

## TERMS OF USE

These terms of use (the "Terms of Use") apply to the Way Cool Software website located at [www.waycoolsw.com](http://www.waycoolsw.com), and all associated sites linked to [www.waycoolsw.com](http://www.waycoolsw.com) by Way Cool Software, Inc., its subsidiaries and affiliates (those sites, the "Site"). The Site is owned by Way Cool Software, Inc. ("Way Cool Software"). The Terms of Use also incorporate by reference the Privacy Policy and the User Agreement also available at the Site. **BY USING THE SITE, YOU AGREE TO THE TERMS OF USE. IF YOU DISAGREE WITH THE TERMS OF USE, DO NOT USE THIS SITE.**

Way Cool Software reserves the right, at its sole discretion, to change, modify, add or remove portions of these Terms of Use, at any time. You are responsible for periodically reviewing the Terms of Use for changes. By continuing to use the Site, you accept any changes at the time they are implemented.

### Content

All content, including, but not limited to, text, graphics, photographs, trademarks, logos, sounds, music, and computer code (that content, the "Content") arranged to create the design, structure, coordination, expression, appearance and feel of the Site is owned, controlled or licensed by or to Way Cool Software, and is protected by United States and international patent, copyright, trademark and trade secret laws of general applicability.

Except as expressly provided in the Terms of Use, no part of the Site and no Content may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted or distributed in any way to any other computer, server, web site, or other medium for publication or distribution or for any commercial enterprise without Way Cool Software's prior express written consent.

Further, you also agree not to reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the Site;

The above notwithstanding, you may use information purposefully made available by Way Cool Software for download from the Site provided that you: (1) not remove any proprietary notice language in all copies of such documents (2) use such information only for your personal, noncommercial, informational purpose and do not copy or post such information on any networked computer or broadcast it in any media (3) make no modifications to any such information (4) make no additional representations or warranties relating to such documents.

### License and Site Access

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### Third Party Links

Links to other websites are provided for the convenience and information of Way Cool Software's customers. Clicking on these links will navigate you to another website. The inclusion of links on the Site does not represent, unless specifically noted in the link, an endorsement, authorization, sponsorship, or affiliation with the linked website. Unless otherwise indicated, any sites linked to from the Site are not under the control of Way Cool Software. Way

Cool Software is not responsible for the content or presentation of any linked site. Way Cool Software makes no representation regarding the accuracy or completeness of the information contained in any linked sites.

Sites that are included in the above links are those of various social media sites, such as Facebook, LinkedIn, and Twitter. These links are provided for the purpose of helping site visitors learn more about Way Cool Software.

### **Blog and Other Social Media Sites**

All editorial comments published through the Site or social media sites linked from the Site reflect the personal opinions of the author and not necessarily the opinion of Way Cool Software. At times, Way Cool Software or other authors may post reviews related to certain products. The author of a given entry related to reviews or other product information will give an indication if they or Way Cool Software was compensated for the review. The above notwithstanding, it is Way Cool Software's policy only to endorse products it or its authors would endorse with or without compensation.

For social media commentary, you are granted limited rights to copy, distribute, transmit or even adapt the entries from Way Cool Software as long as you provide a link to the original work and give credit to Way Cool Software and the original author.

### **User Generated Content/Comment Policy**

Users may generate content on the Site or on Social Media Sites, such as in comments, as long as the content is not illegal, obscene, threatening, defamatory, does not invade the privacy or infringe on the intellectual property rights of others, injure third parties or contain objectionable material and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any other form of "spam." You may not use a false email address, impersonate any person or entity, or otherwise mislead the public as to the source of such content. Way Cool Software reserves the right, but not the obligation, to remove or edit such content, but does not regularly review posted content.

By posting content or submitting material, except for the information input by Subscribers into the database, you grant Way Cool Software a nonexclusive, royalty-free, perpetual, irrevocable, and fully transferable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media. You grant Way Cool Software and sublicensees the right to use the name that you submit with such content, if they choose. You represent and warrant that you own or otherwise control all the rights to the content that you post; that the content is accurate; that use of the content you supply does not violate the Terms of Use and will not cause injury to any person or entity; and that you will indemnify Way Cool Software for all claims resulting from content you supply. Way Cool Software has the right, but not the obligation, to monitor and edit or remove any activity or content. Way Cool Software takes no responsibility and assumes no liability for any content posted by you or any third party. **This license does not apply to data uploaded through the CoolFocus Service. CoolFocus data is private.**

### **Subscribers**

If you use the CoolFocus Service, you are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities, including fees, conducted with your account and password. (those who use this portion of the Site, "Subscribers) Way Cool Software reserves the right to refuse service, terminate accounts, remove or edit content, or cancel orders in its sole discretion. Please see the Subscription Agreement.

### **Intellectual Property Infringement**

It is Way Cool Software's policy to respond to claims of intellectual property infringement. Way Cool Software will promptly process and investigate notices of alleged infringement and take appropriate actions under the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(c)(2) ("DMCA") and other applicable intellectual property laws. As required by the DMCA, notifications of claimed copyright infringement should be sent to Way Cool Software's

designated agent (the "Dedicated Agent"). Below is the information for Designated Agent for the Site:

The Outsourced Associate, LLC  
Attn: Josh Andrews  
PO Box 381722  
Birmingham, Alabama 35238  
Phone: 205.533.7810  
Fax: 877.681.3284  
Email: [jandrews@outsourcedassociate.com](mailto:jandrews@outsourcedassociate.com)

Any written communication under this section should include the following:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- (iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

#### **Products or Services Offered on the Site**

Way Cool Software may make changes to any products or services offered on the Site, or to the applicable prices for any such products or services, at any time, without notice. The information on the Site regarding products and services may be out of date, and Way Cool Software is not obligated to update such information on the Site.

#### **Usage of Text Services by Subscriber**

Subscriber may use the Text Service during the Term of this agreement to assist in appointment reminders, confirmations, and similar activities. The Subscriber is solely responsible for the decision of whether to send the text messages, to whom to send them, and the content of those messages. WAYCOOL SOFTWARE INC. does not, and will not, under any circumstances, decide whether to send the text messages, to whom to send them, and the content of those messages.

Subscriber agrees that WAYCOOL SOFTWARE INC. services will not be relied upon for critical reminders, emergencies, alarms and the like where a system failure could cause costly, fatal or otherwise serious damage or injury. The Parties recognize that computer systems may fail for reasons out of the control of WAYCOOL SOFTWARE INC., including, but not limited to, Internet traffic, condition of telephone or cable lines, and condition of Subscriber's equipment. Accordingly Subscriber agrees that WAYCOOL SOFTWARE INC. is not and will not be liable for any loss thereof.

#### **Disclaimers**

WAY COOL SOFTWARE MAKES NO CLAIM THAT THE SITE OR ANY CONTENT, SERVICE OR FEATURE OF THE SITE WILL BE ERROR-FREE OR UNINTERRUPTED,

OR THAT ANY DEFECTS WILL BE CORRECTED, OR THAT YOUR USE OF THE SITE WILL PROVIDE SPECIFIC RESULTS. THE SITE AND ITS CONTENT ARE DELIVERED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. ALL INFORMATION PROVIDED ON THE SITE IS SUBJECT TO CHANGE WITHOUT NOTICE. WAY COOL SOFTWARE CANNOT ENSURE THAT ANY FILES OR OTHER DATA YOU DOWNLOAD FROM THE SITE WILL BE FREE OF VIRUSES OR CONTAMINATION OR DESTRUCTIVE FEATURES. WAY COOL SOFTWARE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WAY COOL SOFTWARE DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE SITE AND/OR ANY SERVICES. YOU ASSUME TOTAL RESPONSIBILITY FOR YOUR USE OF THE SITE AND ANY LINKED SITES. YOUR SOLE REMEDY AGAINST WAY COOL SOFTWARE FOR DISSATISFACTION WITH THE SITE OR ANY CONTENT IS TO STOP USING THE SITE OR ANY SUCH CONTENT. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES.

The above disclaimer applies to any damages, liability or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use of the Site, whether for breach of contract, tort, negligence or any other cause of action.

Way Cool Software reserves the right to do any of the following, at any time, without notice: (1) modify, suspend or terminate operation of or access to the Site, or any portion of the Site, for any reason; (2) modify or change the Site, or any portion of the Site, and any applicable policies or terms; and (3) interrupt the operation of the Site, or any portion of the Site, as necessary to perform routine or non-routine maintenance, error correction, or other changes.

### **Limitation of Liability**

Way Cool Software is not be liable to you, except where prohibited by law, for any indirect, consequential, exemplary, incidental or punitive damages, including lost profits, even if Way Cool Software has been advised of the possibility of such damages.

### **Indemnity**

You agree to indemnify and hold Way Cool Software, its officers, directors, shareholders, predecessors, successors in interest, employees, agents, subsidiaries and affiliates, harmless from any demands, loss, liability, claims or expenses (including attorneys' fees), made against Way Cool Software by any third party due to or arising out of or in connection with your use of the Site.

### **Violation of These Terms of Use**

Way Cool Software may disclose any information about you (including your identity) if it determines such disclosure is necessary in connection with any investigation or complaint regarding your use of the Site, or to identify, contact or bring legal action against someone who may be causing injury to or interference with (intentional or not) Way Cool Software's rights or property, or the rights or property of visitors to or users of the Site, including Way Cool Software's customers. Some violations may include:

- Using the Site without the requisite ability or authority to ratify legally binding contracts, or while temporarily or indefinitely suspended from the Site;
- Circumventing or manipulating the billing process, or any fees owed to Way Cool Software;
- Distributing or posting spam, chain letters, or pyramid schemes;
- Distributing viruses or any other technologies that may harm Way Cool Software or the interests or property of Way Cool Software customers;
- Copying, modifying, republishing or distributing content from the Site or Way Cool Software's copyrights and trademarks;
- Impersonating another person or otherwise misrepresenting your affiliation with another

person or entity

- Conducting fraud, hiding or attempting to hide your identity
- Providing inaccurate contact information
- Harvesting or otherwise collecting information about users, including email addresses, without their consent;
- Transmitting to Way Cool Software or any user any information or materials of any kind that (1) violate, plagiarize or infringe on the intellectual property or contractual rights of any third party (2) are libelous, defamatory, obscene, pornographic, abusive (3) contain any viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

Way Cool Software reserves the right at all times to disclose any information it deems necessary to comply with any applicable law, regulation, legal process or governmental request. Way Cool Software may also disclose your information when it determines that applicable law requires or permits such disclosure, including exchanging information with other companies and organizations for fraud protection purposes.

You agree that Way Cool Software may preserve any transmittal or communication from you through the Site or any service offered on or through the Site, and may also disclose such data if required to do so by law or Way Cool Software determines that such preservation or disclosure is reasonably necessary to: (1) comply with legal process (2) enforce the Terms of Use (3) respond to claims that any such data violates the rights of others (4) protect the rights, property or personal safety of Way Cool Software, its employees, users of or visitors to the Site, and the public.

You agree that Way Cool Software may, in its sole discretion and without notice, terminate your access to the Site if it determines you have violated these Terms of Use or other agreements or guidelines associated with your use of the Site. You also agree that any violation by you of these Terms of Use will constitute an unlawful and unfair business practice that will cause irreparable harm to Way Cool Software. Because monetary damages for such a violation would be inadequate, you consent to Way Cool Software obtaining any injunctive or equitable relief it deems necessary or appropriate in such circumstances. These remedies are in addition to any other remedies Way Cool Software may have at law or in equity.

You agree that Way Cool Software may, in its sole discretion and without prior notice, terminate your access to the Site, for cause, which includes, but is not limited to: (1) requests by law enforcement or other government agencies (2) a request by you (self-initiated account deletions) (3) discontinuance or material modification of the Site or any service offered on or through the Site or (4) unexpected technical issues or problems.

If Way Cool Software does take any legal action against you as a result of your violation of the Terms of Use, it will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action, in addition to any other relief granted. You agree that Way Cool Software will not be liable to you or to any third party for termination of your access to the Site as a result of any violation of these Terms of Use.

### **Governing Law; Dispute Resolution**

You agree that all matters relating to your access to or use of the Site, including all disputes, will be governed by the laws of the United States and by the laws of the state of Alabama without regard to its conflicts of laws provisions. You agree to the personal jurisdiction by and venue in the state and federal courts in Shelby County, Alabama, and waive any objection to such jurisdiction or venue. Any claim under these Terms of Use must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred. Claims made under the separate terms and conditions of purchase for goods and services are not subject to this limitation. No recovery may be sought or received for damages other than out-of-pocket expenses, except that the prevailing party will be entitled to costs and attorneys' fees.

If there is any controversy or dispute between you and Way Cool Software arising out of or in connection with your use of the Site, the parties shall attempt, promptly and in good faith, to resolve any such dispute. If the parties are unable to resolve any such dispute within a reasonable time (not to exceed thirty (30) days), then either party may submit such controversy or dispute to

mediation to be held in Shelby County, Alabama. If the dispute cannot be resolved through mediation, then it shall be submitted to legally binding arbitration in Shelby County, Alabama, pursuant to the provisions of 9 U.S.C. Section 1, et seq. Judgment upon an arbitration decision may be entered in any court otherwise having jurisdiction. This provision is intended to be as broad as possible under the law: it shall apply to all claims and causes of action, including all statutory and constitutional claims, contract claims and tort claims. The parties agree that their relationship affects and involves interstate commerce. **YOU UNDERSTAND THAT DISPUTES RESOLVED UNDER THIS PROVISION SHALL BE THE SOLE REMEDY FOR ANY CONTROVERSY OR CLAIM ARISING OUT OF THE TERMS OF USE AND EXPRESSLY WAIVE YOUR RIGHT TO A LAWSUIT IN ANY CIVIL COURT EXCEPT TO ENFORCE AN ARBITRATION DECISION.**

#### **Void Where Prohibited**

Way Cool Software administers and operates the Site from its location in Shelby County, Alabama USA. Although the Site is accessible worldwide, it is intended for use within the United States. If you choose to access the Site from outside the United States, you are responsible for complying with applicable local laws.

#### **Miscellaneous**

You may not use, export or re-export any Content or any copy or adaptation of such Content, or any product or service offered on the Site, in violation of any applicable laws or regulations, including, but not limited to, United States export laws and regulations.

Each provision of the Terms of Use shall be considered severable, and if for any reason any provision or provisions herein are determined to be invalid, unenforceable, or illegal under any existing or future law, such invalidity, unenforceability, or illegality shall not impair the operation of or affect those portions of the Terms of Use which are valid, enforceable, and legal. Way Cool Software's failure to enforce strict performance of the Terms of Use shall not be construed as a waiver by Way Cool Software of any provision or any right it has to enforce the Terms of Use, nor shall any course of conduct between Way Cool Software and you or any other party be deemed to modify any provision of the Terms of Use. The Terms of Use shall not be interpreted or construed to confer any rights or remedies on any third parties.

#### **Feedback and Information**

Any feedback you provide regarding the Site is not considered confidential. Way Cool Software is free to use such information without restriction.

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