

Drake Portals Service Agreement

Date last modified: 4/17/25

IMPORTANT – PLEASE READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS

This Service Agreement ("Agreement") is a binding agreement between you ("Customer" or "you") and Drake Software, LLC ("Drake"), and governs your use of Drake Portals and any other services or features you purchase or which are made available to you through Drake Portals, including Drake E-Sign Online (collectively, the "Service").

BY SIGNING UP FOR AN ACCOUNT OR USING THE SERVICE, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE AUTHORIZED ON BEHALF OF AUTHORIZED USER TO ENTER INTO THIS AGREEMENT; AND (C) ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE MANDATORY INDIVIDUAL ARBITRATION PROVISION, LIMITATIONS ON LIABILITY AND JURY TRIAL WAIVER DESCRIBED HEREIN.

1. Definitions

Capitalized terms have the meanings below or as otherwise set forth in this Agreement:

- "Account" means Customer's account, which permits Customer to access the Service. Account shall mean and include "Master Account" and "Sub-Accounts" as applicable.
- "Account Credentials" means the username selected by Customer in combination with a password and any other security credentials used alone or in combination, to verify Customer's identity and permit Customer to access the Service and manage its Account.
- "Authorized User" means Customer and each of its employees, agents, or representatives, as applicable, who are designated by Customer to access the Service in accordance with the terms of this Agreement.
- "Customer Data" means all data, information or files, electronic or otherwise, provided by Customer or any Authorized User to Drake, and stored in the Service, including but not limited to Third Party Data, and all files moved, saved, scanned or uploaded by Customer or any Authorized User to the Service for storage, delivery or other business purposes.
- "Drake's Affiliates" means any entity, individual, firm, or corporation that is, directly or indirectly, through one or more intermediaries, controlled by, or is under common control with, Drake.
- "Drake E-Sign Online" means the remote eSignature application provided by Drake through the Service that enables Customers to collect eSignatures on select tax return documents from their Third Party Clients, provided Customer has purchased eSignature Events.
- "Drake Materials" means all documentation, manuals or other materials provided by Drake related to the Service, in printed, electronic or other form, that describe the operation, use or specifications of the Service.
- "Drake Portals" means the service offered by Drake for the purposes of storing and securely delivering files to other parties, and when permitted by Customer, for the upload and delivery of

Third Party Data by a Third Party Client, and all other Permitted Uses.

- “Drake Tax” means the Drake Software® professional tax software licensed by Customer.
- “Effective Date” means the earlier of when Customer signs up for an Account or begins using the Service.
- “eSignature” means a signature that is applied to a document electronically through Drake E-Sign Online on an electronic device such as a desktop computer or mobile device.
- “eSignature Event” means a single PDF document with eSignature fields produced from Drake Tax for the purposes of obtaining eSignatures from Customer's Third Party Clients using Drake Portals. The PDF can include multiple signature fields for the Third Party Client, including fields for a Third Party Client's spouse if married filing jointly.
- “eSignature Event Bank” represents the total eSignature Events purchased by Customer and available for use.
- “Intellectual Property Rights” means all intellectual property rights, including without limitation, any unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
- “Master Account” means the Account for the primary office/owner of a Multi-Site Account.
- “Multi-Site Account” means an Account that has purchased software licenses for additional sites/Sub-Accounts.
- “Permitted Uses” means lawful uses of the Service by Authorized Users for the intended purpose and in accordance with this Agreement, including use of Drake E-Sign Online if Customer has purchased such Service.
- “Single-Site Account” means a Customer with one site.
- “Sub-Account(s)” means Accounts for any additional sites under a Master Account for a Multi-Site Account.
- “Third Party Client” means any third party that Customer, in the normal course of Customer's use of the Service, designates as its client, for the purpose of receiving files and/or sending files to Customer or collecting eSignatures, as applicable, through the Service.
- “Third Party Data” means all information and data uploaded and delivered by a Third Party Client using the Service in the course of Customer providing services to such Third Party Client.

2. **Service**

Drake agrees to provide Customer with the Service during the Term of this Agreement in accordance with the terms and conditions of this Agreement.

