

2019 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 termination for Licensee's failure to comply with these terms and conditions, 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 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. Software, as used in this Agreement, refers to tax year 2019 Software only and does not apply to other versions of the software.
- b. **License Fee** - The license or subscription fee paid by 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 Licensee, authorized to act on behalf of 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 Licensee has authorized to use the Software and has assumed responsibility for compliance with this Agreement.
- g. **Desktop Application** - The Software installed on a personal computer or local area network.

- h. Web Based Applications - The Software hosted on Drake's servers and/or computers, licensed by Site and maintained by Drake. Web Based Applications include Web1040 and Drake Zero.
- i. Online Account - The account of Licensee accessed via the web and hosted by Drake.
- j. 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.
- k. 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.
- l. Software as a Service (“SaaS”) - A version of the Software licensed through a subscription service via the web and hosted by Drake.
- m. 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.
- n. Subscriber - A Licensee utilizing SaaS products.
- o. EFIN - Electronic Filing Identification Number assigned by the Internal Revenue Service (“IRS”).
- p. Taxpayer Data - any information that is obtained by Licensee or used by Licensee in the preparation of a tax return.
- q. Tax Returns – The federal and state individual and business tax return forms offered through the Software for calculating and reporting tax information with the IRS, state and other tax agencies.

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 Licensee agrees to the terms and conditions of this Agreement. In consideration of and upon receipt of payment of the License Fee by Licensee, Drake grants to Licensee a non-exclusive, non-transferable, limited license to use the Software and any associated manuals and/or documentation subject to 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. Reselling, charging separate fees for the Software, or representing the

authorization to sell or license the Software on behalf of Drake is strictly prohibited.

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 Tax Returns. Except as expressly provided in Section 10(b) (SaaS), 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 electronic filing of Tax Returns and

processing of Bank Products. ALL OTHER USES ARE EXPRESSLY PROHIBITED.

- f. General Data Protection Regulation: Drake does not market the Software to persons residing in the European Economic Area (“EEA”) and the Software is not intended for use inside the EEA. By using the Software, Licensee agrees not to collect data from persons residing inside the EEA and understands and agrees that any data or information transferred to Drake will be processed and stored in the United States and subject to United States law.
- g. 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, 2020. Drake reserves the right to require Licensee to download and install updates to the Software. If Licensee does not comply with this requirement, Drake may, in its sole discretion, take any action Drake deems appropriate, including limiting or terminating Licensee's use of the Software until updates are installed.
- h. 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 Tax Returns.
- b. Licensee acknowledges that Licensee does not rely upon Drake for advice regarding the appropriate tax treatment of items reflected on Tax Returns prepared and/or processed using the Software. Licensee will review any computations made by the Software and satisfy Licensee that those computations and reporting 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 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 4(e), 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 such responsibility is 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 IRS.
- 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.

- l. Licensee acknowledges that by using a computer system and the Software to prepare and transmit Tax Returns electronically, Licensee consents to the disclosure of all information relating to its use of the computer system and the Software to generate Tax Returns and to the electronic transmission of Tax Returns to the state and/or federal agency as applicable under existing law.
- m. Licensee acknowledges and consents to Drake's collection through use of the Software of non-Tax Return related data and information, required and used by Drake for its internal business purposes, fraud prevention, data privacy, and maintaining the security and integrity of the tax system and/or the Software.

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 TAX RETURNS NOT IN COMPLIANCE WITH THIS SECTION 5 WILL BE CAUSE FOR IMMEDIATE TERMINATION OF THIS AGREEMENT AND MAY REPRESENT A VIOLATION OF SECTION 4(e) FOR NON-IRS OR STATE COMPLIANT ACTIVITY AND CIRCUMVENTING SECURITY MEASURES. Drake reserves the right to charge Licensee additional fees for any Bank Products processed not in compliance with this Agreement.
- b. Licensee understands and agrees that fees may be charged by Drake for Tax Returns with Bank Products. A transmission fee and a technology fee may be withheld for each funded Bank Product transmitted through Drake, and 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. Licensee understands and agrees Bank Product availability, related software pricing and fees may vary by State and are subject to change in accordance with regulatory requirements, at Drake's sole determination.

6. **Term and Termination.**

- a. The license granted under this Agreement is for tax year 2019 only. The ability to electronically file Tax Returns, access to web sites and other web based products related to the Software will expire on December 31, 2020, although access to associated data may be available to Licensee upon request for an additional thirty (30) days after expiration.

- b. Extension of Term: If Licensee purchases a license for tax year 2020, this Agreement, as it applies to the tax year 2019 Software only, will be extended for an additional year, subject to Licensee's compliance with the tax year 2020 License Agreement. Licensee acknowledges that use of the Software after October 15, 2020 may be subject to limitations in functionality or additional requirements, in Drake's sole discretion.
- 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 SaaS.
- d. Other Termination: Drake may suspend or otherwise limit the use of the Software including, but not limited to, suspending electronic filing of Tax Returns by Licensee and may take any other actions it deems necessary, if 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.
- e. Drake reserves the right to limit or deny Licensee access to the Software and features of the Software, including electronic filing of Tax Returns, 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, 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 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.
- f. This Agreement applies only to the 2019 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.

- g. 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 and electronic filing of Tax Returns and processing of Bank Products for taxpayers. Any other use of the 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, 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 thirty (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. 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/sysreq2019.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, 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, Licensee must purchase a valid license.

10. **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 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.
- 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 Section 3(a) of this Agreement. The following additional terms and conditions 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 the License Fee by Subscriber, Drake grants to Subscriber a non-exclusive, non-transferable, 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. Each SaaS license shall apply to only 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.

11. **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 the 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 Tax Returns activated. Licensee may convert to an unlimited package of the Desktop by purchasing 85 Tax 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.

12. **Refund Policy.**

NO REFUND OF FEES WILL BE MADE if Licensee has activated, prepared or filed any Tax Returns or violated any provision of this Agreement. Refunds are subject to and may be limited by discounts on multiple product purchases made by Licensee, and a "Full Refund" may be limited in conjunction with the current Drake Refund Policy located at <https://www.drakesoftware.com/pdf/refundpolicy2019.pdf>. All determinations of the refund amount for multiple product purchases and discounts will be made in

the sole discretion of Drake. Where return of materials is concerned for the purposes of a refund, TIME IS OF THE ESSENCE.

13. **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 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.

14. **Privacy Policy and Terms of Use.**

By using the Software, 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 laws and regulations, including those relating to data security and privacy.

15. **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 operations 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) all claims, actions or legal proceedings by a third party relating to the Agreement or Licensee's use of the

Software or the results thereof, including proceedings related to collection and enforcement; (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 Licensee. The obligations set forth in this Section 15 shall survive the termination or expiration of this Agreement.

16. **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 thirty (30) days of becoming aware of said claim.

17. **Representations and Warranties of Drake and Limitation of Liability**

- a. Drake represents and warrants that through October 15, 2020 (the “Warranty Period”) it has the authority and right to grant Licensee use of the Software as described in this Agreement. 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, Licensee acknowledges that commercial preparation of Tax Returns, electronic filing of Tax Returns, processing of Bank Products, and related processing and/or preparation and reporting is subject to change and is of such complexity that the Software may have defects.
- b. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 17(a), THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. DRAKE, ITS AFFILIATES, AND THEIR THIRD PARTY SERVICE PROVIDERS, LICENSORS, OR SUPPLIERS (COLLECTIVELY, "SUPPLIERS") SPECIFICALLY DISCLAIM ANY AND ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IRRESPECTIVE OF ANY COURSE OF DEALING OR PERFORMANCE, CUSTOM OR USAGE OF TRADE,

ALL SUCH WARRANTIES BEING EXPRESSLY EXCLUDED. WITHOUT LIMITING THE FOREGOING, DRAKE, ITS AFFILIATES, AND THEIR SUPPLIERS MAKE NO WARRANTY OF ANY KIND THAT THE SOFTWARE, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEMS, OR OTHER SERVICES, OR BE DEFECT OR ERROR FREE OR THAT SOFTWARE DEFECTS WILL BE CORRECTED. NO EMPLOYEE OR AGENT OF DRAKE IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS ANY OF THE WARRANTIES OR LIMITATIONS CONTAINED IN THIS AGREEMENT.

- c. UNDER NO CIRCUMSTANCES WILL THE ENTIRE LIABILITY OF DRAKE, ITS AFFILIATES, AND THEIR SUPPLIERS EXCEED THE AMOUNT PAID BY LICENSEE FOR USE OF THE SOFTWARE SUBJECT TO THIS AGREEMENT. IN NO EVENT SHALL ANY AMOUNTS PAID TO DRAKE FOR THIRD PARTY PRODUCTS OR SERVICES, INCLUDING BANK PRODUCTS, BE INCLUDED IN THE AMOUNT PAID FOR THE SOFTWARE FOR PURPOSES OF THIS SECTION. 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, ITS AFFILIATES, AND THEIR SUPPLIERS 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.

18. **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/license2019.pdf>.)

19. **Consent to Electronic Communications.**

By using the Software, Licensee consents to receive all communications, notices, agreements, renewals, statements, and disclosures (collectively, "Communications") electronically. Drake may provide Communications to

Licensee related to the Software, Drake's services and Licensee's use thereof by electronic communication, including by email, facsimile, or by making such Communications available on Drake's websites.

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, on-line databases (OLDB), account management website (EOM), Drake user forum, electronic communication interfaces, Gruntworx tax workflow automation tools, mobile apps, SecureFilePro file transfer software, 7216 sample letters and similar tax resources, conversion software, accounting and payroll software, 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, security, reliability 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 Third-Party Products and Services offered by Drake.**

Licensee understands that Drake may offer, suggest or provide to Licensee other third-party products and services, including but not limited to on-line research,

Bank Products, W-2 import services, investment and financial services, tax due electronic payments, audit protection services, merchant card processing tools, retirement and estate planning services, forms, checks and envelope supplies, and the like. Drake makes no guarantee or representation as to the delivery time, functionality, security, reliability 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 offered, suggested or provided to Licensee by Drake.

24. **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 24(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.
- f. This Agreement, together with Drake's Terms of Use and Privacy Policy, constitutes the sole and entire agreement of the parties and supersedes all understandings, representations, and warranties, both written and oral, with respect to the subject matter hereof.