

## SMARTDRAW CLOUD TERMS OF SERVICE

### General

Welcome to SmartDraw Cloud which is maintained and operated by SmartDraw Software, LLC ("SmartDraw").

THIS SMARTDRAW CLOUD TERMS OF SERVICE (THE "**TERMS**") SHALL GOVERN YOUR ACCESS TO AND USE OF THE CLOUD SERVICE. PLEASE CAREFULLY READ THESE TERMS BEFORE USING THE CLOUD SERVICE. SMARTDRAW WILL ALLOW ACCESS TO THE CLOUD SERVICE ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE PROVISIONS CONTAINED IN THESE TERMS. BY YOUR USE OF CLOUD SERVICE, YOU AGREE TO BE LEGALLY BOUND BY THESE TERMS. BEFORE YOU CONTINUE, YOU SHOULD PRINT OR SAVE A LOCAL COPY OF THESE TERMS FOR YOUR RECORDS. IF YOU ARE AGREEING TO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS, AND ALL REFERENCES TO "YOU" SHALL APPLY TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS, THEN DO NOT USE OR ACCESS THE CLOUD SERVICE. THE CLOUD SERVICE IS NOT INTENDED FOR USE BY YOU IF YOU ARE UNDER 13 YEARS OF AGE. BY AGREEING TO THESE TERMS, YOU ARE REPRESENTING TO US THAT YOU ARE OVER 13 YEARS OF AGE.

IF YOU ARE ACCESSING THE CLOUD SERVICE PRIOR TO PURCHASING A LICENSE TO THE CLOUD SERVICE, YOU WILL BE DEEMED FOR ALL PURPOSES OF THESE TERMS TO BE ACCESSING THE CLOUD SERVICE THROUGH A TRIAL LICENSE AND YOU WILL BE SUBJECT TO ALL PROVISIONS IN THESE TERMS APPLICABLE TO TRIAL LICENSES.

### Definitions

For purposes of these Terms, the following terms have the meanings set forth below:

"Authorized Number of Users" means the number of Users who may be provided access to the Cloud Service by the License Purchaser. If You are accessing the Cloud Service through a free Trial License, "Authorized Number of Users" means You only. If the License Purchaser purchased any license to access the Cloud Service other than a Site License, "Authorized Number of Users" means the number of Users as shown by the quantity of licenses purchased or otherwise acquired by the License Purchaser as indicated on the invoice for the Cloud Service. If the License Purchaser purchased a Site License, "Authorized Number of Users" means fifty (50); provided, that if the License Purchaser purchased a Site License that provides for a greater number of Authorized Number of Users, "Authorized Number of Users" means the Authorized Number of Users as shown on the Addendum to Site License provided by and signed by an authorized officer of SmartDraw.

"Cloud Service" means collectively the products, services and software comprising SmartDraw Cloud.

“Content” means diagrams, documents and other information created by You on, or uploaded by You to, SmartDraw’s servers or server’s otherwise under SmartDraw’s control or possession.

“Contextual Click” means a right-click on Devices running Windows, a ctrl-click or secondary click on Apple computers, and a long tap on touch screen Devices.

"Device" means (a) computers, including desktop or laptop computers, used for general computing functions (such as, but not limited to, word processing, e-mail, general purpose Internet browsing and office suite productivity tools), and (b) smartphones, tablets or other forms of mobile computing devices that permit the running of a web browser.

“License Purchaser” means the person or entity that purchases the License as shown on the invoice for the Software. If the invoice reflects both an individual name and an entity name, SmartDraw will treat the entity as the License Purchaser for all purposes under this Agreement.

"Malware" means viruses, worms, time bombs, Trojan horses, spyware and other harmful or malicious code, files, scripts, agents or programs.

“Subscription Term” means the period of time for which License Purchaser purchased or otherwise acquired a license to access the Cloud Service as indicated on the invoice for the Cloud Service. If the term of Your license to the Cloud Service as indicated on the invoice for the Cloud Service is perpetual, Your Subscription Term lasts for as long as SmartDraw maintains the Cloud Service. If You are accessing the Cloud Services through a Trial License, “Subscription Term” means seven (7) days, unless extended by SmartDraw.

"User" means an individual who is allowed access to the Cloud Service by the License Purchaser.

"You" means the License Purchaser and each User.

## **License**

Subject to the terms and conditions of these Terms, SmartDraw grants to You a nonexclusive, nontransferable, nonsublicensable, limited license (the “License”) to access and use the Cloud Service. The Cloud Service may be accessed from any number of Devices, but the License Purchaser may not provide access to the Cloud Service to a number of Users in excess of the Authorized Number of Users. THIS IS NOT A CONCURRENT USER LICENSE. The Authorized Number of Users includes each User that at any time is or has been given access to the Cloud Service, regardless of whether such User is accessing the Cloud Service at a particular point in time. If the License Purchaser purchased a Site License, the Cloud Service may be solely for the License Purchaser’s business purposes, and the License Purchaser may allow its Users to access the Cloud Service only for this purpose. If You are accessing the Cloud Service through a Trial License, a substantial watermark indicating the limitations of Your use of the Cloud Service will be added to all graphics created with the Cloud Service.

## **Term**

The License will last for the Subscription Term, and may only be earlier terminated by SmartDraw if You violate these Terms. You acknowledge that (i) Your right to access and use the Cloud Service is limited to the term of the License Purchaser's Subscription Term, (ii) access to the Cloud Service will cease upon expiration of the Subscription Term if the subscription is not renewed, and (iii) the License Purchaser may generally renew the License, but the terms upon which access to the Cloud Service may be licensed upon a renewal are subject to change by SmartDraw in its sole discretion. Any attempt to defeat the time-control disabling function in the Cloud Service is a material breach of these Terms and a violation of intellectual property law. Upon expiration or earlier termination of the Subscription Term, SmartDraw shall have no obligation to maintain or provide access to any Content of Yours resident on SmartDraw's servers or server's under SmartDraw's control or possession, and may at its discretion thereafter, unless legally prohibited, delete all of Your Content resident on SmartDraw's servers or servers under SmartDraw's control or possession.

If the License Purchaser purchased a License to the Cloud Service that is perpetual as indicated on the invoice for the Cloud Service, the Subscription Term will expire only if SmartDraw discontinues the Cloud Service. Should that occur, SmartDraw will provide Windows the License Purchaser compatible software that will enable the License Purchaser to download all of Your Content maintained in the Cloud Service to a personal computer or server that uses the Windows operating system.

### **Use of Services**

The License Purchaser is responsible for its Users' compliance with these Terms. The License Purchaser is responsible for identifying and authenticating all Users, for approving access by such Users to the Cloud Services, for controlling against unauthorized access by Users and for maintaining the confidentiality of usernames, passwords and account information. By allowing access to the Cloud Service to Users, the License Purchaser accepts responsibility for the confidentiality and timely and proper termination of User records. SmartDraw is not responsible for any harm caused by Users, including individuals who were not authorized to have access to the Cloud Service but were able to gain access because usernames, passwords or accounts were not terminated on a timely basis. The License Purchaser is responsible for all activities that occur under its Users usernames, passwords and accounts or as a result of the Users' access to the Cloud Service. The License Purchaser will notify SmartDraw immediately of any unauthorized use of the Cloud Service, and the License Purchaser will make reasonable efforts to prevent unauthorized third parties from accessing the Cloud Service. The License Purchaser may designate a License Administrator to administer the functions described above, but the License Purchaser will remain ultimately responsible for compliance with these Terms.

