

DRAKE SOFTWARE ACCOUNTING LICENSE AND NON-DISCLOSURE AGREEMENT

This SOFTWARE LICENSE AND NON-DISCLOSURE AGREEMENT ("Agreement") is between Drake Software, LLC ("Drake") and "Licensee" (as defined below).

PLEASE READ THIS CAREFULLY. This Agreement is effective immediately upon opening, installing or using the Software, whichever occurs first, and shall remain in force until terminated. Should this Agreement be terminated for any reason, including Drake's terminating for Licensee's failure to comply, Licensee shall destroy or return to Drake the original and any copies of the Software, including partial copies, in any and all forms, with a written statement that such destruction or return of the Software has been accomplished.

1. **Definitions:**

- a. Software – The applications produced by Drake defined as the Drake Accounting software, which provide bookkeeping, accounting, payroll and electronic filing software for use by professional bookkeepers and payroll providers in providing services to their clients.
- b. License Fee – The fee paid by the Licensee for the use of the Software
- c. Licensee – The individual or entity that has or is responsible for remittance of payment of the License Fee to Drake and is responsible for compliance with this Agreement.
- d. Contact – the designated individual representative of the Licensee, authorized to act on behalf of the Licensee in all matters relating to this Agreement. Such designation is made in writing to Drake either as part of the execution of this Agreement or by other methods which are prescribed and approved by Drake.
- e. Site – One (1) contiguous interconnected physical office space.
- f. Authorized User – Anyone at a Site whom the Licensee has authorized to use the Software and has retained responsibility for compliance with this Agreement.
- g. Online Account – The account of the Licensee accessed via the web and hosted by Drake.
- h. Evaluation Software – A version of the Software that is not for commercial purposes, but for the sole purpose of evaluating the prospect of licensing the Software.

- i. EFIN – Electronic Filing Identification Number assigned by the Internal Revenue Service.
 - j. Taxpayer Data – any information that is obtained by Licensee or used by Licensee in the preparation of a tax return.
- 2. **Grant of License.** The Software is a proprietary product of Drake. It is licensed, not sold, and is licensed only on the condition that the Licensee agrees to the terms and conditions of this Agreement. In consideration of and upon receipt of payment of a License Fee by Licensee, Drake grants to Licensee a non-exclusive, nontransferable license to use the Software and any associated manuals and/or documentation under the terms and conditions of this Agreement. Drake reserves the right to limit the license to the United States of America. This License grants Licensee no right to sub-license or in any way provide the Software to a third party.
- 3. **Conditions**
 - a. Installation Limitations: A separate licensed copy of the Software must be purchased for each EFIN that is used to log in and transmit returns. Licensee shall limit the use of the Software to one Site per license. The license must be registered to a particular Site and may only be used by Authorized Users primarily working out of such Site. Upon request, Licensee agrees to provide to Drake complete records of the location of any Site, and the number of copies of the Software in use at that Site. This Agreement specifically prohibits access of the Software remotely from non-licensed Sites, with all remote usage requiring an additional license and Authorized User for each remote location outside the Site.
 - b. Hosting: Using a hosting service does not relieve Licensee of any of its obligations under this Agreement, unless specifically agreed to in writing by Drake. Installing, uploading or otherwise using the Software to a server with remote access, including the Internet, will require a separate License for each Site accessing the Software. Drake reserves the right to audit and approve any third-party hosting service for compliance with this Agreement.
 - c. Non-disclosure: LICENSEE SHALL NOT PROVIDE OR DISCLOSE OR OTHERWISE MAKE AVAILABLE THE SOFTWARE, OR ANY PORTION THEREOF IN ANY FORM TO ANY THIRD PARTY. LICENSEE SHALL EXERCISE DUE DILIGENCE IN PROTECTING ALL OWNERSHIP RIGHTS AND TRADE SECRETS OF DRAKE. All pricing and other financial aspects of this Agreement are CONFIDENTIAL and may not be shared with any third party except with the express written consent of Drake.

- d. Non-use of Drake Intellectual Property: Without the prior written consent of Drake, which Drake may withhold in its sole discretion, Licensee may not use for marketing, advertising or any other purpose the names "Drake," "Drake Software," any derivative thereof, any trademark or logo of Drake or any affiliate, or any other intellectual property or property rights of Drake.
- e. Restrictions on Use of Software: The Software may be used only for commercial bookkeeping and the preparation and filing of federal and state payroll related tax returns. ALL OTHER USES ARE EXPRESSLY PROHIBITED.
- f. Updates: Drake may notify Licensee of any enhancements or updates released by Drake for the Software licensed hereunder. Any such updates shall be subject to the terms of this Agreement and any other Drake terms, conditions and charges. ONLY REGISTERED LICENSEES WILL BE OFFERED ANY SUCH UPDATES. These updates will be provided via the Internet at no extra charge to Licensee through April 15, 2019.
- g. Intellectual Property Ownership: The Software and various trademarks, service marks and trade names ("Intellectual Property") are the sole and exclusive property of Drake, and may be protected by copyright, trade secret and other intellectual property laws. Any use of Drake's Intellectual Property without Drake's express written consent is prohibited.

4. **Licensee Responsibilities**

- a. Licensee understands and agrees that all decisions regarding the treatment, presentation or reporting of items within the scope of accounting, bookkeeping, payroll processing, payroll calculations including but not limited to withholding and other payroll taxes, financial statements, tax return preparation and/or other tax reporting prepared by Licensee ("Reporting") using the Software are made solely by Licensee and that use of the Software does not relieve Licensee of responsibility for the preparation, accuracy, content, and review of all Reporting.
- b. Licensee acknowledges that Licensee does not rely upon Drake for advice regarding the appropriate treatment of items reflected on any Reporting prepared and/or processed using the Software. The Licensee will review any Reporting and/or computations made by Licensee with the Software and satisfy Licensee as to its accuracy.
- c. Licensee is responsible for the keying of all information accurately into the Software, including but not limited to direct deposit information.

- d. Licensee agrees to abide by and comply with all regulations and laws that pertain to the commercial preparation and electronic filing of tax returns, including but not limited to IRS Regulations, publications and other applicable laws relating to Licensee's business.
- e. Licensee agrees not to use the Software or any of Drake's services for any illegal, fraudulent or otherwise improper purpose. These may include, but are not limited to misrepresenting taxpayer information, falsely representing identities, activities that may circumvent security measures, technical or regulatory requirements or other IRS or State non-compliant activities. If it is determined, at Drake's sole discretion, Licensee is non-compliant with this section, or Licensee has attempted to misrepresent, mislead or otherwise provide false representation(s) as to its compliance with this or any other provision of this Agreement, Licensee shall forfeit all rights to use the Software or services of Drake provided in this Agreement, including but not limited to any rights to refunds of any monies paid to Drake.
- f. Licensee is solely responsible for the backup and retention of all data, unless specifically accepted by Drake.
- g. If applicable, Licensee agrees to provide Drake a copy of Licensee's completed E-File Application Summary, or other documentation required by Drake regarding ownership of an EFIN used with the Software by Licensee, prior to using the electronic filing services of Drake. Licensee understands that in order to use the electronic filing services of Drake or the IRS a valid EFIN must be obtained and maintained as current from the Internal Revenue Service.
- h. Licensee shall be responsible for acquiring and maintaining an information technology infrastructure with sufficient capabilities to operate the Software and comply with all provisions of this Agreement.
- i. Licensee shall not decompile, reverse assemble, or reverse engineer any Software or other information disclosed to Licensee hereunder.
- j. Licensee shall be responsible for complying with all export controls relating to the Software.
- k. Licensee shall be responsible to safeguard and prevent unauthorized access to Taxpayer Data. Licensee shall be responsible to secure usernames and passwords that allow access to Taxpayer Data.