3. **Subscription License**

- (a) Access and Use – Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, Drake hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to access and use the Service for the Permitted Uses during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein (the “**Subscription**”). Such use is limited to Customer's internal

business use. Subscription access to the Service does not transfer or convey any right, title or interest in or to the Service, Drake Materials, or Drake Intellectual Property Rights. Neither Customer nor any Authorized User shall rent, lease, lend, sell, assign, distribute, publish, or transfer the Service to any third party. Customer is responsible for providing, at its expense, all necessary connections and equipment needed to access the Service.

- (b) Drake Materials License – Drake hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to use the Drake Materials during the Term solely for Customer's internal business purposes in connection with its use of the Service.
- (c) Security – Customer will take reasonable precautions and employ physical, administrative and technical controls to safeguard and keep confidential its Account Credentials and protect against unauthorized access to or use of the Service. Customer is responsible for all access to and use of the Service directly or indirectly by or through its Account Credentials and all charges incurred under its Account.
- (d) Reservation of Rights – Drake reserves all rights not expressly granted to Customer in this Agreement and except for the limited rights and licenses expressly granted under this Agreement, all right, title, and interest in and to the Service, Drake Materials, and Drake Intellectual Property Rights are and will remain with Drake.
- (e) Suspension – Notwithstanding anything to the contrary in this Agreement, Drake may temporarily suspend Customer's access to any portion or all of the Service if: (i) Drake reasonably determines that (A) there is a threat or attack on any of the Drake's Intellectual Property Rights; (B) Customer's use of the Service may or does disrupt or pose a security risk to the Service or to any other customer or vendor of Drake; (C) Customer is using the Service for fraudulent or illegal activities; (D) Drake's provision of the Service to Customer is prohibited by applicable law; (ii) any vendor of Drake's has suspended or terminated Drake's access to or use of any third party services or products required to enable Customer to access the Service; or (iii) Customer fails to make any payment when due. Drake shall use commercially reasonable efforts to provide notice of any Service suspension and updates regarding the resumption of access to the Service following any suspension. Drake will have no liability for any damages, liabilities, losses (including any loss of data or profits), or any other consequences that Customer may incur as a result of a Service suspension.

4. **Customer Representations, Warranties, and Covenants**

Customer represents, warrants, and covenants to Drake that it:

- (a) has, and throughout the Term will retain, the full right, power and authority to enter into this Agreement and perform its obligations hereunder;
- (b) shall not store, permit the storage by a Third Party Client, or use the Service to transfer any data that infringes the Intellectual Property Rights of any third party, including without limitation, patent, trademark and copyright rights;
- (c) shall comply with all applicable laws, rules, and regulations including, without limitation, those related to consumer privacy, security, and identity verification consistent with IRS requirements for e-file signature authorization;
- (d) will not store or permit the storage of any data that would include any inappropriate content,

- including without limitation, unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory, pornographic or profane material or any material that could constitute or encourage unlawful conduct, viruses, time bombs, Trojan horses, worms, and cancelbots;
- (e) shall not permit or enable any non-Authorized User to access the Service or otherwise use the Service except as expressly granted herein;
 - (f) is and shall remain responsible for all activity occurring through its Account by any and all third parties, including Authorized Users and Third Party Clients; and
 - (g) has exclusive control and responsibility for all Customer Data, including any tax returns/documents used or transmitted with the Service.

5. Term and Termination

(a) Term

- (i) Monthly Subscription – The initial term of this Agreement shall begin on the Effective Date and continue until the end of the current billing cycle (on a pro rata basis for the first term if the Effective Date is not on the first day of the month) for one (1) month (a “Monthly Subscription”) per the terms in Section 6 below (the “Initial Term”), unless earlier terminated as provided in this Agreement. In the event the Agreement is not terminated as provided in this Agreement or Customer does not request a different Term prior to the end of the then-current Term, this Agreement shall automatically renew for an additional one (1) month (each, a “Renewal Term” and together with the Initial Term, the “Term”).
- (ii) Annual Subscription (Stand Alone) – The initial term of this Agreement shall begin on the Effective Date and continue until the end of the current billing cycle (on a pro rata basis for the first term if the Effective Date is not on the first day of the month) for one (1) year (an “Annual Subscription”) per the terms in Section 6 below (the “Initial Term”), unless earlier terminated as provided in this Agreement. In the event the Agreement is not terminated as provided in this Agreement or Customer does not request a different Term prior to the end of the then-current Term, this Agreement shall automatically renew for an additional one (1) year (each, a “Renewal Term” and together with the Initial Term, the “Term”).
- (iii) Annual Subscription (Online Renewal) – The initial term of this Agreement shall begin on the Effective Date and continue until the end of the current billing cycle for one (1) year (an “Annual Subscription”) per the terms in Section 6 below (the “Initial Term”), unless earlier terminated as provided in this Agreement. In the event the Agreement is not terminated as provided in this Agreement or Customer does not request a different Term prior to the end of the then-current Term, this Agreement shall automatically renew for an additional one (1) year (each, a “Renewal Term” and together with the Initial Term, the “Term”).
- (iv) Trial Subscription – From time to time, in connection with various promotional offers, Drake may make the Service available without charge to certain eligible Customers (in each case, a “Trial Subscription”). The initial term of this Agreement for any Trial Subscription shall begin on the Effective Date and continue until the end of the trial period specified in the promotion (the “Initial Term”), unless earlier terminated as

provided in this Agreement. As part of the Trial Subscription, Drake may require Customer to provide a credit card or other valid payment method at the time of subscribing to the Trial Subscription, in which case, Customer authorizes Drake to charge Customer automatically on the first day after the Trial Subscription for a Monthly Subscription (each, a “Renewal Term” and together with the Initial Term, the “Term”). Customer may terminate or change Customer’s Subscription prior to expiration of the Trial Subscription, as provided in this Agreement. If, at the time of sign up for the Trial Subscription, (i) Drake does not require Customer to provide a credit card or other payment method or (ii) Customer does not provide a valid payment method, then prior to the end of the Initial Term, Customer must (i) notify Drake that it wishes to continue the Subscription and (ii) provide a valid payment method through Customer’s Account.

- (b) Termination – Either party may terminate this Agreement by providing written notice to the other party prior to the end of the then-current Term. Drake may terminate this Agreement effective upon written notice to Customer if Customer or any of its Authorized Users breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for more than fifteen (15) days after providing written notice. Drake may terminate this Agreement effective upon written notice to Customer if Customer: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- (c) No Duty to Retain – At the point of termination, Customer's Account is completely removed from Drake's system and Drake has no obligation to continue storing or providing access to Customer Data, including Third Party Data. Drake, in its sole discretion, may recycle or reassign Customer's Account subdomain.

6. **Billing**

Except as explicitly set forth herein, all payments for the Service are due before delivery of the Service. All Subscriptions to the Service are subject to Automated Recurring Billing (“ARB”) by credit card for purposes of renewal and continuation of Service. All prices and payment terms, ARB, billing policies, or other payment or billing issues are subject to change at the sole discretion of Drake. Prices and payment terms at the time of payment will apply to Customer’s Account. Customer will be notified by email to the email address associated with Customer’s Account thirty (30) days prior to any Subscription price changes to Drake Portals going into effect. If Customer's credit card is declined, Customer will be notified by Drake by email. Upon Customer's failure to pay its Account, Drake reserves the right to suspend Customer's Account or to terminate this Agreement without further notice to Customer.

- (a) Billing Cycle – Customers may sign up for a Monthly Subscription or an Annual Subscription. A standard billing cycle for (i) Monthly Subscriptions is from the first day to the last day of every month and (ii) Annual Subscriptions (both Stand Alone and Online Renewal) is from the first day

of the first month to the last day of the twelfth month. For Monthly Subscriptions and Annual Subscriptions (Stand Alone), Customer's first month of Service in the billing cycle will be prorated if the Effective Date is not on the first day of the month.

