

## SOFTWARE 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 for the commercial preparation of federal and state tax returns, scanning and storing documents, electronic filing of tax returns and processing of Bank Products (as defined below). The Software includes without limitation the software embodied by The Desktop Application, the Web Based Applications, the Software as a Service, and the Evaluation Software.
- 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. Site – One (1) contiguous interconnected physical office space.
- e. Authorized User – Anyone at a Site whom the Licensee has authorized to use the Software and has retained responsibility for compliance with this Agreement.
- f. Desktop Application – The Software installed on a personal computer or local area network.
- g. Web Based Applications – The Software hosted on Drake’s servers and/or computers, licensed by Site and maintained by Drake. Web Based Applications include Web 1040 and Drake Zero.

- h. Online Account – The account of the Licensee accessed via the web and hosted by Drake.
  - i. Bank Products – Tax refund related settlement products, also known as “financial products,” including but not limited to refund transfers (also known as RACs, RTs, bonuses, etc.), refund loans, and any other products which facilitate the payment of tax preparation or other fees from the proceeds of taxpayers’ refunds and/or advance funds to taxpayer in anticipation of repayment from the proceeds of the tax refund.
  - j. Approved Banking Partner – A provider of Bank Products which has been approved by Drake to facilitate and provide Bank Products to Licensees of the Software.
  - k. Software as a Service (“SaaS”) – A version of the Software licensed through a subscription service via the web and hosted by Drake.
  - l. Evaluation Software – A version of the Software which is not for commercial purposes, but for the sole purpose of evaluating the prospect of licensing the Software.
  - m. Subscriber – A Licensee utilizing SaaS products.
  - n. EFIN – Electronic Filing Identification Number assigned by the Internal Revenue Service.
  - o. 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 login and transmit returns (except as provided in section 11b). Licensee shall limit the use of the Software to one Site per license. The license for use of a Desktop Application version of the Software must be registered to a particular Site and may only be used by Authorized Users primarily working out of such Site. The license for use of a Web Based Application version of the Software 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:** Utilizing 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 the commercial preparation and filing of federal and state income tax returns

and processing of Bank Products. 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 to Licensee through October 15, 2017.
- 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 tax treatment of items reflected on tax returns prepared by Licensee 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 such returns.
- b. Licensee acknowledges that Licensee does not rely upon Drake for advice regarding the appropriate tax treatment of items reflected on returns prepared and/or processed using the Software. The Licensee will review any computations made by the Software and satisfy Licensee that those computations are correct.
- c. Licensee is responsible for the keying of all information accurately into the Software, including but not limited to direct deposit information as it pertains to taxpayers’ data for receiving refunds.
- d. Licensee agrees to abide by and comply with all regulations and laws which pertain to the commercial preparation and electronic filing of tax returns, including but not limited to IRS Regulations, publications and other applicable laws. **It is a violation of this license agreement AND applicable law for Licensee to falsely indicate to Drake that Licensee has obtained taxpayer’s Code 26 CFR §301.7216 compliant “Consent to Disclose” or**

**“Consent to Use” taxpayer data. Such violation will be grounds for immediate termination of this Agreement.**

- e. Licensee agrees not to utilize 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 which 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. 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 utilized with the Software by Licensee, prior to utilizing the electronic filing services of Drake. Licensee understands that in order to utilize 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. If Licensee participates in the DrakeHealth referral program (“DrakeHealth”), Licensee agrees to abide by all terms and conditions of DrakeHealth including the Guidelines published by Drake from time to time on the [Drakesoftware.com website \(<https://support.drakesoftware.com/Site/MyAccount/DrakeHealth.aspx>\)](https://support.drakesoftware.com/Site/MyAccount/DrakeHealth.aspx). Participating in DrakeHealth will include but not be limited to sending Licensee’s unique URL to any third party, providing reports generated from the Software pertaining to the Affordable Care Act (ACA), DrakeHealth.com website, qualifying for or receiving any payment of a referral fee from Drake, or otherwise benefitting from DrakeHealth. All other provisions of this agreement, including but not limited to Sections 7, 14, 15, 16 and 17, apply to DrakeHealth. In addition, in order to qualify for any referral fee payment, Licensee must have a current licensed copy of the Software, and be in compliance with all provisions of this Agreement.

- i. 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.
- j. Licensee shall not decompile, reverse assemble, or reverse engineer any Software or other information disclosed to Licensee hereunder.
- k. Licensee shall be responsible for complying with all export controls relating to the Software.
- l. Licensee shall be responsible to safeguard and prevent unauthorized access to Taxpayer Data.
- m. Licensee acknowledges that by using a computer system and software to prepare and transmit its client's tax return electronically, Licensee consents to the disclosure of all information relating to its use of the computer system and software to generate its client's tax return and to the electronic transmission of its client's tax return to the state and/or federal agency as applicable under existing law.

5. **Bank Products**

- a. To the extent Licensee offers Bank Products to taxpayers, Licensee shall utilize an Approved Banking Partner to process all Bank Products for taxpayers served by Licensee Sites during the Term of this Agreement. PLEASE NOTE: TRANSMITTING RETURNS NOT IN COMPLIANCE WITH THIS SECTION 5. WILL BE CAUSE FOR IMMEDIATE TERMINATION OF THIS AGREEMENT AND MAY REPRESENT A VIOLATION OF 4(e) FOR NON-IRS OR STATE COMPLIANT ACTIVITY AND CIRCUMVENTING SECURITY MEASURES.
- b. Licensee understands and agrees that fees will be charged by Drake for returns with Bank Products. A transmission fee and a technology fee will be withheld for each funded Bank Product transmitted through Drake, and will be deducted from the proceeds due to the taxpayer. These fees are subject to change without notice. Licensee agrees to obtain proper approval from the taxpayer for withholding these fees from the proceeds of the taxpayer's refund.

## 6. Term and Termination

- a. Term: The License granted under this Agreement is for tax year 2016 only. The ability to electronically file returns, access to web sites and other web based products related to the Software will expire on December 31, 2017, 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 tax year 2017 this Agreement will be extended for an additional year, subject to the terms and conditions of the tax year 2017 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, including but not limited to, use of unauthorized Bank Products or other misuse of the Software. 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, including suspension of access to the Web Based Applications and the Software as a Service.
- 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 which 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, processing of Bank Products 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, 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 which 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 2016 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 utilize the Software for the sole purpose of commercial preparation of federal and state tax returns and electronically filing tax returns for taxpayers. 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 which 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.

- h. Licensee agrees to comply with all system requirements as posted at <https://www.drakesoftware.com/pdf/sysreq2016.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 utilizing 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 utilize the Software for commercial purposes, the Licensee must purchase a valid License.
10. **Service Bureaus and Multi-Sites.** If Licensee is providing services to multiple offices, including licensing Software for those Sites, Licensee must execute Drake's Multi Site Agreement prior to this Agreement being valid. Reselling, charging separate fees for the Software, or representing the authorization to sell or license the Software on behalf of Drake is strictly prohibited.
11. **Web Based Applications and SaaS.**
  - a. Web Based Applications are subject to ALL TERMS of this Agreement, including Site license restrictions, and may be subject to additional terms of use and service. Licensees who utilize the Web Based Applications are also subject to the following conditions:
    - i. Licensee acknowledges and accepts the terms and conditions of this Agreement by using the Web Based Applications.
    - ii. Drake reserves the right to place limitations on the Web Based Applications including access to the 1040 series of forms only.
    - iii. Licensing the Web Based Applications does not grant to Licensee the right to use any other Drake products not purchased and licensed separately including the Desktop Applications or SaaS.
    - iv. Licensee agrees not to provide access to the Web Based Applications to any party other than those authorized to use the Web Based Applications under the Licensee's Online Account. Licensee will take reasonable precautions to safeguard Licensee's password(s) and keep

it confidential. Licensee agrees to use Web Based Applications only for lawful purposes. Licensee is responsible for providing, at their expense, all necessary connections and equipment needed to access the Web Based Applications. Licensee must maintain the confidentiality of all assigned user names and IDs for the Web Based Applications and Licensee is responsible for all actions, access and charges incurred under those user names and IDs, unless otherwise provided under these terms.

- v. The availability of the Web Based Applications may be subject to interruption and delay due to causes beyond Drake's reasonable control.
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- b. SaaS is licensed as a subscription, and is subject to ALL TERMS of this Agreement except that it is not subject to the Site license restrictions set forth in Sections 3 and 10 of this Agreement. The following additional restrictions pertain to the use of SaaS ONLY, and SaaS may be subject to additional terms of use and service:
    - i. Subscriber acknowledges and accepts the terms and conditions of this Agreement by using the SaaS.
    - ii. In consideration of and upon receipt of payment of a subscription service fee by Subscriber, Drake grants to Subscriber a non-exclusive, nontransferable, limited license to use the SaaS at such time as it is generally available, solely as permitted by these terms. This Agreement does not grant Subscriber access to Drake's Software, data, or property other than for the purposes of using the SaaS.
    - iii. Drake reserves the right to place limitations on the SaaS.
    - iv. Subscribing to the SaaS does not grant to Subscriber the right to use any other Drake products, including the Desktop Applications or the Web Based Applications.
    - v. Subscriber agrees not to provide access to the SaaS to any party other than those authorized to use the SaaS under the Subscriber's Online Account. Drake specifically prohibits access to the SaaS by

more than one (1) EFIN. Subscriber will take reasonable precautions to safeguard Subscriber's password and keep it confidential. Subscriber agrees to use the SaaS only for lawful purposes. Subscriber is responsible for providing, at their expense, all necessary connections and equipment needed to access the SaaS. Subscriber must maintain the confidentiality of all assigned user names and IDs for the SaaS and Subscriber is responsible for all actions, access and charges incurred under those user names and IDs, unless otherwise provided under these terms.

vi. The availability of the SaaS may be subject to interruption and delay due to causes beyond Drake's reasonable control.

12. **Pay Per Return.** If Licensee is using the Software, i.e. the Desktop Application or the Web Based Applications, under the Pay Per Return (PPR) option, Licensee agrees to pay a fee specified by Drake for each return activated. Licensees who choose the PPR option may convert to an unlimited package any time prior to the IRS accepting tax returns for the tax year by paying the maximum unlimited package price, less amounts paid for returns activated. The Licensee may convert to an unlimited package of the Desktop or Web Based Application by purchasing 85 returns for a License at any time during the Term. These conversion terms are subject to change and are not available for the SaaS application. Converting from the unlimited package to PPR is NOT ALLOWED.

13. **Refund Policy.** Licensee may elect to terminate this license prior to December 31, 2016 and receive a full refund with no penalty, 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 has uninstalled all downloaded copies of the software, that Licensee has not disclosed any of the materials to any third party whatsoever, and Licensee has not violated **any provision** of this Agreement. After December 31, 2016, Licensee may request a refund within 72 hours or 3 business days of payment, provided Licensee has not prepared or electronically filed any tax returns using the Software. Drake will, in this case, refund the License Fee that Licensee has paid, less two hundred dollars (\$200.00) for administrative, setup, shipping, handling and other costs. NO REFUND OF FEES WILL BE MADE if Licensee has activated, prepared or filed any returns or violated any provision of this Agreement. No other offer of refund is provided. Where return of materials is concerned for the purposes of a refund, TIME IS OF THE ESSENCE.

#### 14. **Taxes and Fees**

- a. Customer 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 ship to address and Licensee potentially providing a tax exempt certificate to Drake.

15. **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.

16. **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 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 (i) any and all liabilities, obligations, or claims, whether accrued, absolute, contingent, or otherwise, which have as a basis 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 and all loss, claim, cause of action, liability, cost, expenses, damage or deficiency due to any breach by Licensee of any of its representations, warranties, or covenants contained in this Agreement; (iii) all actions, suits, proceedings, demands, assessments, judgment costs and expenses, including the cost and expense of 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 attributable to the acts or inaction or omissions of the Licensee. The obligations set forth in this Section 16 shall survive the termination or expiration of this Agreement.

17. **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.

18. **Representations and Warranties of Drake**

- a. Drake represents and warrants that through October 15, 2017 (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 income tax preparation is subject to change and is of such complexity that the Software may have inherent defects. Under no circumstances will Drake’s liability exceed amounts paid by the Licensee for use of the Software.
- c. THE REMEDIES SET FORTH ABOVE ARE LICENSEE’S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF THE 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. LICENSEE SHALL INDEMNIFY AND HOLD DRAKE HARMLESS AGAINST ANY CLAIM BY A THIRD PARTY RELATING TO LICENSEE'S USE OF THE SOFTWARE OR THE RESULTS THEREOF.

19. **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. (<http://www.drakesoftware.com/PDF/license2016.pdf>).

20. **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.

21. **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.

22. **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 on-line filing through www.1040.com, third party on-line research, on-line databases (OLDB), Drake user forum, electronic communication interfaces, remission of transmittal fees paid to Drake on behalf of Licensee 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.

**23. Other Terms.**

- a. Supported systems are available in 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 23(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.