO ANYONE AT ANY TIME.**

**Customer Security Responsibilities** - The customer is solely responsible for any breaches of security affecting servers under customer control. If a customer's server is involved in an attack on another server or system, it will be shut down and an immediate investigation will be launched to determine the cause/source of the attack. In such event, the customer is responsible for the cost to rectify any damage done to the customer's server and any other requirement affected by the security breach. The labour used to rectify any such damage is categorized as emergency security breach recovery and is currently charged at \$100 CAD per hour. Enquiries regarding security matters may be directed to Network Security support@scratchtelecom.com

**System and Network Security** - Violations of system or network security are prohibited, and may result in criminal and civil liability. Scratch may investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
- Interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks.
- Forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting. Violators of the policy are responsible, without limitations, for the cost of labor to clean up and correct any damage done to the operation of the network and business operations supported by the network, and to respond to complaints incurred by Scratch. Such labor is categorized as emergency security breach recovery and is currently charged at \$100 CAD per hour. Enquiries regarding security matters may be directed to Network Security support@scratchtelecom.com Scratch is concerned with the privacy of online communications and web sites. In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, Scratch urges its customers to assume that all of their online communications are insecure. Scratch cannot take responsibility for the security of information transmitted over Scratch's facilities.

**Password Protection** - The customer is responsible for protecting their password(s). The customer will not use or permit anyone to use Scratch's service to guess passwords by brute-force or other means or to access other systems or networks without authorization

**Internet Etiquette** - The customer is expected to be familiar with and to practice good Internet etiquette (Netiquette). The customer will comply with the rules appropriate to any network to which Scratch may provide access. The customer should not post, transmit, or permit Internet access to information the customer desires to keep confidential. The customer is not permitted to post any material that is illegal, libelous, and torturous, indecently depicts children, or is likely to result in retaliation against Scratch by offended users. Scratch reserves the right to refuse or terminate service at any time for violation of this section. This includes advertising services or sites via IRC, USENET, instant messengers or any other medium.

**Unsolicited commercial email/Unsolicited bulk email** - Using the Services to transmit any unsolicited commercial email or unsolicited bulk email. Activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email whether or not that email is commercial in nature, are prohibited.

**Copyright Infringement - Software Piracy Policy** - The Scratch network may be used only for lawful purposes. Transmission, distribution, or storage of any information, data or material in violation of Canadian, or provincial regulation or law, or by the common law, is prohibited. This includes, but is not limited to, material protected by copyright, trademark, trade secret, or other intellectual property rights. Making unauthorized copies of software is a violation of the law, no matter how many copies you are making. If you copy, distribute or install the software in ways that the license does not allow, you are violating international copyright law. If caught with pirated software, you or your company may be liable under both civil and criminal law. Scratch will cooperate fully with any civil and/or criminal litigation arising from the violation of this policy.

**Network Responsibility** - Customers have a responsibility to use the Scratch network responsibly. This includes respecting the other customers of Scratch Telecom. Scratch reserves the right to suspend and or cancel service with any customer who uses the Scratch network in such a way that adversely affects other Scratch customers. This includes but is not limited to: Attacking or attempting to gain unauthorized access to servers and services that belong to Scratch or its customers (i.e. computer hacking), and/or Participating in behavior which results in reprisals that adversely affects the Scratch network or other customers' access to the Scratch network. Scratch will react strongly to any use or attempted use of an Internet account or computer without the owner's authorization. Such attempts include, but are not limited to, "Internet Scanning" (tricking other people into releasing their passwords), password robbery, and security hole scanning, port scanning, etc. Any unauthorized use of accounts or computers by a Scratch customer, whether or not the attacked account or computer belongs to Scratch, will result in severe action taken against the attacker. Possible actions include warnings, account suspension or cancellation, and civil or criminal legal action, depending on the seriousness of the attack. Any attempt to undermine or cause harm to a server, or customer, of Scratch is strictly prohibited.

Violations of this policy, depending on jurisdiction, may be reported directly to the RCMP's Technological Crime program at <http://www.recol.ca>. Scratch will cooperate fully with any civil and/or criminal litigation arising from the violation of this policy. You give express consent to the disclosure of such information in the event of a violation of this policy.