- (b) Monthly Subscription – For Customers with a Monthly Subscription, Customer's authorized credit card will be charged when Customer subscribes to the Service (prorated for the first month if applicable). For the duration of the Service until cancelled or terminated in accordance with this Agreement, Customer will be automatically charged the then-current fees associated with the Service on or about the first day of the month. Multi-Site Customers must sign up for an Annual Subscription in order to utilize the Sub-Account ordering and management features.
- (c) Annual Subscription – An Annual Subscription billing cycle is for twelve (12) months, including the first prorated month (if applicable). For an Annual Subscription, Customer's authorized credit card will be charged the then-current total fee for the Annual Subscription when Customer subscribes to the Service. The then-current total fee will include the first month (as described above for each Annual Subscription option and prorated, if applicable) and the remaining full eleven (11) months. For the duration of the Service until cancelled or terminated in accordance with this Agreement, Customer will be automatically charged the then-current Annual Subscription fee associated with the Service on or about the anniversary of Customer's Annual Subscription start date.
- (d) Change in Subscription –
 - i. If Customer wishes to change from a Monthly Subscription to an Annual Subscription, Customer's credit card will be charged immediately upon change in Subscription Term and the Annual Subscription billing cycle will begin at the start of the following month and continue for a length of twelve (12) months. Customer's Subscription start date for purposes of billing and the Term of this Agreement will be extended accordingly to reflect the Term of the Annual Subscription period.
 - ii. If a Multi-Site Account is on a Monthly Subscription and wants to add Sub-Accounts, it must first convert to an Annual Subscription.
- (e) Adding a Sub-Account Subscription –
 - i. A Multi-Site Account with an Annual Subscription may add Sub-Account Subscriptions to its Annual Subscription at any time. The Sub-Account Subscriptions align to the billing cycle of the Master Account and are pro-rated for the months remaining in the billing cycle. For the duration of the Service until cancelled or terminated in accordance with this Agreement, the Multi-Site Account will be automatically charged the then-current Annual Subscription fee associated with the Service for its Master Account and Sub-Accounts on or about the anniversary of the Master Account's Annual Subscription start date.
- (f) Storage Upgrades – A storage upgrade is an increase in Customer's storage use that requires Customer to purchase additional storage. If Customer upgrades the storage capacity associated with its Account, the credit card charge for the additional storage purchased and the storage capacity increase will occur at the time of the upgrade request.
- (g) Taxes – Customer is responsible for all sales, use, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local government or regulatory authority on any amounts payable by Customer hereunder.

- (h) Cancellation – Monthly Subscriptions and Annual Subscriptions can be cancelled at any time by Customer using the form available in the Admin section of Customer's Account on Drake's website. The cancellation notice, once received and verified, will terminate the Subscription at the end of the next monthly billing period. Customers with an Annual Subscription may request a prorated refund by contacting Drake at (828) 524-8020. If a refund is granted, Drake reserves the right to charge Customer an early termination fee, which will be deducted from the refund. Any such refund will be calculated based on the then-current Subscription fee for Monthly Subscriptions (rather than the fees paid by Customer for the Annual Subscription). Any unused eSignature Events will remain in Customer's Account for twelve (12) months after termination and will be available for use upon any restoration of Customer's Subscription within such twelve-month period. Customer can restore its Account prior to the end of the billing period by logging in to its Account, navigating to the Account settings screen, and choosing the "Restore My Account" option.

7. Drake E-Sign Online Terms

This Section applies in addition to the other terms and conditions of this Agreement if Customer has purchased Drake E-Sign Online.

- (a) Drake E-Sign Online is available for 1040 returns and business returns. Your Third Party Clients **must be at least 18 years old** to sign their federal tax return using Drake E-Sign Online. By using Drake E-Sign Online, Customer acknowledges and agrees that it (i) is solely responsible for ensuring that the tax returns/documents it uses with the Service are appropriate for eSignature, and Drake is not responsible or liable for any such determination or use; and (ii) has provided appropriate consumer disclosures and received consent from its Third Party Clients for eSignature.
- (b) eSignature Events are purchased from Customer's Account. Multiple eSignature Events can be purchased at one time, allowing Customer to maintain an eSignature Event Bank. Once purchased, eSignature Events DO NOT EXPIRE as long as Customer continues to license Drake Tax and maintain an active Drake Portals Subscription. Customer's eSignature Event Bank will be displayed on the screen when it uses an eSignature Event. eSignature Events are counted as used when you choose the option from Drake Tax's View/Print screen or from the Drake Portals website to create and send the PDF document to Third Party Clients to collect eSignatures. If the PDF must be created again **after** being counted as an eSignature Event due to changes in the tax return forms, it will be treated as a new eSignature Event and will be counted against the eSignature Event Bank.
- (c) A Third Party Client will have **three** attempts to pass the ID verification test by correctly answering at least four out of five dynamic Knowledge-based Authentication ("KBA") questions. Dynamic KBA questions are compiled from public and private data, such as credit reports or transaction history, and are used to help verify a person's identity. IF A THIRD PARTY CLIENT CANNOT PASS THE TEST IN THREE ATTEMPTS, THEY WILL NOT BE GIVEN ACCESS TO SIGN THE DOCUMENTS REMOTELY.
- (d) The current version of Drake E-Sign Online only supports **a single household address** for both the Third Party Client and spouse. If the spouse has **never** lived at the address keyed in Drake

Tax data entry, there is a strong likelihood that the spouse **will not** be able to remotely sign the return. The verification software must be able to match taxpayer (and spouse) to the address provided in order to ask the appropriate KBA questions to the taxpayer (and spouse). It is advised that you **not** use an eSignature Event when you are not sure if both taxpayers have lived at the address on the screen.

- (e) PAYMENT FOR DRAKE E-SIGN ONLINE IS REQUIRED IN ADVANCE. ALL PAYMENTS ARE NON-REFUNDABLE. This includes, but is not limited to, if Customer's Third Party Clients are unable to sign remotely due to technical reasons or if they are unable to pass the ID verification test through KBA.
- (f) Drake E-Sign Online is designed to work on IOS and Android devices, Windows-based desktop computers and Macs. However, THERE IS NO GUARANTEE that Drake E-Sign Online will work on all configurations, browsers, devices, platforms and operating systems. DRAKE DOES NOT GUARANTEE that all devices and computers will be able to use the Service. IMPORTANT: DRAKE STRONGLY ENCOURAGES YOU TO ENSURE THAT YOUR THIRD PARTY CLIENTS ARE WILLING AND CAPABLE OF ESIGNING ONLINE PRIOR TO SENDING THEM A DOCUMENT FOR ESIGNATURE.
- (g) All prices and terms as they relate to payments, billing policies, or other payment or billing issues with respect to Drake E-Sign Online are subject to change at any time without prior notice to Customer, at the discretion of Drake.

8. Privacy Notice and Terms of Service

- (a) By using the Service, Customer agrees to the terms and conditions of Drake's [Privacy Notice](#) and [Terms of Service](#), which are available on its website(s) and are subject to change. All notices of changes to Drake's [Privacy Notice](#) and [Terms of Service](#) will be provided by posting revisions on the applicable Drake website. Customer understands that any suspected illegal or fraudulent activity will be reported to the appropriate governmental or law enforcement authorities and may result in suspension and/or termination of Customer's Subscription and Account. Customer 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.
- (b) California Consumer Privacy Act / California Privacy Rights Act: To the extent that the California Consumer Privacy Act and California Privacy Rights Act, as amended (Cal. Civ. Code §§ 1798.100 et seq.) ("CCPA") is applicable to Customer, the parties agree that Drake qualifies as a "Business," that data is shared with "Service Providers" for a "Business purpose" (as defined under Cal. Civ. Code §§ 1798.140), which is to deliver the Service and related services and products to Customer, and that such sharing of data is done so in compliance with the CCPA. To the extent that the CCPA is applicable to Customer's taxpayer clients and Customer qualifies as a "Business" under the CCPA, the parties agree that Drake is a "Service Provider." Customer represents, warrants and covenants that all "Personal Information" (as defined under the CCPA or applicable data privacy laws) of Customer's taxpayer clients provided to Drake or otherwise made available to Drake through the Service and Drake's related services and products is done so in compliance with applicable laws, and that Customer has provided all notices and consents, and otherwise has all necessary and appropriate authorization for Drake to use such "Personal Information" to provide Customer the Service and Drake's related services and products in

accordance with this Agreement. To learn more about privacy rights available to California consumers, please refer to Drake's [Privacy Notice](#).

- (c) Depending on the state in which you or your clients' reside, the laws in such state may provide additional rights regarding our collection and use of personal information. Both Customer and Drake will comply with privacy laws of the relevant state or states and will provide each other with commercially reasonably requested assistance to enable the requestor to comply with and fulfill its own obligations thereunder.

9. Indemnification

Customer shall indemnify, defend and hold harmless Drake, Drake's Affiliates, and their respective directors, officers, employees and agents, successors and assigns (each, a "Drake Indemnitee") from and against any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments and expenses, including, without limitation, reasonable attorneys' fees, court costs and other legal expenses, incurred by a Drake Indemnitee that arise out of or result from, or are alleged to arise out of or result from: (i) Authorized User's failure to comply with applicable laws, rules, and regulations; (ii) any Customer Data, including Third Party Data, including Drake's processing of such Customer Data as provided in this Agreement; (iii) the infringement of any third party rights, including Intellectual Property Rights; (iv) any unauthorized or unlawful use of the Service by Customer or any of its Authorized Users; and (v) Authorized User's negligence or willful misconduct. Customer may not settle any claim against a Drake Indemnitee unless the Drake Indemnitee consents to such settlement, and further provided that the Drake Indemnitee will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice.

10. Disclaimer of Warranties

EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE SERVICE, DRAKE MATERIALS, AND DRAKE INTELLECTUAL PROPERTY RIGHTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. DRAKE, DRAKE'S AFFILIATES, AND THEIR RESPECTIVE THIRD PARTY SERVICE PROVIDERS, LICENSORS, DISTRIBUTORS, DEALERS, EMPLOYEES, OFFICERS AND DIRECTORS (COLLECTIVELY, "REPRESENTATIVES") HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE, OR THAT THE SERVICE, DRAKE MATERIALS, DRAKE INTELLECTUAL PROPERTY RIGHTS, OR OTHER WORK PRODUCT WILL BE SECURE, UNINTERRUPTED, ERROR-FREE OR SUITABLE FOR THE PARTICULAR NEEDS OF CUSTOMER OR ANY AUTHORIZED USER OR THIRD PARTY. WITHOUT LIMITING THE FOREGOING, DRAKE, DRAKE'S AFFILIATES, AND THEIR REPRESENTATIVES MAKE NO WARRANTY OF ANY KIND THAT THE SERVICE, THE DRAKE MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'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 DEFECTS WILL BE CORRECTED. NO REPRESENTATIVE OF DRAKE IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS ANY OF THE WARRANTIES OR LIMITATIONS CONTAINED IN THIS AGREEMENT. THE SERVICE MAY BE SUBJECT TO LIMITATIONS,

DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, AND OTHER TECHNOLOGIES NECESSARY TO OFFER THE SERVICE. DRAKE, DRAKE'S AFFILIATES, AND THEIR RESPECTIVE REPRESENTATIVES ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

11. Limitation of Liability

DRAKE'S, DRAKE'S AFFILIATES, AND THEIR RESPECTIVE REPRESENTATIVES' TOTAL LIABILITY HEREUNDER INCLUDING, WITHOUT LIMITATION TO CUSTOMER AND ANY OF ITS AUTHORIZED USERS AND THIRD-PARTY CLIENTS, SHALL NOT EXCEED THE FEES PAID TO DRAKE HEREUNDER. IN NO EVENT WILL DRAKE, DRAKE'S AFFILIATES, AND/OR THEIR RESPECTIVE REPRESENTATIVES' BE LIABLE FOR ANY (A) CLAIMS ASSERTING OR BASED ON THE USE, INABILITY TO USE, LOSS, INTERRUPTION OR DELAY OF THE SERVICE, LOSS OF USE OF FACILITY OR EQUIPMENT, LOST BUSINESS, REVENUES OR PROFITS, LOSS OF GOODWILL, FAILURE TO ACHIEVE COST SAVINGS, FAILURE OR INCREASED COST OF OPERATIONS, LOSS, DAMAGE OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SERVICE FAILURE, MALFUNCTION, DOWNTIME, SHUTDOWN, SERVICE INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION OR BREACHES IN SYSTEM SECURITY, OR (B) CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR ENHANCED DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, IN THE CASE OF EACH OF CLAUSE (A) AND CLAUSE (B), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE OTHERWISE FORESEEABLE, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12. Insurance

During the Term, Customer shall maintain, policies of the types and with the coverage amounts that it deems commercially reasonable for Customer's operations. Such policies shall include Drake as an additional insured.

13. Intellectual Property Rights

- (a) Drake, and its Representatives, where applicable, own all right, title and interest, including all related Intellectual Property Rights, in and to: (a) all of Drake's technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Authorized Users by Drake in providing the Service (the "Drake Technology"); (b) the Drake Materials; and, (c) the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Drake Technology or the Intellectual Property Rights owned by Drake. The Drake Software® name, logo, and the product names associated with the Service are trademarks and/or service marks of Drake, and no right or license is granted to use them except as

otherwise expressly permitted in this Agreement.

