

SecureFilePro

Service Agreement

Date last modified: 4/3/2020

IMPORTANT – PLEASE READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS

This Service Agreement (the “Agreement”) is a legal agreement between you (“Customer”) and Drake Software, LLC (“Provider”). This Agreement governs Customer’s use of the SecureFilePro file transfer service (the "Service") made available to Customer by Provider. By signing up for an account and/or using the Service, Customer agrees to and accepts the terms and conditions of this Agreement.

1. Definitions

“Account Username” means the username selected by Customer for the purpose of accessing and managing its account through the website provided by Provider.

“Authorized User” means Customer and its employees, agents or representatives who are designated by Customer to access the Service in accordance with the terms in this Agreement.

“Customer Data” means any and all data, information or files, electronic or otherwise, provided by Customer or any Authorized User to Provider, and stored in the Service, including but not limited to all files moved, saved, scanned or uploaded by Customer or any Authorized User to the Service for storage, delivery or other business purposes.

“Permitted Uses” means any lawful use of the Service by Authorized Users for the intended purpose and in accordance with this Agreement.

“Provider’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, Provider.

“Provider Materials” means the Service and any documentation relating to the Service.

“Service” means the capabilities and features provided by Provider to Customer 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.

“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 through the Service and/or sending files to Customer 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 – Provider 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/Access and Use – Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, Provider 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 Provider Materials. Neither Customer nor any Authorized User shall rent, lease, lend, sell, assign, distribute, publish, or transfer the Service to any third party. All right, title, and interest in and to the Service and the Provider Materials are and will remain with Provider. Customer agrees to use the Service only for lawful purposes. Customer is responsible for providing, at its expense, all necessary connections and equipment needed to access the Service. Customer will take reasonable precautions to safeguard and keep confidential its Account Username and password and keep such Account Username and password confidential. Customer is responsible for all charges incurred under the Account Username.
4. Provider Materials License – Provider hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to use the Provider Materials during the Term solely for Customer's internal business purposes in connection with its use of the Service.
5. Term and Termination – 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 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 term of one (1) month or one (1) year, as applicable (each, a “Renewal Term”). The Initial Term and any Renewal Terms shall be referred to herein as the “Term”. Either party may terminate this Agreement by providing notice to the other party prior to the end of the then-current Term. Provider 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.

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 Provider. Customer will be notified by email to the email address associated with Customer's account thirty (30) days prior to any price changes going into effect. If Customer’s credit card is declined, Customer will be notified by Provider by email. Upon failure to pay Customer's account, Customer’s account will be suspended and Provider may terminate this Agreement without notice to Customer.

a. **Billing Cycle** – Customers can 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 however, will be prorated if Customer initially subscribes mid-month.

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.

Annual Subscriptions- An Annual Subscription billing cycle is for twelve months, including the first prorated month (if applicable). For Customer’s with 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 remainder for full following eleven months.

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 Service and the Annual Subscription billing cycle will begin at the start of the following month and continue for a length of twelve months. Customer’s Annual 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.

b. **Storage Upgrade** – 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.

- c. 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 Provider's income.
 - d. 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 Provider's website. The cancellation notice, once received and verified, will suspend the subscription at the end of the current billing period. Customer shall not be entitled to a refund of fees, including fees paid in advance for services, nor shall Customer be entitled to a refund of credits, whether in the form of money or additional days of service. Upon cancellation of Customer's Subscription, any credit is forfeited by the Customer. Customer will be responsible for the full Subscription payment for the current Term. If Customer's account is restored before the end of the current billing period, Customer will not incur any additional charges. If Customer does not restore Customer's account before the end of the current billing period, Customer's account and this Agreement will be terminated. Customer can restore Customer's account by logging in to Customer's account as an administrator, navigating to the account settings screen and choosing the "Restore my account" option.
7. Termination/No Duty to Retain – At the point of termination, Customer's account is completely removed from Provider's system and Provider has no obligation to continue storing or providing access to Customer Data or Third Party Data. Provider, in its sole discretion, may recycle or reassign Customer's account subdomain (ex. subdomain.securefilepro.com).
8. Privacy Policy and Terms of Use – By using the Service, Customer agrees to the terms and conditions of Provider's Privacy Policy and Terms of Use, which are available on its website(s) and are subject to change. All notices of changes to Provider's Privacy Policy and Terms of Use will be provided by posting revisions on the applicable Provider 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. Customer acknowledges that Provider retains the right to take whatever steps necessary, as determined in Provider'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 Provider, Provider's Affiliates, and their respective directors, officers, employees and agents, 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, brought, alleged or incurred by or awarded to any third party arising from or relating to (i) any claim from a Third Party Client of Customer (ii) any Customer Data or Third Party Data, including without limitation, the infringement of any third party rights, and (ii) any unauthorized or unlawful use of the Service by Customer or any of its Authorized Users.

10. Limitations of Liability – PROVIDER’S TOTAL LIABILITY TO CUSTOMER AND ANY OF ITS AUTHORIZED USERS AND THIRD PARTY CLIENTS SHALL NOT EXCEED THE FEES PAID TO PROVIDER BY CUSTOMER FOR THE FAILED SERVICE FEATURE DURING THE PERIOD OF FAILURE. IN NO EVENT WILL PROVIDER OR PROVIDER’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.
11. Representations and Warranties – Customer represents and warrants to Provider 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 infringement;
 - (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.

Disclaimer – EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE SERVICE AND PROVIDER MATERIALS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. PROVIDER, PROVIDER'S AFFILIATES, AND THEIR THIRD PARTY SERVICE PROVIDERS, LICENSORS, OR SUPPLIERS (COLLECTIVELY, "SUPPLIERS") 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, PROVIDER 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, PROVIDER, PROVIDER'S AFFILIATES, AND THEIR SUPPLIERS MAKE NO WARRANTY OF ANY KIND THAT THE SERVICE, PROVIDER 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 EMPLOYEE OR AGENT OF PROVIDER IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS ANY OF THE WARRANTIES OR LIMITATIONS CONTAINED IN THIS AGREEMENT.

12. Insurance – Provider is not required to carry any insurance for the benefit of Customer, including without limitation, commercial general liability, cyber liability, worker's compensation, employers' liability, commercial automobile, and errors and omissions/professional liability insurance.
13. Force Majeure - Provider 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: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition, national or regional shortage of adequate power or telecommunications or transportation facilities.
14. General Provisions
 - (a) Further Assurances – Customer shall, upon the request of Provider, 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 Provider shall be in writing and addressed to Provider as follows (or as otherwise specified by Provider):

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 3rd day after the date mailed, 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. Provider 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 Provider's websites.
- (e) Entire Agreement – This Agreement, together with Provider'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 either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. 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 Provider, at its sole discretion. Customer’s continued use of Provider’s Service shall be deemed to be Customer’s acceptance of and agreement to Provider’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. Any controversy or claim arising out of, or relating to, this Agreement, or the making, performance or interpretation thereof, other than a claim by Provider for injunctive or other equitable relief, shall be settled by arbitration in the City of Franklin, County of Macon, State of 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. Arbitrators shall be persons experienced in software hosting related issues.
- (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) General Data Protection Regulation – Provider does not market the Service to persons residing in the European Economic Area (“EEA”) and the Service are not intended for use inside the EEA. By using the Service, Customer agrees not to collect data from persons residing inside the EEA and understands and agrees that any data or information transferred to Provider will be processed and stored in the United States and subject to United States law.