### **Content**

SmartDraw does not claim any intellectual property rights in any Content created by Users using the Cloud Service under the License, and nothing in these Terms is intended to grant

SmartDraw any rights to Your Content or intellectual property therein except for the limited rights that are required by SmartDraw to operate the Cloud Service, as explained below. **Each User hereby agrees that for all purposes under this License, SmartDraw shall be entitled to treat the License Purchaser as the full and sole owner of any intellectual property rights in Content created by Users authorized to access the Cloud Service by the License Purchaser pursuant to this License. Notwithstanding anything to the contrary herein, the License Purchaser may terminate any User's access to the Cloud Services at any time.**

By creating, uploading or otherwise submitting Content to the Cloud Service, You grant SmartDraw permission to take actions required to make the Cloud Service available and functional. These actions also include but are not limited to: hosting Your Content on SmartDraw's servers or servers under SmartDraw's control or possession, and sharing it at Your direction. These actions include making available product features visible to You, for example, image thumbnails or document previews. These actions also include design choices SmartDraw makes to administer the Cloud Service technically and to redundantly backup data to keep it safe.

How SmartDraw treats Your personal data and protects Your privacy generally is explained in SmartDraw's Privacy Policy.

### **Sharing Content**

You are solely responsible for your conduct, Your Content and Your communications with others while using the Cloud Service. It is your responsibility to ensure that you have the rights or permission needed to comply with these Terms. By using the Cloud Service You acknowledge that SmartDraw has no obligation to monitor any information on the Cloud Service. SmartDraw is not responsible for the accuracy, completeness, appropriateness, or legality of Content You may be able to access using the Cloud Service.

The Cloud Service provides features that allow You to share Your Content with others. Content You share with others from the Cloud Service could become available to the public at large should that link be shared by the original recipient. Please consider carefully what Content You choose to share and with whom You share it. There are many things that recipients may do with Content You share (for example, copy it, modify it, re-share it). You agree that SmartDraw has no responsibility or obligation to supervise or monitor the use by others of Your Content, or to assist You in enforcing the terms of any permissions, rights or licenses You may grant to those with whom You choose to share Content.

### **Your Use of the Cloud Service**

Content in the Cloud Service may be protected by intellectual property rights of others. Please do not create, copy, upload, download or share any Content on the Cloud Service unless You have the right to do so. You will be fully responsible and liable for what You create, copy, share,

upload, download or otherwise employ while using the Cloud Service, and SmartDraw will have no responsibility of any type for such use. You must not upload Malware to the Cloud Service.

If Your contact information or other information related to Your account changes, You must notify SmartDraw promptly and keep Your information current. You are responsible for safeguarding the password that You use to access the Cloud Service and You agree not to disclose Your password to any third party. You are responsible for any activity using Your account, whether or not You authorized that activity. You should immediately notify SmartDraw of any unauthorized use of Your account.

You agree that you will not misuse the Cloud Service. For example, do not interfere with the Cloud Service or try to access the Cloud Service using a method other than the interface and instructions SmartDraw provides. You also agree to abide by our Acceptable Use Policy and to our General Restrictions.

### **Intellectual Property Matters**

Use of the Cloud Service does not give You ownership of any intellectual property rights in the Cloud Service or any Content that is not Your own. The technologies SmartDraw uses to provide the Cloud Service are protected by patent, copyright, trademark, and other laws of both the United States and foreign countries. These Terms do not grant You any rights to use SmartDraw's trademarks, logos, domain names, or other brand features.

### **Acceptable Use Policy**

You agree not to misuse the Cloud Service. For example, You must not, and must not attempt to, use the Cloud Service to do any of the following:

- probe, scan, or test the vulnerability of any system or network;
- breach or otherwise circumvent any security or authentication measures;
- access, tamper with, or use non-public areas of the Cloud Service or SmartDraw's servers or servers under SmartDraw's control or possession;
- interfere with or disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Cloud Service;
- plant Malware or otherwise use the Cloud Service to distribute Malware;
- access or search the Cloud Service by any means other than SmartDraw's publicly supported interfaces (for example, "scraping");
- send unlawful communications, promotions or advertisements, or spam;
- send altered, deceptive or false source-identifying information, including "spoofing" or "phishing";

- publish anything that is fraudulent, misleading, or infringes another's rights;
- promote or advertise products or services other than Your own without appropriate authorization;
- impersonate or misrepresent Your affiliation with any person or entity;
- publish or share materials that are unlawfully pornographic or indecent, or that advocate bigotry, religious, racial or ethnic hatred; or
- violate the law in any way, or to violate the privacy of others, or to defame others.

### **General Restrictions**

You agree and acknowledge that, unless enforcement is prohibited by applicable law (and then only to the extent prohibited by applicable law), the following actions are expressly prohibited:

(a) You may not (and may not permit any third party to) decompile, disassemble or reverse engineer the Cloud Service;

(b) You may not modify, translate, adapt, arrange or create derivative works of the Cloud Service;

(c) You may not sell, transfer, rent, lease, loan, or otherwise distribute all or any portion of the Cloud Service or any other rights granted to You under these Terms;

(d) Except as otherwise expressly provided in these Terms, You may not allow access to the Cloud Service in connection with a web hosting, commercial time sharing, service bureau, or similar service;

(e) You may not remove, alter or obscure any copyright or other proprietary notices, labels or marks from the Cloud Service; and

(f) You may not otherwise install, access or otherwise use or copy Cloud Service other than in strict compliance with these Terms.

### **Restrictions on Use of Clipart, Symbols, Templates and Photographic Images**

The Cloud Service contains clipart, templates and photographic images (collectively, "Images") which are owned by SmartDraw or its licensors. You may use and publish the Images as part of your own work product, subject to the restrictions in these Terms and any additional restrictions or conditions described in the credits dialog box in certain Image libraries. Where an Image in a library contains a copyright notice, the notice must be maintained and unaltered in any reproduction of the Image. To find out if an Image is covered by a copyright notice, make a Contextual Click on the Image in the applicable Image library and select "Credits" from the menu to view license information. Subject to the foregoing, You may incorporate any Images into your own original work and publish, display and distribute your work in any media.

## **Modification and Termination of Your Use of Cloud Service**

You can stop using the Cloud Service at any time. SmartDraw may revise these Terms from time to time and the most current version will always be posted on SmartDraw's website and on Your login screen for the Cloud Service. By accessing the Cloud Service You have agreed to be bound by the current version of these Terms. You should look at the current version of these Terms regularly.

## **Other Content**

The Cloud Service may contain links to third-party websites or resources. SmartDraw does not endorse and is not responsible or liable for their availability, accuracy, the related content, products, or services. You are solely responsible for Your use of any such websites or resources.

## **Disclaimer of Warranty**

THE CLOUD SERVICE IS PROVIDED "AS IS", AND YOUR USE OF THE CLOUD SERVICE IS AT YOUR OWN RISK, WITHOUT EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND. EXCEPT AS SPECIFIED IN THESE TERMS, SMARTDRAW MAKES, AND YOU RECEIVE, NO WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO THE CLOUD SERVICE. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE CLOUD SERVICE AND ITS FUNCTIONALITY IN ANY COMMUNICATION WITH YOU CONSTITUTE TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. IN ADDITION, SMARTDRAW SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, SMARTDRAW DOES NOT WARRANT THAT THE USE OF THE CLOUD SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE FOREGOING MAY NOT APPLY TO YOU.

## **Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL SMARTDRAW, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS) DAMAGES, REGARDLESS OF LEGAL THEORY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT SMARTDRAW HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. SMARTDRAW'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THE CLOUD SERVICE WILL NOT EXCEED THE AMOUNTS PAID BY THE LICENSE HOLDER TO SMARTDRAW FOR THE PAST TWELVE MONTHS OF THE CLOUD SERVICE. SOME STATES DO NOT ALLOW THE TYPES OF LIMITATIONS IN THIS PARAGRAPH, SO THEY MAY NOT APPLY TO YOU.

## **Copyright Matters and DMCA Policy**

SmartDraw respects the intellectual property rights of others and expect Users to do the same. In accordance with the Digital Millennium Copyright Act of 1998, the text of which may be found on the U.S. Copyright Office website at: <http://www.copyright.gov/legislation/dmca.pdf>, SmartDraw will respond expeditiously to claims of copyright infringement committed using the Cloud Service if such claims are reported to our Designated Copyright Agent identified in the sample notice below.

If You are a copyright owner, authorized to act on behalf of one, or authorized to act under any exclusive right under copyright, please report alleged copyright infringements taking place on or through the Cloud Service by completing the following DMCA Notice of Alleged Infringement and delivering it to our Designated Copyright Agent. Upon receipt of a Notice containing the information described below, SmartDraw will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged content from the Cloud Service.

The Notice should be in the following form:

DMCA Notice of Alleged Infringement ("Notice")

Identify the copyrighted work that You claim has been infringed, or if multiple copyrighted works are covered by this Notice, You may provide a representative list of the copyrighted works that you claim have been infringed.

Identify the material or link you claim is infringing (or the subject of infringing activity) and to which access is to be disabled, including at a minimum, if applicable, the URL of the link shown in the Cloud Service or the exact location where such material may be found.

Provide your company affiliation (if applicable), mailing address, telephone number, and, if available, email address.

Include both of the following statements in the body of the Notice: "I hereby state that I have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use)." "I hereby state that the information in this Notice is accurate and, under penalty of perjury, that I am the owner, or authorized to act on behalf of, the owner, of the copyright or of an exclusive right under the copyright that is allegedly infringed."

Provide your full legal name and your electronic or physical signature.

Deliver this Notice, with all items completed, to our Designated Copyright Agent:

Copyright Agent  
SmartDraw Software, LLC  
9909 Mira Mesa Blvd., Ste. 300  
San Diego, CA 92131  
[copyright@smartdraw.com](mailto:copyright@smartdraw.com)



## **Security Overview**

SmartDraw provides this overview so that You can better understand the security measures we've put in place to protect the Content that You create and store using the Cloud Service.

### **Service Organization Control (SOC) 2 Type II**

SmartDraw engages an outside auditing firm to conduct a Service Organization Control (SOC) 2 Type II audit each year. A SOC 2 report falls under the AICPA AT 101 guidelines and can be either a Type I or a Type II. Whereas SSAE 16 (SOC 1) reports are used for audits of controls that impact a user organization's internal controls over financial reporting (ICFR), SOC 2 reports are intended for service organizations whose services do not impact ICFR. The typical users of a SOC 2 report will include prospective clients of the service organization, management of the service organization, and independent auditors providing services to the user organizations. The SOC 2 audit covers operational and/or regulatory compliance controls and follows pre-defined Trust Services Principles and Criteria.

### **Secure Storage**

SmartDraw encrypts the Content that You create and store on the Cloud Service using the AES-256 standard, which is the same encryption standard used by banks to secure customer data. Encryption for storage is applied after Content is uploaded, and SmartDraw manages the encryption keys.

SmartDraw hosts the Cloud Service on redundant servers in data centers in multiple states, all of which are professionally managed with 24/7 security staff to keep the data centers physically secure.

### **Secure Transfers**

Your files are sent between the client or browser from which you access the Cloud Service and SmartDraw's servers over a secure channel using RSA 2048-bit (Secure Sockets Layer) encryption, the standard for secure Internet connections.

### **Your Data is Backed Up**

SmartDraw keeps redundant backups of all the Content hosted on the Cloud Service at multiple locations to minimize the possibility of data loss.

## **Privacy**

A copy of SmartDraw's full privacy policy can be found at:  
<http://www.smartdraw.com/about/privacy.htm>

SmartDraw guards Your privacy to the best of its ability and works hard to protect Your Content and other information from unauthorized access.

SmartDraw's employees cannot view or access the Content you store using the Cloud Service, and are only permitted to view file metadata (e.g., file names and locations). Like most online services, SmartDraw has a small number of employees who must be able to access User data for the reasons stated in our privacy policy (e.g., when legally required to do so). But that's the rare exception, not the rule. SmartDraw has strict policy and technical access controls that prohibit employee access except in these rare circumstances. In addition, SmartDraw employs a number of physical and electronic security measures to protect user information from unauthorized access.