- (b) Customer Data – As between Customer and Drake, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, subject to the rights and permissions granted in Section 13(c).
- (c) Consent to Use Customer Data – Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Drake to enforce this Agreement and exercise Drake's rights and perform Drake's obligations hereunder with respect to the Service.

14. **Force Majeure**

Drake shall not be liable or responsible to Customer, its Authorized Users or Third Party Clients, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by or results from acts or events beyond Drake's reasonable control, including, without limitation, the following: (a) acts of God; (b) flood, fire or explosion, earthquake, epidemics, pandemics, or quarantines; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the Effective Date; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (i) shortage of adequate power or transportation facilities.

15. **General Provisions**

- (a) Further Assurances – Customer shall, upon the request of Drake, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.
- (b) Relationship of Parties – 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 or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- (c) Notices – All notices, requests, consents, claims, demands, waivers and other communications hereunder (other than routine communications having no legal effect) by Customer to Drake shall be in writing and addressed to Drake as follows (or as otherwise specified by Drake):

Attn: Legal Department
Drake Software, LLC
111 Technology Drive
Franklin, NC 28734

Email: legal@drakesoftware.com

Notices sent in accordance with this Section 15(c) shall be deemed effectively given: (a) when

received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) when sent by email, with confirmation of receipt; or (d) on the date delivered, by certified or registered mail, return receipt requested, postage prepaid.

- (d) Consent to Electronic Communications – By using the Service, Customer consents to receive all communications, notices, agreements, renewals, statements, and disclosures (collectively, “Communications”) electronically. Drake may provide Communications to Customer related to the Service, and Customer's use thereof by electronic communication, including by email, text message, facsimile, or by making such Communications available on Drake's websites.
- (e) Entire Agreement – This Agreement, together with Drake's Privacy Notice and Terms of Use, 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.
- (f) Assignment – This Agreement shall not be assigned by Customer without the prior written consent of Drake. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and permitted assigns.
- (g) Waiver – Failure to enforce any provisions of this Agreement shall not constitute a waiver of any of the terms and conditions hereof.
- (h) No Third-Party Beneficiaries – This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and except as provided in Section 9 (Indemnification), Section 10 (Disclaimer of Warranties), and Section 11 (Limitation of Liability), nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- (i) Amendment – This Agreement may be modified only by Drake, at its sole discretion. Customer's continued use of the Service shall be deemed to be Customer's acceptance of and agreement to Drake's modification of this Agreement.
- (j) Severability – If any provision of this Agreement is found by a court of competent jurisdiction to be legally invalid or unenforceable: (i) the validity and enforceability of the remainder of this Agreement shall not be affected, (ii) such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law, and (iii) such provision shall be valid, enforceable, and enforced in its modified form.
- (k) Governing Law, Venue and Dispute Resolution – This Agreement has been entered into and shall be governed, construed, and interpreted pursuant to and in accordance with the laws of the State of North Carolina, without regard to conflicts of law principles. Any actions that are not subject to mandatory arbitration or disputes over the arbitrability of any matter shall be brought in either the state court for the county of Macon, or federal court in the Western District, North Carolina. 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 resolved through binding arbitration before a single neutral arbitrator that is mutually acceptable to the parties in accordance with then existing Commercial Arbitration Rules of the American Arbitration Association. Arbitrators shall be persons experienced in software related issues. Such arbitration shall take place in the City of Franklin, County of Macon, State of North Carolina. Any judgment on the arbitration award may be

entered in any court having jurisdiction over the subject matter of the controversy.
NOTWITHSTANDING THE ABOVE, EACH OF CUSTOMER, AUTHORIZED USER, AND DRAKE HEREBY
IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING
ARISING OUT OF OR RELATED TO THIS SUPPLEMENTAL AGREEMENT.

- (l) Survival – The force and continuing nature of the parties' obligations under this Agreement shall not be affected by the termination of any business relationship between the parties.
- (m) Geographic Restrictions – Drake does not market the Service to persons residing in the United Kingdom, Switzerland or the European Economic Area (“EEA”) and the Service is not intended for use inside the United Kingdom, Switzerland and EEA. By using the Service, Customer agrees not to collect data from persons residing inside the United Kingdom, Switzerland or 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.