6. **Term and Termination**

- a. The License granted under this Agreement is for the 2018 version of the Software only. The ability to electronically file returns, access to websites and other web-based products related to the Software will expire on April 15, 2019, although access to associated data may be available to Licensee upon request for an additional 30 days after expiration.
- b. Extension of Term: If Licensee purchases a License for the 2019 version of the Software, this Agreement will be extended for an additional term, subject to the terms and conditions of the 2019 License Agreement.
- c. Termination for Cause: Drake may terminate Licensee's rights under this Agreement immediately and without notice if Licensee fails to comply with any term or condition of this Agreement. The License granted pursuant to this Agreement will immediately terminate and Licensee shall immediately uninstall the Software from all computer(s) and/or networks, return the Software to Drake and destroy all backup copies. Any termination of this Agreement shall not affect Drake's rights hereunder.
- d. Other Termination: Drake reserves the right to suspend or otherwise limit the use of the Software including but not limited to suspending electronic filing of tax returns by Licensee, if the Licensee or any of its affiliates are the subject(s) of an investigation or legal action by any regulatory authority, or at the direction of any governmental agency, legal authority or court order, or if Licensee commits or is alleged to have committed acts of fraud or abuse that may in Drake's sole discretion compromise the integrity and reputation of the IRS E-file program and/or Drake.

Drake reserves the right to limit or deny Licensee access to the Software and features of the Software, including electronic filing, or other functionality, if Drake determines in Drake's sole discretion that Licensee has violated any provision of this Agreement or transmissions or communications originating from or affiliated in any way with Licensee are potentially fraudulent data or represent fraudulent activity, or may have been affected by malware, denial-of-service attacks, originate from an insufficiently secure environment or similar security or system failures, or are otherwise compromised or could represent data or transmissions that could put at risk Drake's security, Drake's participation in the IRS E-File program, Drake's relationships with third-party program providers, or the availability of Drake, Drake's websites, computer systems, web services or the Software.

- e. This Agreement applies only to the 2018 version of the product(s) referenced herein and DOES NOT constitute an offer or in any way guarantee the availability, now or ever, of any other Drake products or versions to Licensee.

- f. Support. Drake reserves the right to limit support to the current tax year's Software, and to only current Licensees.
7. **Representations of Licensee.**
- a. Licensee will use the Software for the sole purpose of commercial preparation of financial statements, bookkeeping reports, payroll and preparing and filing federal and state tax returns and electronically filing tax returns. Any other use of this Software is EXPRESSLY PROHIBITED.
 - b. Licensee will comply with all federal, state and other regulations.
 - c. Licensee represents to Drake that the information provided to Drake by Licensee concerning the EFIN, firm name, owner name, contact name, phone number, address, and all other identifying information of Licensee is correct and accurate. Any changes to this information must be provided to Drake in writing within 30 days of changing.
 - d. Licensee represents to Drake that it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement.
 - e. Licensee represents to Drake that it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization.
 - f. Licensee shall not upload or otherwise transmit any software or other technology that permits unauthorized access or disables, destroys, or otherwise harms the Software or any property of Drake.
 - g. Licensee shall implement adequate safeguards to protect Taxpayer Data against unauthorized access. Licensee shall be responsible to secure usernames and passwords that allow access to Taxpayer Data.
 - h. Licensee agrees to comply with all system requirements as posted at <https://www.drakesoftware.com/pdf/dassysreq2018.pdf>
8. **Right to Change and Modify Software.** Drake may in its discretion change any feature or aspect of the Software or services provided without prior notice to Licensee.
9. **Evaluation Software.** If Licensee is using the Evaluation Software, all provisions of this Agreement will apply, except as modified by this section. The Evaluation Software will have certain limitations, including but not limited to the inability to electronically file or

produce or process live tax returns. It is to be used for evaluation purposes only, and not for commercial purposes. To use the Software for commercial purposes, the Licensee must purchase a valid License.

