

## DataSafe Terms of Use

**General.** This End User License Agreement, including any other policy produced by DataSafe from time to time and posted via hyperlink on this site (collectively, the "Terms"), are a binding contract between you and StudioPlus Software, LLC d/b/a DataSafe ("DataSafe").

You understand and agree that by clicking the "I AGREE" button or by installing, accessing, or using the software, products, services, applications and associated documentation (collectively, the "DataSafe Services"), You, either individually, or on behalf of a business or organization, You will be bound by these Terms.

If you do not agree with these Terms, DataSafe is not willing to license to you and you may not use the DataSafe Services.

**Your License.** The DataSafe Services are licensed and not sold to you. During the term of your subscription, DataSafe grants to you a revocable, limited, non-transferable, non-exclusive license to use the DataSafe Services, solely in connection with the backup of your data. Except for the limited license granted in these Terms, DataSafe and its licensors retain all right, title and interest in and to the DataSafe Services, the ownership of the servers and machines thereof, all copies, and all proprietary rights therein, including copyrights, patent, trademark and trade secret rights. You may not copy, assign, re-license or distribute the DataSafe Services, except to the extent that copying is necessary to use the DataSafe Services for the purposes set forth herein. You may not reverse engineer, decompile, disassemble, modify, or create derivative works of the DataSafe Services. You may not alter or modify any disabling mechanism which may be included in the DataSafe Services. You may not assign, sublicense, rent, timeshare, loan, lease, or otherwise transfer the DataSafe Services, or directly or indirectly permit any third party to copy the DataSafe Services. You may not remove any proprietary notices (e.g., copyright and trademark notices) from the DataSafe Services. You must reproduce the copyright and all other proprietary notices displayed on the DataSafe Services and on each permitted backup or archival copy. All use of the DataSafe Services shall be in accordance with these Terms and its then-current documentation. You shall be solely responsible for ensuring that your use of the DataSafe Services is in compliance with all applicable foreign, federal, state and local laws, rules and regulations.

You may install, use or access the DataSafe Services in executable form only on the number and type of devices that are specified in the then-current documentation for your account type as described on the Site or as specified in other transaction documentation. You specifically agree that You will not, nor will You permit another person to:

- sublicense, lease, rent, loan, transfer or distribute any portion of the DataSafe Services;
- modify, adapt, translate or create derivative works from the DataSafe Services;
- decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the DataSafe Services; or remove, obscure, or alter any trademark, copyright or other proprietary rights notices displayed in DataSafe Services.

**Operation.** The DataSafe Services shall, upon your command, save a copy of each file that is automatically selected for backup (your "Backed-up Data") to a server operated by DataSafe or a DataSafe agent.

**Account Access.** To access and use the DataSafe Services, you agree to provide DataSafe with accurate and complete information when you register and to keep such information accurate and complete while you have a subscription for the DataSafe Services. You are solely responsible for maintaining the confidentiality of your user name and password and solely responsible and liable for any and all activities that occur with respect to your account. Compromise of your username and password may compromise the security of your Backed-Up Data.

You agree that, if You register for an Account, You are the owner of any files associated with your account. You further acknowledge and agree that the business, organization, or other group of users may have selected one or more administrators to control, manage and use the DataSafe Services on behalf of such business or organization, or group of users, and the administrators may have been granted certain privileges such as access to and control of your Backed-up Data, without notice to you.

**Compensation.** You agree to pay DataSafe's then-current and applicable subscription fees for the DataSafe Services. The fee structure is described in the DataSafe pricing terms which are subject to change from time to time with limited notice to You. You acknowledge that Your account may be subject to automatic renewal if You so elect.

**Enhancements.** DataSafe may (i) automatically update the DataSafe Services which may affect your usage without your prior notice, (ii) upgrade, enhance, change and modify (collectively, the "Enhancements") the DataSafe Services, or (iii) discontinue or retire the DataSafe Services or any aspect or feature of the DataSafe Services, including the types of files and data that are backed-up (not every file on your computer is backed-up) or the availability of DataSafe Services on any particular device or communications service at any time and from time-to-time in its sole discretion. Any Enhancements made available to you will be subject to these Terms. DataSafe will use reasonable efforts to provide notice of material changes to the DataSafe Services or changes to these Terms by emailing you at the address provided in your registration and by posting them to the DataSafe website. It is your responsibility to periodically check DataSafe's web site to inform yourself of any such modifications. Changes to these Terms, which may be made in DataSafe's sole and exclusive discretion, will be effective upon acceptance of these Terms (as described herein) for new subscriptions and effective for all existing users thirty (30) calendar days after the posting of the new Terms on DataSafe's web site. You agree to be bound to these Terms, as modified. If you do not agree to the modified Terms you are not permitted to use the DataSafe Services and must terminate your subscription immediately.

**Term and Termination.** These Terms and your license to the DataSafe Services will commence at the time and on the day you indicate your agreement to these terms, or You install, access, or use the DataSafe Services, whichever is earlier. These Terms, your license and your subscription to the DataSafe Services will automatically terminate or expire upon the earlier of (i) non-renewal, cancellation, or expiration of your subscription or your failure to pay invoices when due, (ii) DataSafe's discontinuance of the DataSafe Services, or (iii) failure to comply with these

Terms. If any third party makes an intellectual property infringement claim relating to the DataSafe Services, DataSafe reserves the right to immediately terminate your subscription to the affected DataSafe Services.

DATASAFE MAY, IN ITS SOLE DISCRETION, DENY USE OF AND ACCESS TO ALL OR ANY PORTION OF THE DATASAFE SERVICES, INCLUDING SUSPENDING OR TERMINATING YOUR LICENSE AND ACCOUNT WITH DATASAFE IF YOU ARE USING THE DATASAFE SERVICES IN A MANNER NOT INTENDED OR IN VIOLATION OF LAW.

**Termination.** Upon any non-renewal, termination, or expiration of your subscription to the DataSafe Services (i) the license granted herein will automatically and immediately terminate and you will have no further right to possess or use the DataSafe Services, (ii) the DataSafe Services may be disabled by DataSafe without notice to you, and (iii) you will no longer have the right to access or retrieve your Backed-up Data. You acknowledge and agree that DataSafe's policy is to automatically delete all of your Backed-up Data upon non-renewal, termination, or expiration of your subscription to the DataSafe Services and that it is solely your responsibility to seek another source for your backup needs.

**Disclaimer of Warranties.** THE DATASAFE SERVICES MAY CONTAIN OR DATASAFE MAY PROVIDE TO YOU THIRD PARTY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING, OR YOU MAY OBTAIN THIRD PARTY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING FROM THIRD PARTIES DIRECTLY, ("THIRD PARTY COMPONENTS"). THE DATASAFE SERVICES, ALL THIRD PARTY COMPONENTS AND ALL BETA SOFTWARE ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. DATASAFE AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DATASAFE SERVICES, THE THIRD PARTY PRODUCTS AND ALL BETA SOFTWARE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES REGARDING QUIET ENJOYMENT, QUALITY OF INFORMATION, SECURITY, RELIABILITY, TIMELINESS, AVAILABILITY OF BACKED-UP DATA AND PERFORMANCE OF THE DATASAFE SERVICES. DATASAFE DOES NOT WARRANT THAT THE DATASAFE SERVICES, THIRD PARTY COMPONENTS, OR BETA SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE DATASAFE SERVICES, THIRD PARTY COMPONENTS, OR BETA SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE DATASAFE SERVICES, THIRD PARTY COMPONENTS, OR BETA SOFTWARE WILL BE CORRECTED, OR THAT ENCRYPTION ALGORITHMS, ASSOCIATED KEYS AND OTHER SECURITY MEASURES WILL BE SECURE OR EFFECTIVE. YOU UNDERSTAND AND AGREE THAT YOUR INSTALLATION, USE AND ACCESS OF THE DATASAFE SERVICES, THIRD PARTY COMPONENTS AND ALL BETA SOFTWARE IS AT YOUR SOLE DISCRETION AND RISK AND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER, SOFTWARE AND THE LOSS OF BACKED-UP DATA THAT RESULTS FROM THE USE THEREOF. NO ORAL

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**Limitation of Liability.** YOU ARE SOLELY RESPONSIBLE AND LIABLE FOR YOUR CONDUCT, YOUR DATA, AND YOUR BACKED-UP DATA RELATED TO THE DATASAFE SERVICES. YOU AGREE TO INDEMNIFY, DEFEND AND HOLD DATASAFE, AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, SUPPLIERS AND LICENSORS HARMLESS FROM AND AGAINST ANY AND ALL LOSS, COST, DAMAGE, LIABILITY AND EXPENSE (INCLUDING ATTORNEYS' FEES, EXPERT FEES AND OUT-OF-POCKET EXPENSES) ARISING OUT OF, RESULTING FROM, OR IN CONNECTION WITH YOUR BREACH OF THESE TERMS, YOUR USE OF THE DATASAFE SERVICES, OR YOUR BACKED-UP DATA. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL DATASAFE OR ITS AFFILIATES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY COST TO PROCURE SUBSTITUTE SERVICES OR DATA, OR ANY DIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY, OR ANY OTHER DAMAGES, INCLUDING DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOSS OF DATA AND BACKED-UP DATA, BUSINESS INTERRUPTION, OR LOST REVENUES, ARISING OUT OF YOUR USE OR INABILITY TO USE THE DATASAFE SERVICES, THIRD PARTY COMPONENTS, OR BETA SOFTWARE, OR YOUR USE OF DATA OR FILES STORED THEREIN, EVEN IF DATASAFE HAS BEEN ADVISED ABOUT THE POSSIBILITY OF SUCH DAMAGES (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR OTHERWISE)). IN ANY CASE AND WITHOUT LIMITING THE FOREGOING, THE ENTIRE LIABILITY OF DATASAFE AND ITS AFFILIATES, SUPPLIERS AND LICENSORS FOR ALL DAMAGES OF EVERY KIND AND TYPE (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) SHALL BE LIMITED TO THE LICENSE FEES PAID BY YOU TO DATASAFE IN THE TWELVE (12) CALENDAR MONTHS PRIOR TO THE DAMAGES ARISING. IF THE DATASAFE SERVICES ARE PROVIDED TO YOU WITHOUT CHARGE, THEN DATASAFE SHALL HAVE NO LIABILITY TO YOU WHATSOEVER. THE FOREGOING TERMS SET A LIMIT ON THE AMOUNT OF DAMAGES PAYABLE AND ARE NOT INTENDED TO ESTABLISH LIQUIDATED

DAMAGES. YOU EXPRESSLY RECOGNIZE AND ACKNOWLEDGE THAT SUCH LIMITATION OF LIABILITY IS AN ESSENTIAL PART OF THIS AGREEMENT AND IS AN ESSENTIAL FACTOR IN ESTABLISHING THE PRICE OF THE DATASAFE SERVICES.

**Governing Law.** These Terms shall be governed, construed and enforced in accordance with the laws of the State of Minnesota without reference to conflicts of law principles. The parties agree that the exclusive jurisdiction of any actions arising out of, relating to, or in any way connected with these Terms, shall be in the state or federal courts, as applicable, located in the City of St. Paul or the County of Ramsey, Minnesota.

**Privacy and Security.** DataSafe shall store your data using commercially reasonable methods of protection. Although DataSafe makes good faith efforts to store your personal information and Backed-up Data in a secure operating environment that is not accessible to unauthorized users, DataSafe cannot guarantee complete security. By using such products and services, you knowingly accept this risk.

**Export.** You agree that You are the owners of all files used with DataSafe, and You shall not export, directly or indirectly, the DataSafe Services to any country for which the United States requires an export license or other governmental approval. You shall not use the DataSafe Services to store, backup, or distribute child pornography or other illegal files or data. You shall defend, indemnify and hold DataSafe harmless from and against any and all damages, fines, penalties, assessments, liabilities, costs and expenses (including attorneys' fees, expert fees and out-of-pocket expenses) arising out of any claim that you are storing child pornography or other illegal files or data, or that the DataSafe Product was exported or otherwise shipped or transported by you in violation of applicable laws, rules and regulations.

**Use Outside of the United States.** The use of this Software is intended to be used solely in the United States of America. If you are using the DataSafe Services outside of the United States, you acknowledge that You are solely responsible for complying with local law and regulations specific to Your country, and You agree to indemnify and hold DataSafe harmless for the violation of any local law or regulation.

**General.** These Terms constitute the entire understanding of the parties and supersede all prior and contemporaneous written and oral agreements with respect to the subject matter hereof. In particular, if you are a current licensee of DataSafe Services, these Terms shall supersede your existing license agreement and that agreement shall be of no further force or effect. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of these Terms. As used in these Terms, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation." If one or more of the provisions herein shall be held invalid, illegal, or unenforceable in any respect, the validity, legality and enforcement of the remaining provisions shall not be affected or impaired. The failure to enforce or the waiver by either party of a default or breach of the other party shall not be considered to be a waiver of any subsequent default or breach. If you or DataSafe cannot perform its obligations under these Terms because of any act of God, accident, strike, court

order, fire, riot, war, failure of third party equipment, or any other cause not within the affected party's reasonable control and that could not be avoided through the exercise of reasonable care and diligence (a "Force Majeure Event"), then the non-performing party will: (i) promptly notify the other party; (ii) take reasonable steps to resume performance as soon as possible; and (iii) not be considered in breach during the duration of the Force Majeure Event. If a Force Majeure Event continues for five (5) or more business days, DataSafe may terminate your subscription to the DataSafe Services and these Terms by providing written notice to you. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.**