**Security Responsibility** - All customers are responsible for maintaining and upgrading any software that is deemed unfit or unsafe by Scratch's Network Security Team. Notification will be made to any customer running exploitable/vulnerable software by the Scratch Network Security Team. This includes but it not limited to your operating system, patches, services, libraries, etc. If you receive an email Scratch's Network Security Team, containing [URGENT] in the subject line, you must complete upgrades stated in the email body in 24 hours or less or your account may be suspended until the problem is rectified. If you receive Email from Scratch's Network Security Team, containing [REQUIRED] in the subject line, you must complete upgrades in 72 hours or less or your account may be suspended until the problem is rectified. If you receive Email from Scratch's Network Security Team, containing [RECOMMENDED] in the subject line, we highly recommend this upgrade but it is not mandatory. One vulnerable server is

inherently dangerous to the entire network. If a server is being used in a DDoS (distributed denial of service attack), it can affect all customers on a network. For this reason we take security very seriously.

**Lawful Purpose** - All services may be used for lawful purposes only. Transmission, storage, or presentation of any information, data or material in violation of any applicable law, regulation, or AUP is prohibited. This includes, but is not limited to: copyrighted material or material protected by trade secret and other statute or dissemination of harmful or fraudulent content. Using any Scratch Telecom service or product for the purpose of participating in any activity dealing with subject matters that are prohibited under applicable law is prohibited. Any conduct that constitutes harassment, fraud, stalking, abuse, or a violation of federal export restriction in connection with use of Scratch services or products is prohibited. Using the Scratch network to solicit the performance of any illegal activity is also prohibited, even if the activity itself is not performed. In addition, knowingly receiving or downloading a file that cannot be distributed legally, even without the act of distribution, is prohibited. Servers hosted within Scratch's network are open to the public. You are solely responsible for your usage of the Scratch network and servers, all traffic going in and out of your switch port, and any statement you make on servers hosted within the Scratch network may be deemed "publication" of the information entered. Acknowledging the foregoing, you specifically agree not to use our service in any manner that is illegal or libelous.

**Child Pornography on the Internet** - Scratch will cooperate fully with any criminal investigation into a Customer's violation of the Criminal Code, Canada concerning child pornography or any other suitable act in terms of jurisdiction. Customers are ultimately responsible for the actions of their clients over the Scratch network, and will be liable for illegal material posted by their clients. According to the Criminal Code, child pornography includes photographs, films, video or any other type of visual presentation that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years or any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years. Violations of Criminal Code will be reported to the RCMP.

**IP Address Overlap** - Scratch administers the network on which customer servers reside. The customer cannot use IP addresses which were not assigned to them by Scratch Telecom staff. Any server found using IP's which were not officially assigned, will be suspended from network access until the IP address overlap can be corrected.

**IP Address Control** - Scratch Telecom retains all reversing control over all IP addresses without exception. DNS reversing requests can be made by emailing [support@scratchtelecom.com](mailto:support@scratchtelecom.com)

**IRC** - Scratch permits the use of IRC (Internet Relay Chat) clients inside the Scratch network as long as no other terms of this AUP are violated. Scratch reserves the right to prohibit IRCDs (IRC servers). We filter all common IRCD ports by default. Written permission must be gained from Scratch to run an IRCD.

**Billing** - The customer understands that the customer is responsible for paying for any network resources that are used to connect the customer's server to the Internet. The customer may request that the customer's server be disconnected from the Internet, but the customer will still be responsible for paying for any network resources used up to the point of suspension or cancellation.

**Suspension** - If Scratch in its sole discretion determines that a customer's server has become the source or target of any violation concerning the Scratch Acceptable Use Policy (AUP), Scratch reserves the right to suspend network access to that server. While Scratch will attempt to contact the customer prior to suspending network access to the customer's server(s), prior notification to the customer is not assured. In certain cases, Scratch will contact law enforcement and other agencies regarding these activities. Customers are responsible for all charges, as well as any fees relating to the investigation, suspension, administration and handling of their servers before, during and after the suspension period.

**Cancellation** - Scratch reserves the right to cancel service at any time. If inappropriate activity is detected, all accounts of the customer in question will be deactivated until an investigation is complete. Prior notification to the

Customer is not assured. In extreme cases, law enforcement will be contacted regarding the activity. All fees paid in advance of cancellation will be prorated and paid by Scratch if Scratch institutes its right of cancellation. Any violation of policies, which results in extra costs, will be billed to the customer (i.e. transfer, space, etc.).

**Indemnification** - Scratch wishes to emphasize that in signing the Master Services Agreement or its equivalent; customer indemnifies Scratch for any violation of the Master Services Agreement or its equivalent, law or AUP that results in loss to Scratch or the bringing of any claim against Scratch by any third-party. This means that if Scratch is sued because of a customer's or a customer of a customer's activity, the customer will pay any damages awarded against Scratch, plus costs and reasonable legal fees.

**Disclaimer of Responsibility** - Scratch is under no duty to look at each customer's or user's activities to determine if a violation of the AUPs has occurred, nor do we assume any responsibility through our AUPs to monitor or police Internet-related activities. Scratch disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person's or party's violation of this policy. All Sub-Networks, resellers and managed servers of Scratch must adhere to the above policies. Failure to follow any term or condition will be grounds for immediate Cancellation. **INDIRECT OR ATTEMPTED VIOLATIONS OF THE AUPs AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON YOUR BEHALF SHALL BE CONSIDERED VIOLATIONS OF THESE AUPs BY YOU.**

**FIXED TERM AGREEMENT  
(EXHIBIT "A" TO THE MASTER SERVICES AGREEMENT)**

THIS AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Commencement Date"), between Scratch Telecom Corporation a corporation incorporated under the laws of the Province of Ontario, (the "Service Provider") and:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (the "Customer").

**WHEREAS:**

1. The Customer may require collocation, site back-up, and other services related to data back-up, storage and security;
2. Service Provider is able to provide the Customer with the level of service as described in the Service Level Obligations and Agreement and the Master Services Agreement (the "MSA") to which this Term Service Agreement is made an Exhibit;
3. The Customer has executed a purchase order either in writing, electronically, or by facsimile transmission.

IN CONSIDERATION of the mutual covenants and agreements contained herein the parties mutually covenant and agree as follows:

**1. Services**

1.1 Order. Pursuant to an order for services ("Order") submitted electronically or by facsimile by the Customer attached hereto as Schedule "A" to this Agreement, Service Provider shall provide services to Customer in accordance with the terms of the MSA, which terms are incorporated herein as if set out in full.

**2. Term and Fees**

2.1 Term. This agreement shall be in full force and effect, subject to paragraph from the Commencement Date for a period of \_\_\_\_\_ months (the "Initial Term"). Thereafter, this agreement may be renewed for additional periods of twelve months by the mutual written agreement of Service Provider and the Customer (the "Renewal Term").

2.2 Fees. Customer agrees to pay all fees for services rendered pursuant to any Order and the MSA. In the event of an early termination of this Agreement by Customer, Customer agrees to pay fifty-percent (50%) of the fees that would have been charged for the remainder of Initial Term outstanding at time of termination. Customer agrees that this termination fee is a genuine pre-estimate of damages flowing from early termination of the agreement in relation to the Service Provider's ramp-up costs and ongoing development costs and not a penalty.

2.3 Increase in fees. In recognition of the impact of inflation on the costs incurred by Service Provider during the term of this agreement, Service Provider shall be entitled to increase the fees with written notification of any increase in the fees to be charged given by Service Provider to the Customer at least ninety days prior to the date upon which such increase is to be effected.

2.4 Sales taxes. All fees are exclusive of applicable sales taxes, which sales taxes, if eligible, will be set forth in the Customer's invoice.

2.5 Customer agrees that Scratch Telecom has a lien over any equipment purchased on behalf of the client or provided by the client and may retain and dispose of such equipment as a set-off against non-payment of any fees or charges (including reasonable collection costs) under this Agreement.

**3. Default and Force Majeure**

**3.1 Default**

(1) If either party becomes insolvent or commits an act of bankruptcy, the other party may by notice immediately terminate this agreement. If either party shall fail to perform or observe any of the covenants or obligations imposed upon it (except where such failure is caused by force majeure), the other party may in addition to, and without prejudice to, and without limiting,

any other rights or remedies under or by virtue of this agreement or otherwise available, give notice of its intention to terminate this agreement, stating therein the default committed. In the event that the party in default shall fail to cure such default before the expiration of ten days next following the service of such notice, this agreement, at the option of the party giving such notice, may thereupon be immediately terminated.

(2) Upon any such termination of this agreement neither party shall have further obligations hereunder subject to any adjustments and the settlement of any accounts then outstanding between the parties relative to this agreement.

**3.2 Force majeure**

(1) Notwithstanding anything else contained in this agreement if Service Provider is at any time or times during the currency of this agreement rendered unable wholly or in part by force majeure to perform or comply with any obligation or condition hereof, the obligation or condition insofar as it is affected by such force majeure shall be suspended during the continuance of any inability so caused, but for no longer period. Should Service Provider allege force majeure it shall give notice and full particulars of such force majeure in writing to Customer. In the event of force majeure Service Provider shall use reasonable diligence to put itself in a position to carry out its obligations hereunder.

(2) The term "force majeure" as used herein shall mean acts of God, strikes, lockouts or other industrial disturbances, act of the Queen's enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, frost, storms, floods, washouts, arrests and restraints of government and people, civil disturbances, explosions, inability to obtain materials, supplies or labor, unavoidable breakdown of machinery, any laws, orders, rules, regulations, acts or restraints of any governmental body or authority, civil or military, any act or omission by any party or parties other than Service Provider and not controlled by Service Provider, and any other cause whether of the kind herein enumerated or otherwise, which are not within the reasonable control of Service Provider and which renders Service Provider unable to perform its obligation or obligations hereunder.

(3) Nothing herein contained shall be construed to require Service Provider to settle a strike or walkout by acceding to the demands of opposing parties.

(4) If performance by Service Provider is prevented by reason of force majeure for a period in excess of thirty continuous days, the Customer shall be entitled to terminate this agreement by giving ten days' prior written notice.

**4. Miscellaneous**

**4.1 Confidentiality**

(1) Service Provider's physical security system and access control system are trade secrets and shall not be used or disclosed to a third party by the Customer, without Service Provider's prior written consent for any purpose whatsoever. Service Provider and the Customer shall each exercise the same standard of care to protect any proprietary or confidential data of the other which is disclosed during negotiation or performance of this agreement as is used to protect its own proprietary or confidential data from unauthorized disclosures. If the Customer has any special means of protecting such data it shall in writing so inform Service Provider who will use its best efforts to utilize such means to protect said data, provided that Service Provider incurs additional costs in so doing the Customer shall pay all such additional costs. If such material is publicly available, already in the other party's possession or known to it, or is thereafter rightfully obtained from other sources, then there shall be no restriction pursuant to this agreement in the use of such material. (2) Service Provider shall not disclose that the Customer is utilizing this service without the written consent of the Customer.

**5. General Terms and Conditions**

5.1 Appendices and Counterparts. All recitals and appendices are hereby incorporated into this Agreement. This Agreement may be executed in any number of counterparts and/or duplicate originals.

5.2 Assignment. Customer may not assign this Agreement without the prior written consent of Service Provider, which consent will not be unreasonably withheld. Any purported assignment in contravention of this Section 5.2 is null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of any permitted successors or assigns.

5.3 Controversies. Before either party commences any action against the other party, it shall give written notice to the other party of its intention to file a

claim, and the senior management of the parties then shall meet in good faith to resolve the dispute.

5.4 Definitions and Section Headings. Singular terms shall be construed as plural, and vice versa, where the context requires. Section headings are a matter of convenience and shall not be considered part of this Agreement.

5.5 Conflict between Documents. If there is a conflict in the definition of capitalized terms between the MSA and this Agreement, this Agreement shall prevail.

5.6 Entire Agreement. This Agreement along with the MSA and Order are the complete and exclusive statement of the understandings of the parties, and supersede and merge all prior proposals and understandings, whether oral or written, relating to the subject matter of this Agreement, the MSA and the Order. This Agreement may not be modified except in writing, signed by an officer of Customer and a duly authorized representative of Service Provider, and expressly referring to this Agreement. This Agreement takes precedence over any purchase order issued by either party, which may be accepted by the other party for administrative convenience only.

5.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the Federal laws of the Dominion of Canada applicable therein but without giving any effect to the choice of law principles there under.

5.8 Independent Contractors; Non-exclusive. Customer and Service Provider are independent contractors and will so represent themselves in all regards. Neither party may bind the other in any way. Nothing in this Agreement will be construed to make either party the agent or legal representative of the other or to make the parties partners or joint ventures.

5.9 Notices. Notices will be delivered to a party's address stated in the signature block of this Agreement, or to another address that a party properly notified the other that notices should be sent.

5.10 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect. However, should either party reasonably conclude that a provision held to be invalid or unenforceable was a material inducement to its entering into this Agreement, and the loss of that provision has deprived it of the benefit of the bargain reached upon execution of this Agreement, then that party may, upon ten (10) days' prior written notice, terminate this Agreement.

5.11 Waiver. The waiver of one breach or default shall not constitute the waiver of any subsequent breach or default, and shall not act to amend or negate the rights of any party.

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IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

**CUSTOMER:** \_\_\_\_\_

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

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

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

**SCRATCH TELECOM CORPORATION**

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

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

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