#### Compliance with Laws and Law-Enforcement

As set forth in SmartDraw privacy policy, and in compliance with United States law, SmartDraw will cooperate with United States law enforcement when it receives valid legal process, which may require it to provide the contents of Your private files hosted on the Cloud Service. In these cases, SmartDraw will remove encryption from the files before providing them to law enforcement.

#### Where do You report security concerns?

SmartDraw takes a number of measures to ensure that the data You create and store on the Cloud Service is safe and secure. While SmartDraw is very confident in its technology, SmartDraw recognizes that no system can guarantee data security with 100% certainty. For that reason, SmartDraw will continue to innovate to make sure that its security measures are state of the art, and will investigate any and all reported security issues concerning the Cloud Service. Please report any security issues to [security@smartdraw.com](mailto:security@smartdraw.com).

#### Entire Agreement

These Terms set forth the entire understanding of You and SmartDraw relating to the Cloud Service and supersede any and all other previous or contemporaneous communications, agreements, representations, warranties or advertising with respect to the Cloud Service. THESE TERMS SHALL PREVAIL OVER ANY PRE-PRINTED TERMS OR OTHER CONFLICTING OR ADDITIONAL TERMS OF ANY PURCHASE ORDER, ORDERING DOCUMENT, ACKNOWLEDGEMENT OR CONFIRMATION OR OTHER DOCUMENT ISSUED BY CUSTOMER, EVEN IF SIGNED AND RETURNED BY SMARTDRAW.

The English language version of these Terms is legally binding in case of any inconsistencies between the English version and any translations.

#### Export Laws

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Cloud Service. You agree that such export laws govern Your use of the Cloud Service, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed reexport" regulations). You agree that no data, information,

software programs and/or materials resulting from use of the Cloud Service (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

### **U.S. Government Restricted Rights**

If the License to the Cloud Service is being acquired by or on behalf of the United States government or a United States government prime contractor or subcontractor, the License to the Cloud Service is provided with the same commercial license rights as are described elsewhere in these Terms.

### **Arbitration**

You and SmartDraw agree that all disputes, claims or controversies arising under or pursuant to these Terms will be submitted to neutral, binding arbitration to be held in San Diego, California before a retired judicial officer pursuant to the Comprehensive Rules and the Arbitration Administrative Policies of the Judicial Arbitration and Mediation Services (JAMS). You agree to give up any rights You may have to litigate any such disputes, claims or controversies in a court or jury trial; provided, however, that nothing herein shall limit the rights of You or SmartDraw to pursue injunctive or other equitable relief in an appropriate court or other legal forum. In the event of an action for injunctive or other equitable relief, or if the agreement to arbitrate as provided herein is for any reason deemed invalid, You and SmartDraw agree that the sole and exclusive jurisdiction and venue for actions arising under these Terms shall be the State and Federal courts in San Diego County, California. You hereby agree to service of process in accordance with the rules of such courts.

### **Other Legal Matters**

These Terms shall be governed by and construed in accordance with the laws of the State of California, without reference to or application of choice of law rules or principles.

Notwithstanding any choice of law provision or otherwise, the Uniform Computer Information Transactions Act and the United Nations Convention on the international Sale of Goods shall not apply to these Terms. These Terms control the relationship between SmartDraw and You. These Terms do not create any third party beneficiary rights.

If You do not comply with these Terms, and SmartDraw does not take action right away, this does not mean that SmartDraw is waiving or giving up any rights that it may have (such as taking action in the future).

The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of any other provision of these Terms. If any provision of these Terms shall be held invalid or unenforceable in part, the remaining portion of such provision, together with all

other provisions of these Terms, shall remain valid and enforceable and continue in full force and effect to the fullest extent consistent with law.

You may not assign any of your rights in these Terms, and any such attempt is void, but SmartDraw may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with SmartDraw.

### **Basis of Bargain**

You acknowledge and agree that SmartDraw has entered into these Terms in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.