

# Cygnnet OurDrive for Business Agreement

Last Modified: October 30th 2013

This Cygnnet OurDrive for Business Agreement (the "**Agreement**") is between Cygnnet OurDrive, a Maltese company ("**Cygnnet OurDrive**") and Customer or End User, as applicable. This Agreement governs access to, and use of, the Cygnnet OurDrive for Business services and any client software (the "**Services**" or "**Cygnnet OurDrive 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 OurDrive 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 OurDrive for Business, you agree to this Agreement (especially note sections 1 and 13) and the Cygnnet OurDrive Terms of Service at [www.cygnnet-ecm.com/terms](http://www.cygnnet-ecm.com/terms) or [www.ourdrive.eu/terms](http://www.ourdrive.eu/terms) To the extent this Agreement conflicts with the Cygnnet OurDrive 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 OurDrive for Business account.

## 1. End Users.

- A. **Accounts.** When joining a Cygnnet OurDrive for Business account, an End User may join with a new account or convert an existing personal account into a Cygnnet OurDrive for Business account. It's important to note that once an End User's personal account becomes a Cygnnet OurDrive 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 OurDrive for Business account. Administrators may also have the ability to monitor, restrict, or terminate access to an End User's Cygnnet OurDrive for Business account. An End User may not be able to disassociate his or her Cygnnet OurDrive for Business account from the organisation.

## 2. Customer Obligations.

- A. **Compliance.** Customer will use the Services in compliance with the Cygnnet OurDrive 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 OurDrive to provide the Services. The Customer represents, and must ensure, that its End Users are governed by this Agreement, the Cygnnet OurDrive Terms of Service, and consent to the Cygnnet OurDrive 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 OurDrive'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 OurDrive 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 OurDrive, 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 OurDrive 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 OurDrive only if it cannot obtain such information despite diligent efforts.
  - iii. Cygnet OurDrive 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 OurDrive'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 OurDrive 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 OurDrive 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 OurDrive under this Agreement.
- B. **Facilities and Data Transfer.** Cygnet OurDrive 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.** Cygnet OurDrive may update the Services from time to time. If Cygnet OurDrive changes the Services in a manner that materially reduces their functionality, Cygnet OurDrive will inform the Customer, unless the Customer has opted-out of communications of that type from Cygnet OurDrive.
  - D. **Limitations on Use of Services.** Cygnet OurDrive 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 Cygnet OurDrive.
5. **Suspension.**
- A. **Of End User Accounts by Cygnet OurDrive.** If an End User (i) violates this Agreement or the Cygnet OurDrive Terms of Service, (ii) uses the Services in a manner resulting in excessive support requests, or (iii) uses the Services in a manner that Cygnet OurDrive reasonably believes will cause it liability, then Cygnet OurDrive 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 Cygnet OurDrive may do so.
  - B. **Security Emergencies.** Notwithstanding anything in this Agreement, if there is a Security Emergency, then Cygnet OurDrive may automatically suspend use of the Services. Cygnet OurDrive 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 OURDRIVE 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 Cygnet OurDrive 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.** Cygnet OurDrive may need the Customer's permission to do things that the Customer or End User ask Cygnet OurDrive to do with Cygnet OurDrive 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 Cygnet OurDrive the permissions Cygnet OurDrive needs to do those things solely to provide the Services

and for Cygnet OurDrive to meet its obligations and exercise its rights under this Agreement. This permission also extends to third parties Cygnet OurDrive 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 Cygnet OurDrive or post in Cygnet OurDrive's forums without any obligation to the Customer or End Users.
  - D. **Customer List.** Cygnet OurDrive may include a Customer's name in a list of Cygnet OurDrive customers on the Cygnet OurDrive 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) Cygnet OurDrive 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) Cygnet OurDrive 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 OURDRIVE 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 OURDRIVE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION IN, OR FROM, AN END USER OR CUSTOMER SERVICES ACCOUNT. Cygnet OurDrive 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. Cygnet OurDrive 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 authorize Cygnet OurDrive 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 OurDrive. Cygnet OurDrive 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 OURDRIVE MAY AUTOMATICALLY CHARGE AT THE END OF THE TRIAL, OR FOR THE RENEWAL, UNLESS THE CUSTOMER NOTIFIES CYGNET OURDRIVE THAT THE CUSTOMER WANTS TO CANCEL OR DISABLE AUTO RENEWAL. Cygnet OurDrive 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 OurDrive will charge tax when required to do so. If the Customer is required by law to withhold any taxes, the Customer must provide Cygnet OurDrive 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 OurDrive 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 OurDrive 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 OurDrive Terms of Service will continue to apply.
- E. **Effects of Termination.** If this Agreement terminates: (i) the rights granted by Cygnet OurDrive to the Customer will cease immediately (except as set forth in this section), (ii) the rights granted by Cygnet OurDrive to End User will cease immediately, (iii) Cygnet OurDrive 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 OurDrive 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 OurDrive 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 OurDrive.** Cygnet OurDrive 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 OurDrive'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 OurDrive 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 OurDrive and, (ii) any content, information, or data provided by the Customer, End Users or other third parties.
- C. **Possible Infringement.** If Cygnet OurDrive believes the Services infringe, or may be alleged to infringe, a third party's Intellectual Property Rights, then Cygnet OurDrive may: (i) obtain the right for the Customer, at Cygnet OurDrive'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 OurDrive does not believe the options described in this section are commercially reasonable, then Cygnet

OurDrive 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 OURDRIVE 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 OURDRIVE OR THE CUSTOMER'S INDEMNIFICATION OBLIGATIONS, NEITHER CYGNET OURDRIVE 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 OURDRIVE'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF € 50,000 OR THE AMOUNT PAID BY THE CUSTOMER TO CYGNET OURDRIVE DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

## 13. Miscellaneous.

- A. **Terms Modification.** Cygnet OurDrive may revise this Agreement from time to time, and the most current version will always be posted on the Cygnet OurDrive for Business website. If a revision, at Cygnet OurDrive's sole discretion, is material, Cygnet OurDrive will notify you (for example at the email address associated with the applicable account). Other revisions may be posted to Cygnet OurDrive's blog or terms page, and you are responsible for checking such postings regularly. By continuing to access or use the Services after revisions become effective, you agree to be bound by the revised Agreement. If the Customer does not agree to the revised Agreement terms, the Customer may cancel the Services. If the revision is material and Customer cancels before the effective date of the revision, Cygnet OurDrive will refund a pro rata amount of any fees Customer paid in advance for the Services for the unused portion of the term. If the End User does not agree to the revised Agreement terms, the End User must stop using the Cygnet OurDrive for Business account. Customer may grant approvals, permissions, extensions and consents by email.
- B. **Entire Agreement.** The Agreement, including the Customer's invoice and the Cygnet OurDrive Terms of Service, constitute the entire agreement between you and Cygnet OurDrive with respect to the subject matter of this Agreement, and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the invoice, the Agreement, the Cygnet OurDrive Terms of Service.

- C. **Governing Law.** THE AGREEMENT AND SERVICES WILL BE GOVERNED BY MALTESE LAW EXCEPT FOR ITS CONFLICTS OF LAWS PRINCIPLES. ALL CLAIMS ARISING OUT OF, OR RELATED TO, THIS AGREEMENT OR THE SERVICES MUST BE LITIGATED EXCLUSIVELY IN MALTA, AND THE PARTIES CONSENT TO VENUE AND PERSONAL JURISDICTION THERE.
- D. **Severability.** Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and remaining provisions of the Agreement will remain in full effect.
- E. **Notice.** Notices must be sent via registered post, or overnight courier and are deemed given when received. Notices to you may also be sent to the applicable account email address, and are deemed given when sent. Notices to Cygnet OurDrive must be sent to Cygnet OurDrive, 38 (St. Martin), Triq San Albert, Gzira GZR 1157, Malta, with a copy to the Legal Department.
- F. **Waiver.** A waiver of any default is not a waiver of any subsequent default.
- G. **Assignment.** Customer may not assign or transfer any part of this Agreement without the written consent of Cygnet OurDrive. Cygnet OurDrive may not assign this Agreement without providing notice to the Customer, except Cygnet OurDrive may assign this Agreement to an affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all, or substantially all, of its assets without providing notice. Any other attempt to transfer or assign is void.
- H. **No Agency.** Cygnet OurDrive and the Customer are not legal partners or agents, but are independent contractors.
- I. **Force Majeure.** Neither Cygnet OurDrive nor the Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labour strikes, governmental action, and Internet disturbance).
- J. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement. Without limiting this section, a Customer's End Users are not third party beneficiaries to the Customer's rights under this Agreement.
- K. **Export Restrictions.** The export and re-export of data via the Services may be controlled by the United States Export Administration Regulations. The Services may not be used in Cuba; Iran; North Korea; Sudan; or Syria or any country that is subject to an embargo by the United States or by the European Union and the Customer must ensure that Administrators and End Users do not use the Services in violation of any export restriction or embargo by the United States. In addition, Customer must ensure that the Services are not provided to persons on the Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals.