



Drake Terms and Conditions for Third Party Products and Services

Date last modified: 8/1/20

Important – Please read the following Terms and Conditions for Third Party PRODUCTS AND SERVICES carefully

By purchasing and/or using the Service in any manner, you represent that you have read, understand, and agree to all terms and conditions set forth in this Agreement and that you are at least eighteen (18) years old.

These Terms and Conditions ("**Terms and Conditions**" or "**Agreement**") govern your ("**Subscriber**", "**you**" or "**your**") purchase of Third Party Products (as defined below) offered by Drake Software, LLC ("**Drake**"). Subscriber agrees to and accepts these Terms and Conditions with respect to the purchase and use of the Third Party Products. These Terms and Conditions are in addition to any terms and conditions under any license agreements or other subscriber agreements with respect to products and services sold and licensed by Drake and apply to Subscriber's purchase and use of Third Party Products.

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 RIGHT NETWORKS®), 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 and/or using Third Party Products in any manner, you represent that you have read, understand, and agree to these Terms and Conditions and that you are at least eighteen (18) years old. These Terms and Conditions, together with our 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.

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 standard 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. For support related to Hosting on Right Networks® resold by Drake, please email rhosting@drakesoftware.com or call 828.349.5556.

Term and Termination

This Agreement shall become effective upon Subscriber's purchase 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 Agreement based upon a material breach by the other party which is not cured after fourteen (14) days written notice. Drake may terminate this 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 Billing and Payment Policy, the terms and conditions of which are incorporated herein.

Notwithstanding the terms and conditions of Drake's 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 Billing and Payment Policy upon written notice to Subscriber. Drake reserves the right to make adjustments to pricing and offerings related to Third Party Products for reasons 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 maintain services 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 services.

Privacy Policy and Terms of Use

By visiting Drake's websites and purchasing Third Party Products, Subscriber agrees to the terms and conditions of Drake's Privacy Policy and Website Terms of Use, which are available on its website(s) and are subject to change. All notice of changes to Drake's Privacy Policy and Website Terms of Use will be provided by posting revisions on the applicable Drake website. 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.

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 Agreement and perform its obligations hereunder;
- b. no Subscriber Data infringes the intellectual property 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, pornographic 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 Agreement 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 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 to edit, delete, or withdraw access to support and public media websites at its sole discretion.

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 CUSTOMER 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 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 CUSTOMER 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 CUSTOMER'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 CUSTOMER 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 SUPPLIER'S TOTAL LIABILITY TO CUSTOMER AND ANY OF ITS AUTHORIZED USERS SHALL NOT EXCEED THE FEES PAID BY CUSTOMER 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

Neither Drake nor Third Party Providers shall be liable or responsible to Subscriber, or be deemed to have defaulted under or breached this 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 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.

General Provisions

- a. Further Assurances - 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 Agreement.
- b. Relationship of Parties - The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- c. Notices - All notices, requests, consents, claims, demands, waivers and other communications hereunder (other than routine communications having no legal effect) by Subscriber to Drake shall be in writing and addressed to Drake as follows (or as otherwise specified by Drake):

Attn: Legal Department
Drake Software
235 East Palmer Street
Franklin, NC 28734
Facsimile: 828-349-5729

Notices sent in accordance with this Section shall be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile, in each case with confirmation of transmission, if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the 3rd day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

- a. Consent to Electronic Communications - By subscribing to the Third Party Products, Subscriber consents to receive all communications, notices, agreements, renewals, statements, and disclosures (collectively, "**Communications**") electronically. Drake may provide Communications to Subscriber related to the Third Party Products, and Subscriber's use thereof by electronic communication, including by email, facsimile, or by making such Communications available on Drake's websites.
- b. Entire Agreement - This Agreement, together with Drake's Billing and Payment Policy, Website Terms of Use and Privacy Policy, constitutes the sole and entire agreement of the parties and supersedes all understandings, representations, and warranties, both written and oral, with respect to the subject matter hereof.
- c. Assignment - This Agreement shall not be assigned by Subscriber without the prior written consent of Drake, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and permitted assigns.

- d. Waiver - Failure to enforce any provisions of this Agreement shall not constitute a waiver of any of the terms and conditions hereof.
- e. Amendment - This Agreement may be modified only by Drake, at its sole discretion. Subscriber's continued use of Drake's Services shall be deemed to be Subscriber's acceptance of and agreement to Drake's modification of this Agreement.
- f. Severability - If any provision of this Agreement is found by a court of competent jurisdiction to be legally invalid or unenforceable: (i) the validity and enforceability of the remainder of this Agreement shall not be affected, (ii) such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law, and (iii) such provision shall be valid, enforceable, and enforced in its modified form.
- g. Governing Law - This 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 and the state court for the county of Macon, and federal courts of the Western District, North Carolina shall have exclusive jurisdiction and shall be the only venues for any formal legal actions. Any controversy or claim arising out of, or relating to, this Agreement, or the making, performance or interpretation thereof, other than a claim by Drake for injunctive or other equitable relief, shall be settled by arbitration in the City of Franklin, County of Macon, State of North Carolina, in accordance with the Rules of the American Arbitration Association then existing. Any judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. Arbitrators shall be persons experienced in software related issues.
- h. IP Rights - Nothing in this Agreement shall be deemed, by implication or otherwise, to vest in Subscriber any rights in any patents, copyrights, or other property of Drake or its affiliates.
- i. Survival - The force and continuing nature of the parties' obligations under this Agreement shall not be affected by the termination of any business relationship between the parties. Provisions of these Terms and Conditions, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Indemnity, Disclaimer of Warranties, Limitation of Liabilities, and General Provisions.
- j. General Data Protection Regulation - Drake does not market the Third Party Products to persons residing in the European Economic Area ("EEA") and the Third Party Products are not intended for use inside the EEA. By using the Third Party Products, Subscriber agrees not to collect data from persons residing inside the EEA and understands and agrees that any data or information transferred to Drake will be processed and stored in the United States and subject to United States law.