10. **Refund Policy.** Should Licensee elect to terminate this license within 30 days of payment, Licensee may do so, provided Licensee returns all materials, undamaged, to Drake by REGISTERED MAIL within 30 days, with a written statement that Licensee has retained no copies of the Software, and that Licensee has not disclosed any of the materials to any third party whatsoever. DRAKE will, in this case, refund the license fee that Licensee has paid (less \$200.00 for shipping, handling and restocking). No refund of fees will be made after January 15, 2019. No other offer of refund is provided. Where return of materials is concerned for the purposes of a refund, TIME IS OF THE ESSENCE.

11. **Taxes and Fees**

- a. Licensee agrees to pay for Software prior to receiving, installing or commercially using the Software, unless other payment arrangements are made, and agreed to in writing by Drake.
- b. Licensee grants to Drake an irrevocable right to offset unpaid Software License Fees with any and all fees collected by Drake remittable to Licensee. If Licensee does not comply with all terms of this Agreement, including payment of fees in a manner prescribed by Drake, Drake reserves the right to immediately cease offering all services and products to Licensee, including access to databases, e-filing systems and Software updates.
- c. All sales, use and other taxes are the responsibility of the Licensee, and Licensee agrees that Drake may, at its sole discretion, charge and collect applicable taxes and fees as part of the purchase.
- d. Applicable taxes are calculated on a product basis and are subject to variables determined by Drake, including Licensee's shipping address and Licensee potentially providing a tax-exempt certificate to Drake.

12. **Privacy Policy and Terms of Use.** Licensee agrees to the terms and conditions of Drake's Privacy Policy and 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 Terms of Use will be provided by posting revisions on the applicable Drake website. Licensee understands that any suspected illegal or fraudulent activity will be reported to the appropriate governmental or law enforcement authorities. Licensee acknowledges that Drake retains the right to take whatever steps necessary, as determined in Drake's sole discretion, to comply with applicable data security and privacy laws and regulations.

13. **Indemnification of Drake.** Licensee hereby agrees to indemnify, defend, and hold Drake harmless from and against any and all liabilities, losses, costs, expense, damages, and deficiencies, including, without limitation, court costs and reasonable attorney fees, which directly or indirectly arise out of, result from or relate to (i) the operation of Licensee, any and all accounts payable of Licensee, and any and all taxes levied or incurred, whether payable to a federal, state, local or other governmental authority; (ii) any breach by Licensee of any of its representations, warranties, or covenants contained in this Agreement; (iii) successful collection from Licensee or its legal representative, successors, or assigns of any amount due Drake hereunder or resulting therefrom; (iv) any customer data provided by Licensee to Drake or any harmful software transmitted by Licensee or on behalf of Licensee; and (v) unauthorized access to Taxpayer Data or other confidential data attributable to the acts or inaction or omissions of the Licensee. (vi) any claim by a third party relating to Licensee's use of the Software or the results thereof. The obligations set forth in this Section 13 shall survive the termination or expiration of this Agreement.
14. **Indemnification of Licensee.** Drake hereby agrees to indemnify and hold Licensee harmless from and against any and all liabilities, losses, costs, expense, damages, and deficiencies during the term of this Agreement, including, without limitation, court costs and reasonable attorney fees, which directly or indirectly arise out of, result from or relate to any and all liabilities, obligations, or claims, whether accrued, absolute, contingent, or otherwise, which have as a basis the intellectual property ownership of the Software. Licensee agrees to notify Drake of such claims in writing within 30 days of becoming aware of said claim.
15. **Representations and Warranties of Drake and Limitation of Liability**
- a. Drake represents and warrants that through April 15, 2019 (the "Warranty Period"), it has the authority and right to grant the Licensee use of the Software as described in this Agreement.
 - b. DRAKE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL SUCH WARRANTIES BEING EXPRESSLY EXCLUDED. During the Warranty Period, Licensee shall promptly notify Drake in writing of any claimed deficiency and provide information sufficient to permit Drake to validate the deficiency. If a deficiency exists which breaches the warranty, Drake shall, at its sole discretion and within ninety (90) days: (i) correct the deficiency; or (ii) with Drake's prior written authorization and upon Licensee's de-installation of the Software and return of all copies of the Software to Drake, refund any License Fee paid to Drake, whereupon this Agreement shall terminate. Drake will exercise due care in conforming the Software to the requirements of the Federal and State authorities; however, the Licensee acknowledges that accounting, bookkeeping, commercial preparation

