

Drake Software Terms and Conditions for Third-Party Products and Services

Last Updated: 11/20/2024

IMPORTANT – PLEASE READ THE FOLLOWING TERMS AND CONDITIONS FOR THIRD PARTY PRODUCTS AND SERVICES CAREFULLY. THESE TERMS INCLUDE A MANDATORY INDIVIDUAL ARBITRATION PROVISION, LIMITATIONS ON LIABILITY AND JURY TRIAL WAIVER.

These Supplemental Terms and Conditions (“**Supplemental Terms and Conditions**” or “**Supplemental Agreement**”) govern your (“**Subscriber**”, “**you**”, or “**your**”) purchase of Third Party Products (as defined below) offered by Drake Software, LLC (“**Drake**”) to use in conjunction with Drake’s products and Services (the “**Services**”). Subscriber agrees to and accepts these Supplemental Terms and Conditions with respect to the purchase and use of the Third Party Products. Subscriber shall, upon the request of Drake, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Supplemental Agreement.

THIRD PARTY PRODUCTS MAY INCLUDE (A) SOFTWARE-AS-A-SERVICE OR OTHER CLOUD-BASED SOFTWARE, APPLICATIONS OR SERVICES (INCLUDING HOSTED CLOUD SERVICES SUCH AS HOSTING ON RIGHTWORKS®), MADE AVAILABLE FOR USE BY SUBSCRIBER AND ITS AUTHORIZED USERS VIA THE INTERNET, AND (B) ANY OTHER RESOLD PRODUCTS OR SERVICES MADE AVAILABLE FOR PURCHASE BY DRAKE TO SUBSCRIBER (collectively, “**Third Party Products**”).

By purchasing or using Third-Party Products in any manner, you represent that you have read, understand, and agree to these Supplemental Terms and Conditions and that you are at least eighteen (18) years old (OR HAVE REACHED THE AGE OF MAJORITY IN YOUR JURISDICTION OF RESIDENCE, IF OVER 18). These Supplemental Terms and Conditions, together with our [Hosting Billing and Payment Policy](#) and any other agreements incorporated herein by reference, are the only terms that govern the relationship between Drake and Subscriber with respect to the purchase of the Third Party Products and constitute a binding agreement between the parties. Please note that your use of the Third-Party Products will also be subject to such Third Party Provider’s terms and conditions, as entered into between you and such provider.

ANY GENERAL DESCRIPTION OF THE THIRD PARTY PRODUCTS AND/OR THE RESULTS THEREOF POSTED ON ANY DRAKE WEBSITE DO NOT CONSTITUTE PART OF THE AGREEMENT BETWEEN DRAKE AND SUBSCRIBER.

Third Party Products Provider

Subscriber acknowledges that it is receiving the Third Party Products directly from a third party (the “**Third Party Provider**”) pursuant to the Third Party Provider's terms and conditions or terms of service, or such other terms as agreed upon by Subscriber and the Third Party Provider (“**Third Party Terms of Service**”). Accordingly, Subscriber shall consider the Third Party Provider to be the contracting party and the Third Party Provider shall be the party responsible for providing the Third Party Products to Subscriber, except as expressly provided herein. Subscriber will look solely to the Third Party Provider for any loss, claims or damages arising from or related to the provision of such Third Party Products and

any use thereof by Subscriber.

Support Services

As a reseller of the Third Party Products, Drake may provide Subscriber support services with respect to the Third Party Products. To the extent Drake provides Subscriber support services, Subscriber agrees and consents to the Third Party Provider providing Drake access to Subscriber's files, electronic or otherwise, created by Subscriber using the Third Party Products or other applications and files of Subscriber stored or hosted by the Third Party Provider (collectively, "**Subscriber Data**"). Drake will only process, retain, use, or disclose the Subscriber Data to the extent necessary to provide the support services with respect to Subscriber's Third Party Products. All information collected from you by Drake is governed by our [Privacy Notice](#). For support related to Hosting on Rightworks resold by Drake, please email rwhosting@drakesoftware.com or call (828) 349-5556. Subscriber understands that any suspected illegal or fraudulent activity will be reported to the appropriate governmental or law enforcement authorities. Subscriber acknowledges that Drake retains the right to take whatever steps necessary, as determined in Drake's sole discretion, to comply with applicable laws and regulations, including those relating to data security and privacy.

Term and Termination

This Supplemental Agreement shall become effective upon Subscriber's purchase or use of the Third Party Products and shall continue so long as Subscriber uses or subscribes to the Third Party Products, depending on Subscriber's applicable subscription period for the Third Party Products, until terminated as provided herein (the "**Term**"). Subscriber is solely responsible for providing Drake with timely notice of nonrenewal for any recurring or auto-renewing Third Party Products prior to the end of the applicable subscription period and for paying all fees due through the date of termination of such Third Party Products. Notice of nonrenewal must be sent to Drake in the manner prescribed by Drake prior to the end of the Term to prevent auto-renewal. Subscriber is solely responsible for all fees and costs resulting from Subscriber's failure to provide timely notice of non-renewal or termination as set forth in this section.

Either party may terminate this Supplemental Agreement based upon a material breach by the other party which is not cured after fourteen (14) days written notice. Drake may terminate this Supplemental Agreement immediately upon written notice to Subscriber upon Subscriber's (i) failure to pay any amounts when due or (ii) unauthorized or unlawful use of the Third Party Products.

Fees and Expenses; Availability Limitations

[Click here](#) to see Drake's Hosting Billing and Payment Policy, the terms and conditions of which are incorporated herein. Notwithstanding the terms and conditions of Drake's Hosting Billing and Payment Policy, Subscriber shall be liable for all applicable taxes, including without limitation, any applicable state sales taxes. Drake reserves the right to amend its Hosting Billing and Payment Policy effective upon posting the updated policy. Drake reserves the right to make adjustments to pricing and offerings related to Third Party Products for reason including, but not limited to, changing market conditions, discontinuation or unavailability of Third Party Products and Third Party Provider price changes.

Service Availability

Drake and Third Party Providers make every reasonable effort to provide the Third Party Products to Subscribers. Due to events or circumstances beyond the reasonable control of Drake or its Third Party Providers, no warranties or guarantees are made as to the availability of the Third Party Products.

Representations and Warranties of Subscriber

Subscriber represents and warrants to Drake that:

- (a) it has, and throughout the Term will retain, the full right, power and authority to enter into this Supplemental Agreement and perform its obligations hereunder;
- (b) no Subscriber Data infringes the intellectual property rights or privacy rights of any third party;
- (c) it shall comply with all applicable privacy and security regulations and laws;
- (d) it has, and throughout the Term will retain, software, hardware and Internet connections that meet with the Third Party Provider's minimum system requirements;
- (e) the Subscriber Data shall not include any inappropriate content, including without limitation, unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory, or profane material or any material that could constitute or encourage unlawful conduct, viruses, time bombs, Trojan horses, worms, and cancelbots;
- (f) it shall not permit or enable any non-authorized users to access the Third Party Products or otherwise use any of the Third Party Products.

Indemnification

Subscriber shall indemnify, defend and hold harmless Drake, Drake's affiliates, and their respective directors, officers, employees and agents, from and against any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments and expenses, including, without limitation, reasonable attorneys' fees, court costs and other legal expenses, brought, alleged or incurred by or awarded to any third party arising from or relating to any unauthorized or unlawful use of the Third Party Products by Subscriber or a breach of this Supplemental Agreement or any Third Party Terms of Service by Subscriber.

Disclaimer of Warranties

Subscriber expressly acknowledges that Drake is not the provider of the Third Party Products purchased by Subscriber hereunder and the only warranties offered are those of the Third Party Provider, not Drake. In purchasing or using the Third Party Products, Subscriber relies on the Third Party Provider's service descriptions and the terms and conditions set forth in the Third Party Terms of Service only and not on any statements, specifications, service descriptions or other specifications representing the Third Party Products that may be provided by Drake. Drake makes no guarantees or warranties with respect to delivery time, functionality, security, reliability or availability of any Third Party Products or the support services provided hereunder. Subscriber agrees to hold Drake harmless for any failure in providing or delivering the Third Party Products or support services, and Drake, its affiliates, and their Third Party Providers, licensors and suppliers (collectively, "**Suppliers**") shall have no liability or responsibility to Subscriber for damages of any kind, including special, indirect or consequential damages, arising out of or resulting from such Third Party Products or other services provided to Subscriber by Drake. All Drake website content is monitored by Drake, including but not limited to all forums, Facebook, or other sites, and Drake reserves the right (but shall not have an obligation) to edit, delete, or withdraw access to support and public media websites at its sole discretion.

To the fullest extent permitted by applicable law, you release Drake from responsibility, liability, claims, demands, and/or damages of every kind and nature, in any way arising out of or related to the operation, or your use, of the Third Party Products that in any way arise out of or related to the acts or omissions of third parties ("**Third Party Disputes**").

If you are a **California resident**, you hereby waive any rights you may have arising out of these terms under California Civil Code section 1542, which says "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." You also waive any rights you may have with respect to third party disputes under any other statute or common law principles that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.

Subscriber expressly waives any claim that it may have against Drake based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights with respect to the Third Party Products and also waives any right to indemnification from Drake against any such claim made against Subscriber by a third party.

THE SERVICES PROVIDED TO SUBSCRIBER HEREUNDER AND THE THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. SUBJECT TO APPLICABLE LAW, DRAKE, ITS AFFILIATES, AND THEIR SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS SUPPLEMENTAL AGREEMENT OR ANY SUBJECT MATTER HEREOF, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE, OR THAT THE THIRD PARTY PRODUCTS OR DRAKE'S SERVICES HEREUNDER, WILL BE TIMELY, SECURE, UNINTERRUPTED, ERROR-FREE OR SUITABLE FOR THE PARTICULAR NEEDS OF SUBSCRIBER OR ANY AUTHORIZED USER OR THIRD PARTY. WITHOUT LIMITING THE FOREGOING, DRAKE, ITS AFFILIATES, AND THEIR SUPPLIERS MAKE NO WARRANTY OF ANY KIND THAT THE THIRD PARTY PRODUCTS OR DRAKE'S SERVICES HEREUNDER OR USE THEREOF, WILL MEET SUBSCRIBER'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEMS, OR OTHER SERVICES, OR BE DEFECT OR ERROR FREE OR THAT DEFECTS WILL BE CORRECTED. NO EMPLOYEE OR AGENT OF DRAKE OR ITS AFFILIATES IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS ANY OF THE WARRANTIES OR LIMITATIONS CONTAINED IN THIS AGREEMENT.

Subscriber shall be solely responsible for daily back-up and other protection of Subscriber Data and software against loss, damage or corruption. DRAKE, ITS AFFILIATES, AND THEIR SUPPLIERS ARE HEREBY RELEASED AND SHALL CONTINUE TO BE RELEASED FROM ALL LIABILITY IN CONNECTION WITH THE LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE, AND SUBSCRIBER ASSUMES ALL RISK OF LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE THIRD PARTY PRODUCTS.

Limitation of Liabilities

DRAKE, ITS AFFILIATES AND THEIR SUPPLIERS' TOTAL LIABILITY TO SUBSCRIBER AND ANY OF ITS AUTHORIZED USERS SHALL NOT EXCEED THE FEES PAID BY SUBSCRIBER FOR THE FAILED SERVICE FEATURE DURING THE PERIOD OF FAILURE AND IN NO EVENT SHALL EXCEED THE FEES PAID BY

SUBSCRIBER FOR THE THIRD PARTY PRODUCTS IN THE SIX (6) MONTH PERIOD PRECEDING THE CLAIM. IN NO EVENT WILL DRAKE, ITS AFFILIATES OR THEIR SUPPLIERS BE LIABLE TO SUBSCRIBER, ITS AUTHORIZED USERS OR TO ANY THIRD PARTY FOR (A) ANY CLAIMS ASSERTING OR BASED ON THE USE, INABILITY TO USE, LOSS, INTERRUPTION OR DELAY OF THE SERVICES, LOSS OF USE OF FACILITY OR EQUIPMENT, LOST BUSINESS, REVENUES OR PROFITS, LOSS OF GOODWILL, FAILURE TO ACHIEVE COST SAVINGS, FAILURE OR INCREASED COST OF OPERATIONS, LOSS, DAMAGE OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SERVICE FAILURE, MALFUNCTION, DOWNTIME, SHUTDOWN, SERVICE INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION OR BREACHES IN SYSTEM SECURITY, OR (B) FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR ENHANCED DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, IN THE CASE OF EACH OF CLAUSE (A) AND CLAUSE (B), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE OTHERWISE FORESEEABLE, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

Force Majeure

Drake shall not be liable or responsible to Subscriber, or be deemed to have defaulted under or breached this Supplemental Agreement, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by events beyond their reasonable control including but not limited to: acts of God, flood, fire or explosion, pandemic or epidemic, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Supplemental Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition, national or regional shortage of adequate power or telecommunications or transportation facilities.

Governing Law, Venue and Dispute Resolution

This Supplemental Agreement has been entered into and shall be governed, construed, and interpreted pursuant to and in accordance with the laws of the State of North Carolina, without regard to conflicts of law principles. Any actions that are not subject to mandatory arbitration or disputes over the arbitrability of any matter shall be brought in either the state court for the county of Macon, or federal court in the Western District, North Carolina.

Any controversy or claim arising out of, or relating to, this Supplemental Agreement, or the making, performance or interpretation thereof, other than a claim by Drake for injunctive or other equitable relief, shall be resolved through binding arbitration before a single neutral arbitrator that is mutually acceptable to the Parties, in accordance with then existing Commercial Arbitration Rules of the American Arbitration Association. Arbitrators shall be persons experienced in software related issues. Such arbitration shall take place in the City of Franklin, County of Macon, State of North Carolina. Any judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.

NOTWITHSTANDING THE ABOVE, EACH OF YOU AND DRAKE HEREBY IRREVOCABLY WAIVE ANY AND ALL

RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS SUPPLEMENTAL AGREEMENT.

Questions and Comments

If you have questions or comments about the Third Party Products, please contact us at rwhosting@drakesoftware.com.