

# Business Agreement

Last Modified: December 1st, 2014

## Cygnnet Cloud for Business Agreement

Last Modified: March 20th, 2014

This Cygnnet Cloud for Business Agreement (the “Agreement”) is between Cygnnet Cloud, a Maltese company (“Cygnnet Cloud”) and Customer or End User, as applicable. This Agreement governs access to, and use of, the Cygnnet Cloud for Business services and any client software (the “Services” or “Cygnnet Cloud for Business”).

The Customer ordering the Services: If you are ordering the Services, then by clicking “I Agree”, signing your contract for the Services, or using Cygnnet Cloud for Business, you agree to this Agreement as a “Customer”. If you are agreeing to this Agreement for use by an organisation, you are agreeing to this Agreement on behalf of that organization. You must have the authority to bind that organization to this Agreement, otherwise you must not sign up for the Services.

End Users: If you are using the Services as an “End User”, then by clicking “I Agree” or using Cygnnet Cloud for Business, you agree to this Agreement (especially note sections 1 and 13) and the Cygnnet Cloud Terms of Service at [www.cygnnet-ecm.com/terms](http://www.cygnnet-ecm.com/terms) or [www.Cloud.eu/terms](http://www.Cloud.eu/terms)

To the extent this Agreement conflicts with the Cygnnet Cloud Terms of Service, this Agreement takes precedence. Please note that in this Agreement you are agreeing that your Administrator may be able to control account information and access your Cygnnet Cloud for Business account.

## 1. End Users.

### *A. Accounts.*

When joining a Cygnnet Cloud for Business account, an End User may join with a new account or convert an existing personal account into a Cygnnet Cloud for Business account. It’s important to note that once an End User’s personal account becomes a Cygnnet Cloud for Business account, it will be subject to the Administrator’s control. End Users must use the Services in compliance with any employment obligations and the Customer’s terms and policies.

### *B. Administrator Control.*

An End User’s Administrator may have the ability to access, disclose, restrict, or remove information from an End User’s Cygnnet Cloud for Business account. Administrators may also have the ability to monitor, restrict, or terminate access to an End User’s Cygnnet Cloud for Business account. An End User may not be able to disassociate his or her Cygnnet Cloud for Business account from the organisation.

## 2. Customer Obligations.

### *A. Compliance.*

Customer will use the Services in compliance with the Cygnnet Cloud Terms of Service including the Acceptable Use Policy. Customer will obtain and maintain any necessary consent from End Users to allow Administrators to engage in the activities described in this Agreement, and to allow Cygnnet Cloud to provide

the Services. The Customer represents, and must ensure, that its End Users are governed by this Agreement, the Cygnet Cloud Terms of Service, and consent to the Cygnet Cloud Privacy Policy.

***B. Customer Administration of the Services.***

The Customer may specify End Users as “Administrators” through the administrative console. The Customer is responsible for:

- (i) maintaining the confidentiality of passwords and Administrator accounts,
- (ii) managing access to Administrator accounts, and
- (iii) ensuring that Administrator use of the Services complies with this Agreement. Cygnet Cloud’s responsibilities do not extend to the internal management or administration of the Services for the Customer.

***C. Unauthorized Use & Access.***

The Customer will prevent unauthorized use of the Services by its End Users and terminate any unauthorized use of the Services. The Services are not intended for use by End Users under the age of 13. The Customer will ensure that it does not allow any person under 13 to use the Services. The Customer will promptly notify Cygnet Cloud of any unauthorized use of, or access to, the Services.

***D. Restricted Uses.***

The Customer will not:

- (i) sell, resell, or lease the Services or,
- (ii) use the Services for activities where use or failure of the Services could lead to physical damage, death, or personal injury. The Customer, not Cygnet Cloud, is responsible for any applicable vertical or industry-specific regulation compliance (e.g. HIPAA).

***E. Third Party Requests.***

- (i) “Third Party Request” refers to a request from a third party for records relating to an End User’s use of the Services including information in, or from, an End User or Customer Cygnet Cloud for Business account. Third Party Requests may include valid search warrants, court orders or subpoenas, or any other request for which there is written consent from End Users permitting a disclosure.
- (ii) The Customer is responsible for responding to Third Party Requests via its own access to information. Customer will seek to obtain information required to respond to Third Party Requests and will contact Cygnet Cloud only if it cannot obtain such information despite diligent efforts.
- (iii) Cygnet Cloud will make commercially reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to:
  - (i) promptly notify Customers of Cygnet Cloud’s receipt of a Third Party Request,
  - (ii) comply with Customers’ commercially reasonable requests regarding its efforts to oppose a Third Party Request and,
  - (iii) provide Customers with information or tools required for the Customer to respond to the Third Party Request (if the Customer is otherwise unable to obtain the information). If the Customer fails to promptly respond to any Third Party Request, then Cygnet Cloud may, but will not be obligated, to do so.

***F. Communication Setting Management.***

The Customer is responsible for maintaining all “opt-in/out” settings for communications from, or via, Cygnet Cloud for all of the Customer’s End Users. The Customer will use reasonable efforts to answer any requests from End Users regarding such settings.

## **3. Services.**

***A. Provision of Services.***

The Customer may access and use the Services made available by Cygnet Cloud under this Agreement.

***B. Facilities and Data Transfer.***

Cygnnet Cloud will use commercially reasonable efforts to ensure that all facilities used to store and process Customer Data meet commercially reasonable security standards. By using the Services, the Customer consents to transfer, processing, and storage of Customer Data. “Customer Data” means any data and content stored or transmitted via the Services by the Customer or End Users.

***C. Modifications to the Services.***

Cygnnet Cloud may update the Services from time to time. If Cygnnet Cloud changes the Services in a manner that materially reduces their functionality, Cygnnet Cloud will inform the Customer, unless the Customer has opted-out of communications of that type from Cygnnet Cloud.

***D. Limitations on Use of Services.***

Cygnnet Cloud may impose reasonable limitations on bandwidth usage for the Services.

## **4. Support.**

The Customer will, at their own expense, respond to questions and complaints from End Users or third parties relating to use of the Services. The Customer will use reasonable efforts to resolve support issues before forwarding them to Cygnnet Cloud.

## **5. Suspension.**

***A. Of End User Accounts by Cygnnet Cloud.***

If an End User (i) violates this Agreement or the Cygnnet Cloud Terms of Service, (ii) uses the Services in a manner resulting in excessive support requests, or (iii) uses the Services in a manner that Cygnnet Cloud reasonably believes will cause it liability, then Cygnnet Cloud may request that the Customer suspend or terminate the applicable End User account. If the Customer fails to promptly suspend or terminate the End User account, then Cygnnet Cloud may do so.

***B. Security Emergencies.***

Notwithstanding anything in this Agreement, if there is a Security Emergency, then Cygnnet Cloud may automatically suspend use of the Services. Cygnnet Cloud will make commercially reasonable efforts to narrowly tailor the suspension as needed to prevent or terminate the Security Emergency. “Security Emergency” means: (i) use of the Services that do, or could, disrupt the Services, other customers’ use of the Services, or the infrastructure used to provide the Services and (ii) unauthorized third party access to the Services.

## **6. Intellectual Property Rights.**

***A. Reservation of Rights.***

THIS AGREEMENT DOES NOT GRANT CYGNET Cloud ANY RIGHTS TO CUSTOMERS’ OR END USERS’ FILES OR THE INTELLECTUAL PROPERTY RIGHTS EMBODIED IN THOSE FILES, EXCEPT FOR THE LIMITED RIGHTS EXPRESSLY SET FORTH IN THIS AGREEMENT THAT ARE NEEDED TO RUN THE SERVICES. This Agreement does not grant Customer or End Users (i) any rights to the Intellectual Property Rights in the Services or, (ii) any rights to use the Cygnnet Cloud trademarks, logos, domain names, or other brand features. “Intellectual Property Rights” means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights, and other similar rights.

***B. Limited Permission.***

Cygnnet Cloud may need the Customer's permission to do things that the Customer or End User ask Cygnnet Cloud to do with Cygnnet Cloud for Business accounts. For example, hosting files, or sharing them at the Customer or End User's direction. This includes product features visible to the Customer or End User, for example, image thumbnails or document previews. It also includes design choices made to technically administer the Services, for example, how the Service redundantly backs up data to keep it safe. Customers grant Cygnnet Cloud the permissions Cygnnet Cloud needs to do those things solely to provide the Services and for Cygnnet Cloud to meet its obligations and exercise its rights under this Agreement. This permission also extends to third parties Cygnnet Cloud works with to provide the Services (again, only to provide the Services).

***C. Suggestions.***

While we appreciate it when users send us feedback, we may, at our discretion and for any purpose, use, modify, and incorporate into our products and services, license and sub-license, any feedback, comments, or suggestions the Customer or End Users send Cygnnet Cloud or post in Cygnnet Cloud's forums without any obligation to the Customer or End Users.

***D. Customer List.***

Cygnnet Cloud may include a Customer's name in a list of Cygnnet Cloud customers on the Cygnnet Cloud website.

**7. Third Party Services.**

If the Customer uses any third-party service with the Services, (a) the service may access or use the Customer's or End User's information; (b) Cygnnet Cloud will not be responsible for any act or omission of the third party, including the third party's use of the Customer's or End User's information; and (c) Cygnnet Cloud does not warrant or support any service provided by the third party.

**8. Disclaimers.**

THE SERVICES ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER CYGNET Cloud NOR THE CUSTOMER MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NONINFRINGEMENT. CYGNET Cloud MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION IN, OR FROM, AN END USER OR CUSTOMER SERVICES ACCOUNT.

Cygnnet Cloud is not responsible for the accuracy, completeness, appropriateness, or legality of files, user posts, or any other information in or from an End User or Customer Services account. Cygnnet Cloud has no responsibility or liability for the deletion, or failure to store, any information in or from an End User or Customer Services account.

**9. Fees & Payment.*****A. Fees.***

Customers will pay, and authorise Cygnnet Cloud to charge using Customer's selected payment method, all applicable fees. If the Customer enrolls in the annual billing plan, fees are refundable within the first 30 days

of the Services. Otherwise, fees are non-refundable except as required by law. The Customer is responsible for providing complete and accurate billing and contact information to Cygnet Cloud. Cygnet Cloud may suspend or terminate the Services if fees are 30 days past due.

***B. Auto Renewals and Trials.***

IF CUSTOMER'S ACCOUNT IS SET TO AUTO RENEWAL, OR IS IN A TRIAL PERIOD, CYGNET Cloud MAY AUTOMATICALLY CHARGE AT THE END OF THE TRIAL, OR FOR THE RENEWAL, UNLESS THE CUSTOMER NOTIFIES CYGNET Cloud THAT THE CUSTOMER WANTS TO CANCEL OR DISABLE AUTO RENEWAL. Cygnet Cloud may revise service rates by providing the Customer at least 30 days notice prior to the next charge.

***C. Taxes.***

The Customer is responsible for all taxes. Cygnet Cloud will charge tax when required to do so. If the Customer is required by law to withhold any taxes, the Customer must provide Cygnet Cloud with an official tax receipt or other appropriate documentation.

## **10. Term & Termination.**

***A. Term.***

This Agreement will remain in effect until the Customer's subscription to the Services expires or terminates, or until the Agreement is terminated.

***B. Termination for Breach.***

Either Cygnet Cloud or the Customer may suspend use of the Services, or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice or, (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days.

***C. Termination at Will.***

Customers may terminate this Agreement at any time by disabling the Customer's Services account via the Services administrative console.

***D. End User Termination.***

End Users may stop using the Services at any time. If an End User's Cygnet Cloud for Business account is converted into a personal account, this Agreement will terminate for that account with respect to the End User, except that the Cygnet Cloud Terms of Service will continue to apply.

***E. Effects of Termination.***

If this Agreement terminates: (i) the rights granted by Cygnet Cloud to the Customer will cease immediately (except as set forth in this section), (ii) the rights granted by Cygnet Cloud to End User will cease immediately, (iii) Cygnet Cloud may provide Customers access to its account at then-current rates so that the Customer may export its information and, (iv) after a commercially reasonable period of time, Cygnet Cloud may delete any data relating to a Customer's account. The following sections will survive expiration or termination of this Agreement: 1(B) (Administrator Control), 2(E) Third Party Requests, 6 (Intellectual Property Rights), 8 (Disclaimers), 9 (Fees & Payment), 10(D) (End User Termination), 10(E) (Effects of Termination), 11 (Indemnification), 12 (Limitation of Liability), and 13 (Miscellaneous).

## 11. Indemnification.

### *A. By Customer.*

The Customer will indemnify, defend, and hold harmless Cygnet Cloud from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim regarding: (i) Customer Data, (ii) the Customer's use of the Services in violation of this Agreement or Acceptable Use Policy, or (iii) use of the Services by Customer's End Users.

### *B. By Cygnet Cloud.*

Cygnet Cloud will indemnify, defend, and hold harmless the Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a claim by a third party against Customer to the extent based on an allegation that Cygnet Cloud's technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, U.S. patent, or trademark right of the third party. In no event will Cygnet Cloud have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by Cygnet Cloud and, (ii) any content, information, or data provided by the Customer, End Users or other third parties.

### *C. Possible Infringement.*

If Cygnet Cloud believes the Services infringe, or may be alleged to infringe, a third party's Intellectual Property Rights, then Cygnet Cloud may: (i) obtain the right for the Customer, at Cygnet Cloud's expense, to continue using the Services, (ii) provide a non-infringing functionally equivalent replacement or, (iii) modify the Services so that they no longer infringe. If Cygnet Cloud does not believe the options described in this section are commercially reasonable, then Cygnet Cloud may suspend or terminate a Customer's use of the impacted Services (with a pro rata refund of pre-paid fees for the Services).

### *D. General.*

The party seeking indemnification will promptly notify the other party of the claim, and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defence, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and, (ii) the other party may join in the defence with its own counsel at its own expense. **THE INDEMNITIES ABOVE ARE CYGNET Cloud AND THE CUSTOMER'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.**

## 12. Limitation of Liability.

### *A. Limitation on Indirect Liability.*

**EXCEPT FOR CYGNET Cloud OR THE CUSTOMER'S INDEMNIFICATION OBLIGATIONS, NEITHER CYGNET Cloud NOR THE CUSTOMER WILL BE LIABLE FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.**

### *B. Limitation on Amount of Liability.*

**CYGNET Cloud'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF**