



# Terms of Use

## Agreement Between User and Drake

This website and other related websites and mobile applications (collectively referred to as “Sites”) comprise various web pages and services operated by Drake Software, LLC (“Drake”). The following terms, conditions and notices, together with any documents expressly incorporated by reference (collectively, these “Terms of Use”), govern your access to and use of the Sites. The Sites are offered to you conditioned on your acceptance of the Terms of Use and your use of the Sites constitutes your agreement to the Terms of Use. Please read these Terms of Use carefully as they apply to your use of the Sites.

The Sites are offered to users who are 18 years of age or older (or have reached the age of majority in the jurisdiction where you reside) and reside in the United States or any of its territories or possessions. By using the Sites, you warrant that you are of legal age to form a binding contract with Drake and meet all of the foregoing eligibility requirements. If you do not meet these requirements, you must not access or use the Sites.

## Modification of These Terms of Use

Drake reserves the right to modify and update these Terms of Use from time to time in Drake’s sole discretion. All changes are effective immediately when posted to the Sites and apply to all access to and use of the Sites thereafter. By continuing to use the Sites following the posting of such modifications, you agree to be bound by the revised Terms of Use.

## No Unlawful or Prohibited Use

As a condition of your use of the Sites, you warrant to Drake that you will not use any of the Sites for any purpose that is unlawful or prohibited by these Terms of Use. You may not use any of the Sites in any manner which could damage, disable, overburden, or impair any of the Sites or interfere with any other party’s use and enjoyment of any of the Sites. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Sites.

## Use of Communication Services

- The Sites may contain bulletin board services, chat areas, news groups, forums, communities, personal web pages, calendars, and/or other message or communication facilities designed to enable you to communicate with the public at large or with a group (collectively, “Communication Services”). You agree to use the Communication Services only to post, send and receive messages and materials that are proper and related to the particular Communication Service. By way of example, and not as a limitation, you agree that when using a Communication Service, you will not:
- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
- Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topic, name, material or information;
- Upload files that contain software or other material protected by intellectual property laws (or by rights of privacy or publicity) unless you own or control the rights thereto or have received all necessary consents;
- Upload files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of another’s computer;
- Advertise or offer to sell or buy any goods or services for any business purpose, unless such Communication Service specifically allows such messages;
- Conduct or forward surveys, contests, pyramid schemes or chain letters;
- Download any file posted by another user of a Communication Service that you know, or reasonably should know, cannot be legally distributed in such manner;

- Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded;
- Restrict or inhibit any other user from using and enjoying the Communication Services;
- Violate any code of conduct or other guidelines which may be applicable for any particular Communication Service;
- Harvest or otherwise collect information about others, including e-mail addresses, without their consent; or
- Violate any applicable laws or regulations.

Drake has no obligation to monitor the Communication Services. However, Drake reserves the right to review materials posted to a Communication Service and to remove any materials in its sole discretion. Drake reserves the right to terminate your access to any or all of the Communication Services at any time without notice for any reason whatsoever.

Drake reserves the right at all times to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post, or remove any information or materials, in whole or in part, in Drake's sole discretion.

Always use caution when giving out any personally identifying information about yourself or your children in any Communication Service. Drake does not control or endorse the content, messages, or information found in any Communication Service, and therefore, Drake specifically disclaims any liability arising from or relating to any Communication Services and any actions resulting from your participation in any Communication Services. Managers and hosts are not authorized Drake spokespersons, and their views do not necessarily reflect those of Drake.

Materials uploaded to a Communication Service may be subject to posted limitations on usage, reproduction, and/or dissemination. You are responsible for adhering to such limitations if you download the materials.

### **Materials Provided to Drake or Posted On Any of the Sites**

Drake does not claim ownership of the materials you provide to Drake (including feedback and suggestions) or post, upload, input, or submit to any of the Sites or their associated services, including any Communication Services (collectively "Submissions"). However, by posting, uploading, inputting, providing, or submitting your Submission, you grant to Drake and its affiliated companies, and each of their respective licensees, successors, and assigns, the permission to use your Submission for any purpose, including, without limitation, the rights to copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate, and reformat your Submission, and to publish your name in connection with your Submission.

All Submissions will be considered non-confidential and non-proprietary. No compensation will be paid with respect to the use of your Submission, as provided herein. Drake is under no obligation to post or use any Submission you may provide and may remove any Submission at any time in Drake's sole discretion.

By posting, uploading, inputting, providing or submitting your Submission you represent and warrant that (i) you own or otherwise control all of the rights in and to your Submission and have the right to grant to Drake the license to use such Submission, as described in this section and (ii) all of your Submissions do and will comply with these Terms of Use.

### **Use of Cookies**

The Sites use "cookies" to help you personalize your online experience. A cookie is a text file that is placed on your hard disk by a web page server. Cookies cannot be used to run programs or deliver viruses to your computer. Cookies are uniquely assigned to you, and can only be read by a web server in the domain that issued the cookie to you.

One of the primary purposes of cookies is to help us provide you with a better user experience by remembering certain information about you, including preferences. For example, if you personalize a page on one of the Sites, or register with a Site or its services, a cookie helps the Site recall your specific information on subsequent visits. This simplifies the process of recording your personal information, such as billing addresses, shipping addresses, and so on. When you return to a Site, the information you previously provided can be retrieved, so you can easily use the Site's features that you customized.

You have the ability to accept or decline cookies. Most web browsers automatically accept cookies, but you can usually

modify your browser setting to decline cookies if you prefer. If you choose to decline cookies, you may not be able to fully experience the interactive features of a Site's services or the features of other websites you visit.

### **Links to Third Party Web Sites**

The Sites may contain links to other web sites provided by third parties ("Linked Sites"). The Linked Sites are not under the control of Drake and Drake is not responsible for the contents of any Linked Site, including without limitation any link contained in a Linked Site, or any changes or updates to a Linked Site. Drake is not responsible for webcasting or any other form of transmission received from any Linked Site. Drake provides links to you only as a convenience, and the inclusion of any link does not imply endorsement by Drake of the site or any association with its operators. You acknowledge and agree that Drake has no control or responsibility for any sites linked to the Sites and accepts no responsibility or liability for any loss or damage that may arise from your use of such sites.

### **Disclaimer of Warranties and Limitation of Liabilities**

THE INFORMATION, SOFTWARE, PRODUCTS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH THE SITES MAY INCLUDE INACCURACIES OR TYPOGRAPHICAL ERRORS. DRAKE AND/OR ITS REPRESENTATIVES (DEFINED BELOW) MAY MAKE UPDATES AND/OR CHANGES TO THE SITES AT ANY TIME. ADVICE RECEIVED VIA THE SITES SHOULD NOT BE RELIED UPON FOR PERSONAL, MEDICAL, LEGAL, ACCOUNTING OR FINANCIAL DECISIONS, AND YOU SHOULD CONSULT AN APPROPRIATE PROFESSIONAL FOR SPECIFIC ADVICE TAILORED TO YOUR SITUATION.

DRAKE, ITS AFFILIATES, AND THEIR LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, THIRD PARTY CONTENT OR SERVICE PROVIDERS, DISTRIBUTORS, DEALERS, SUPPLIERS, EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS (COLLECTIVELY, "REPRESENTATIVES") MAKE NO REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, OR ACCURACY OF THE INFORMATION, SOFTWARE, PRODUCTS, SERVICES, AND RELATED GRAPHICS CONTAINED ON THE SITES FOR ANY PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SITES AND ALL INFORMATION, SOFTWARE, PRODUCTS, SERVICES, AND RELATED GRAPHICS ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED. DRAKE AND ITS REPRESENTATIVES HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SITES AND ALL INFORMATION, SOFTWARE, PRODUCTS, SERVICES, AND RELATED GRAPHICS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. NO REPRESENTATIVE OF DRAKE IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS ANY OF THE WARRANTIES OR LIMITATIONS CONTAINED IN THESE TERMS OF USE. ANY UPDATES PROVIDED BY DRAKE OR ITS REPRESENTATIVES SHALL BE SUBJECT TO THESE TERMS OF USE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DRAKE OR ITS REPRESENTATIVES BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR ANY OTHER DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA, OR PROFITS ARISING OUT OF OR IN ANY WAY RELATING TO THE USE OR PERFORMANCE OF ANY OF THE SITES, THE DELAY OR INABILITY TO USE ANY OF THE SITES OR RELATED SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES, AND RELATED GRAPHICS OBTAINED THROUGH ANY OF THE SITES, OR OTHERWISE ARISING OUT OF OR RELATING TO THE USE OF ANY OF THE SITES, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, EVEN IF DRAKE OR ANY OF ITS REPRESENTATIVES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF ANY OF THE SITES, OR DO NOT AGREE WITH THESE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITES AND SERVICES.

### **Intellectual Property Rights**

All contents, features, and functionality of the Sites are owned by Drake, its licensors, or other suppliers or providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights.

Drake is the owner and/or authorized user of all trademarks, registered trademarks and/or service marks appearing on the Sites, and is the copyright owner or licensee of the content and/or information on the Sites. You may not download and/or save a copy of any of the pages on the Sites except as otherwise provided in these Terms of Use, for any purpose. However, you may print a copy of the information on this Site for your personal use or records and not for further reproduction, publication or distribution. If you make other use of the Sites, except as otherwise provided above, you may violate copyright and other laws of the United States, other countries, as well as applicable state laws and may

be subject to penalties. Drake does not grant any license or other authorization to any user of its trademarks, registered trademarks, service marks, or other copyrightable material or other intellectual property, by placing them on the Sites.

The names of actual companies and products mentioned herein and/or third party trademarks and logos contained herein may be the trademarks of their respective owners. All rights not expressly granted herein are reserved.

## **Notices and Procedure for Making Claims of Copyright Infringement**

If you believe any materials accessible on or from the Sites infringe your copyright, you may request removal of those materials from the Sites by submitting written notification to Drake's copyright agent designated below. ALL INQUIRIES THAT DO NOT COMPLY WITH THE FOREGOING PROCEDURE WILL RECEIVE NO RESPONSE.

In accordance with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (17 U.S.C. § 512) ("DMCA"), the written notice (the "DMCA Notice") must include substantially the following:

- Your physical or electronic signature.
- Identification of the copyrighted work you believe to have been infringed or, if the claim involves multiple works on the Sites, a representative list of such works.
- Identification of the material you believe to be infringing in a sufficiently precise manner to allow us to locate that material.
- Adequate information by which we can contact you (including your name, postal address, telephone number, and, if available, email address).
- A statement that you have a good faith belief that use of the copyrighted material is not authorized by the copyright owner, its agent, or the law.
- A statement that the information in the written notice is accurate.
- A statement, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

Our designated copyright agent to receive DMCA Notices is:

John Sapp  
Drake Software, LLC  
235 E Palmer St  
Franklin, NC 28734  
[john.sapp@drakesoftware.com](mailto:john.sapp@drakesoftware.com)

If you fail to comply with all of the requirements of Section 512(c)(3) of the DMCA, your DMCA Notice may not be effective. Please be aware that if you knowingly materially misrepresent that material or activity on the Sites is infringing your copyright, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

## **Consent to Electronic Communications**

By using the Sites, you consent to receive all communications, notices, agreements, renewals, statements, and disclosures (collectively, "Communications") electronically. Drake may provide Communications to you related to the Sites and the services by electronic communication, including by email, facsimile, or by making such Communications available on the Sites.

## **Termination/Governing Law**

Drake reserves the right, in its sole discretion, to terminate your access to the Sites and the related services or any portion thereof at any time, without notice. To the maximum extent permitted by law, these Terms of Use are governed by the laws of the State of North Carolina, and you hereby consent to the exclusive jurisdiction and venue in the United States District Court for the Western District of North Carolina, or if such court does not have subject matter jurisdiction, the state courts in Macon County, North Carolina for all disputes arising out of or relating to these Terms of Use or your use of the Sites. At Drake's sole discretion, it may require you to submit any disputes arising from these Terms of use or your use of the Sites to final and binding arbitration under the Rules of Arbitration of the American Arbitration Association, applying North Carolina law. Use of the Sites is unauthorized in any jurisdiction that does not give effect to all provisions of these Terms of Use, including without limitation, this paragraph. You agree that no joint

venture, partnership, employment, or agency relationship exists between you and Drake as a result of your use of any of the Sites. Drake's compliance with these Terms of Use is subject to existing laws and legal process, and nothing contained herein is in derogation of Drake's right to comply with governmental, court and law enforcement requests or requirements relating to your use of any of the Sites or information provided to or gathered by Drake with respect to such use. If any part of these Terms of Use is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Terms of Use shall continue in effect. A printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

### **Entire Agreement**

These Terms of Use, together with our Privacy Policy and Software License Agreement, constitute the entire agreement between you and Drake regarding your use of the Sites and related services and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Sites.

### **Questions and Comments**

If you have questions or comments about the Sites or the services provided by Drake, please contact us at: [webmaster@drakesoftware.com](mailto:webmaster@drakesoftware.com).