



Drake Portals Service Agreement

Last modified: November 17, 2022

IMPORTANT – PLEASE READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS

This Service Agreement (the “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 made available to you through Drake Portals, including Drake E-Sign Online (collectively, the “Service”).

By signing up for an Account and/or using the Service, you (A) acknowledge that you have read and understand this Agreement; (B) represent that you are authorized on behalf of Customer to enter into this Agreement; and (C) you accept the terms and conditions of this Agreement.

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 Credentials” means the username selected by Customer in combination with a password and any other security credentials used along 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 date Customer accepts this Agreement when setting up its Account.

“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 the User 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.

“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.

“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 or the Drake Materials. 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 Access 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 and the Drake Materials 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 disrupts or poses 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 Services 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:
 - a. it has, and throughout the Term will retain, the full right, power and authority to enter into this Agreement and perform its obligations hereunder;
 - b. it 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. it shall comply with all applicable laws and regulations, including those related to consumer privacy and security;
 - d. it 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. it shall not permit or enable any non-Authorized User to access the Service or otherwise use the Service except as expressly granted herein;
- f. it 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. it 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. **Subscription Term** – The initial term of this Agreement shall begin on 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 either one (1) month (a “Monthly Subscription”) or one (1) year (an “Annual Subscription”) per the terms in Section 6(a) below (the “Initial Term”), as selected by Customer, 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 the same Term period, i.e., for an additional one (1) month or one (1) year, as applicable (each, a “Renewal Term” and together with the Initial Term, the “Term”).
- b. **Termination** – Either party may terminate this Agreement by providing 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** – 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 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 failure to pay Customer’s Account, Customer’s Account will be suspended and Drake may 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 is from the first day to the last day of every month for Monthly Subscriptions, and from the first day of the first month to the last day of the twelfth month for Annual Subscriptions. Customer’s first month of Service in the billing cycle will be prorated if Customer initially subscribes mid-month.
- b. **Monthly Subscriptions** – 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, Customer will be automatically charged the fees associated with the Service on or about the first day of the month.
- c. **Annual Subscriptions** – An Annual Subscription billing cycle is for twelve months, including the first prorated month (if applicable). For an Annual Subscription, Customer’s authorized credit card will be charged the total fee for the Annual Subscription when Customer subscribes to the Service. The total fee will include the first prorated month (if applicable) and the remaining full eleven months.

- d. **Change in Subscription** – 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.
 - e. **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.
 - f. **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, other than taxes imposed on Drake's income.
 - g. **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 suspend the Subscription at the end of the next monthly billing period. Upon request to Drake, Customers with an Annual Subscription will be eligible for a prorated refund of prepaid fees for the Service for the remainder of the Subscription Term. 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 (i) it 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) it 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 you continue 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 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 on screen 1 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 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 Policy and Terms of Use** – By using the Service, Customer 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 notices of changes to Drake's Privacy Policy and Terms of Use 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.
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) Customer's failure to comply with applicable laws; (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) Customer'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 AND DRAKE MATERIALS 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 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 TO CUSTOMER AND ANY OF ITS AUTHORIZED USERS AND THIRD PARTY CLIENTS SHALL NOT EXCEED THE FEES PAID TO DRAKE BY CUSTOMER FOR THE FAILED SERVICE FEATURE DURING THE PERIOD OF FAILURE. IN NO EVENT WILL DRAKE OR DRAKE'S AFFILIATES BE LIABLE TO CUSTOMER, ITS AUTHORIZED USERS OR TO ANY THIRD PARTY FOR (A) ANY 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) FOR ANY 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** – Drake is not required to carry any insurance for the benefit of Customer, including without limitation, commercial general liability, cyber liability, workers' compensation, employers' liability, commercial automobile, and errors and omissions/professional liability insurance.
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 you 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 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 date of this Agreement; (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; and (j) other events beyond the reasonable control of Drake.
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
235 East Palmer Street
Franklin, NC 28734
Facsimile: 828-349-5729

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) on the date sent by facsimile, in each case with confirmation of transmission, if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; 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, facsimile, or by making such Communications available on Drake’s websites.
- e. **Entire Agreement** – 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.
- 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 benefits of the parties hereto and their respective successors and permitted assigns and 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** – 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 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.
- l. **Arbitration.**
 - i. Pursuant to the Federal Arbitration Act (FAA), 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 Franklin, North Carolina, in accordance with the Commercial Arbitration Rules (“Rules”) of the American Arbitration Association then existing, except that the provisions of this Agreement will control and take precedence in the event of any conflict or inconsistency between the Rules and this Agreement. 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 a licensed attorney or retired judge experienced in software-related issues.
 - ii. All disputes between Customer and Drake will be resolved only on an individual basis. Customer and Drake each specifically agree that no dispute between them may be brought, heard, or arbitrated in

any forum (whether as a judicial proceeding in court, as an administrative proceeding before an agency or other body, or in arbitration) as a class, collective, representative, or private attorney general action, and they further agree that neither Customer nor Drake may be a party or member in any such class, collective, or representative proceeding. The preceding sentence will hereafter be referred to as the "Class Action Waiver." Notwithstanding any other provision of this Agreement, any dispute regarding the validity, enforceability, or breach of the Class Action Waiver may be resolved only by a court and not by an arbitrator. In any case in which: (a) the dispute is filed as a class, collective, representative, or private attorney general action and (b) there is a final judicial determination that the Class Action Waiver is unenforceable with respect to some or all of the claims or causes of action brought or asserted, the class, collective, representative and/or private attorney general action must to that extent be litigated in a civil court of competent jurisdiction, but the claims or causes of action with respect to which the Class Action Waiver is enforceable shall be resolved on an individual basis in arbitration.

- iii. Customer and Drake will pay their own costs for the arbitration, including attorneys' fees, but the arbitrator may, in the final ruling, award the prevailing party some or all of its attorneys' fees. The arbitrator may issue orders allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving claims. Documents shall be exchanged in accordance with the Rules, and each side shall be allowed to conduct at least three (3) depositions. The filing of dispositive motions shall be permitted in the arbitration and shall not be disfavored, and the standard for deciding such motions shall be the same as under the provisions of the Federal Rules of Civil Procedure governing such motions. Except as otherwise provided in the Rules, the arbitrator may award all remedies to which a party is entitled under applicable law and this Agreement. The decision or award by the arbitrator will be in writing and will contain findings of fact and conclusions of law.
- iv. The Federal Arbitration Act governs the interpretation and enforcement of this Section and any arbitration conducted between Customer and Drake. If the FAA is found not to apply, then arbitration shall proceed under North Carolina law. North Carolina law shall apply to all other matters, and this Agreement and the rights and obligations of Customer and Drake shall be governed, construed and interpreted in accordance with North Carolina law. BY ENTERING INTO THIS AGREEMENT AND AGREEING TO ARBITRATION, CUSTOMER AGREES THAT CUSTOMER AND DRAKE ARE EACH WAIVING THE RIGHT TO FILE A LAWSUIT AND THE RIGHT TO A TRIAL BY JURY.
- m. **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.
- n. **General Data Protection Regulation** – 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.
- o. **California Consumer Privacy Act / California Privacy Rights Act.**
 - i. 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 that such sharing of data is done so in compliance with the CCPA.
 - ii. To the extent that the CCPA is applicable to Customer's Third Party 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 Third Party Clients provided to Drake or otherwise made available to Drake through the Service 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 in accordance with this Agreement.