of financial statements, bookkeeping reports, payroll calculations, payroll withholding, payroll processing, preparing and filing federal and state payroll tax returns, electronically filing tax returns and related processing and/or preparation and Reporting is subject to change and is of such complexity that the Software may have inherent defects.

- c. UNDER NO CIRCUMSTANCES WILL DRAKE'S LIABILITY EXCEED AMOUNTS PAID BY THE LICENSEE FOR USE OF THE SOFTWARE. THE REMEDIES SET FORTH HEREIN ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF THIS AGREEMENT OR ANY WARRANTIES CONTAINED IN THIS AGREEMENT. DRAKE SHALL HAVE NO OTHER LIABILITY OR RESPONSIBILITY TO LICENSEE FOR DAMAGES OF ANY KIND, INCLUDING SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR RESULTING FROM THE USE OF THE SOFTWARE OR ANY PROGRAMS, SERVICES OR MATERIALS MADE AVAILABLE HEREUNDER OR THE USE OR MODIFICATION THEREOF OR UNAUTHORIZED ACCESS TO TAXPAYER DATA, ALL OF WHICH LICENSEE HEREBY WAIVES.
16. **Amendment, Modification and Waiver.** This Agreement may be modified, amended or supplemented by Drake without prior written notice or consent of Licensee. Drake reserves the right to change, modify or update this Agreement with NO PRIOR NOTICE by posting the revised agreement on its website located on the drakesoftware.com website. (<https://www.drakesoftware.com/PDF/daslicense2018.pdf>).
17. **Governing Law.** This Agreement shall be construed under the laws of the State of North Carolina, 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.
18. **Arbitration.** 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 a single arbitrator in the City of Franklin, 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. The arbitrator shall be experienced in software-related issues.
19. **Other Products Provided by Drake.** Licensee understands that Drake may provide to Licensee other products and services other than the Software, including but not limited to online databases (OLDB), Drake user forums, electronic communication interfaces and remitted by Drake to Licensee, and the like. Drake makes no guarantee as to delivery time, functionality or availability of such products and services. Licensee agrees to hold Drake harmless for any failure in providing or delivering these products

and services, and Drake shall have no liability or responsibility to Licensee for damages of any kind, including special, indirect or consequential damages, arising out of or resulting from such other products or services provided to Licensee by Drake. Use of the forum and editorial control of content is at Drake's discretion. All Drake website content is monitored by Drake, including but not limited to the Drake 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. Access to any on-line service is subject to Drake's Terms of Service located on the applicable Drake website.

20. Other Terms.

- a. Supported systems are available in the documentation and User manual for each Product, and are subject to change. All Web-Based Products require Internet access.
- b. In no event shall Drake be liable or responsible to Licensee for any failure or delay in performing any term of this Agreement when such failure or delay is caused by circumstances beyond its reasonable control.
- c. 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, employment, or fiduciary relationship between the parties, and neither party shall have the right to contract for or bind the other in any manner whatsoever.
- d. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement without Drake's prior written consent. Any purported assignment, delegation, or transfer in violation of this Section 20(d) is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- e. If any provision of this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision.