

## TERMS AND CONDITIONS

(Last revision – October 2022)

The below terms and conditions, together with any Order Form incorporating these terms, represent a binding services agreement (the **"Agreement"**) between the customer named on the Order Form (**"Customer"**) and Egnyte, Inc., a Delaware corporation, located at 1350 W. Middlefield Road, Mountain View, California 94043 (**"Egnyte"**). Customer's signature on the Order Form constitutes Customer's acceptance of the Agreement as of the effective date of the Order Form (the **"Effective Date"**); provided, however, that for click-through online purchases, the date of purchase shall constitute the Effective Date. Any individual purchasing Services on behalf of an organization represents that such individual has the authority to bind the organization to this Agreement. Individuals under the age of thirteen may not use the Services.

### 1. Definitions and Interpretation.

**"Account"** means an account or domain created by or on behalf of Customer within the Services.

**"Administrator(s)"** means the Power User(s) that Customer appoints to have administrative rights to the Services, including rights to purchase and configure the Services. Egnyte does not maintain administrative rights over Accounts. Customer must maintain at least one active Administrator at all times.

**"Content"** means files, materials, data, text, audio, video, images, or other content.

**"Documentation"** means written materials describing the functionality and operation of the Services that Egnyte makes available to customers, including material at <https://helpdesk.egnyte.com/hc/en-us>.

**"Egnyte Platform"** means Egnyte's hosted content services platform that enables the processing, governance, and management of Content. Each Egnyte Platform subscription includes per-unit features and functionality per the relevant Egnyte Platform plan.

**"Collaboration"** is a service within the Egnyte Platform enabling secure file sharing, editing, and collaboration for content through a cloud-based repository and/or through a User's device linked to the Services.

**"Governance"** is a content governance service within the Egnyte Platform that monitors Egnyte-supported content repositories to identify potential corporate-wide access control problems within such repositories.

**"Order Form"** means Egnyte's then-current standard form (including an online form for purchases) setting forth Services quantities, pricing, fees, and payment terms.

**"Services"** refers to the services ordered under Customer's Order Form(s), as may be further described in Egnyte's Product-Specific Special Terms at the following link: <https://www.egnyte.com/product-specific-special-terms> (**"PSST"**). Egnyte may update the PSST from time to time, provided that any such updates will only apply to Customer from the earlier of i. the date of signing of a new agreement with Egnyte, ii. the date of renewal of the Subscription Term, or, iii. solely for the purposes of overage billing, the date the overage occurs.

**“User”** means: i. an individual authorized by Customer to be a Power User or a Standard User under the Services, each as defined below:

- **“Power User”** means an employee, consultant, or individual contractor of Customer or an employee, consultant, or individual contractor of any affiliated entity to Customer. An individual who is an unaffiliated third party but requires Power User functionality may also be provisioned with a Power User subscription;
- **“Standard User”**, also referred to as an **“External User”**, means an individual other than a Power User (including, without limitation, individuals employed or engaged by Customer’s suppliers or customers). For clarity, an employee, consultant, or individual contractor of Customer, or any employee, consultant, or individual contractor of any affiliated entity to Customer may not use a Standard User subscription;

and/or ii. an individual existing in a content repository whose Content may be scanned under Governance in accordance with the terms of the Agreement.

For clarity, a. affiliated entities do not have an automatic right to utilize the Services, but if Egnyte agrees in writing to allow such usage, those Users of the affiliated entities can only be classified as Power Users, and b. parent and subsidiary companies, along with Customer-acquired entities – irrespective of the manner of acquisition - are considered affiliated entities.

Section headings are for general reference only and are not probative in interpreting the meaning of any provisions hereunder.

## 2. Use of the Services; Privacy.

### a. Services.

- i. General: Egnyte will make the Services available to Customer for Customer’s internal business purposes in accordance with the relevant Order Form. For clarity, the Services are not for resale. Egnyte will process Content in accordance with Customer’s and Users’ instructions.
- ii. Services Configuration: Customer shall be responsible for configuring the Services per Customer requirements, subject to the functionalities or limitations of such Services.
- iii. By entering this Agreement, Customer represents that its purchase of Services is not contingent on the delivery of any future functionality or features or dependent on any oral or written comments made by Egnyte regarding future functionality or features.

- b. Access to the Services. Egnyte provides the Services in a hosted, cloud-based format and makes the Egnyte Clients available to Customer and its Users (subject to usage restrictions associated with Standard User subscriptions), solely as an ancillary tool for accessing the Services. **“Egnyte Clients”** means the installations installed on Customer’s local server, desktop, mobile, or other device (e.g., mobile, desktop, or group apps) that enable a User to engage with the Services. Customer acknowledges that, from time to time, Egnyte may issue updates to the Egnyte Clients (for example, to address security vulnerabilities, upgrade the protocol, improve usability or performance, and upgrade features). In that event, in order for Customer to best utilize the Services, either Customer will be offered the ability to upgrade the version of Egnyte Clients that are currently running, or they will be automatically upgraded by Egnyte.

- c. Provision of Support for Services. Egnyte will provide support for the Services as described in the applicable Order Form (“**Support**”). Egnyte may update its Support from time to time on written notice (which may include posting the updated Support on Egnyte’s customer support website), provided the new level of support is not materially less than that described in the applicable Order Form as of its effective date.
  - d. Data Protection, Privacy, Security, and Backup. Egnyte will comply with the data protection and information security procedures detailed in the Data Protection Addendum at the following link: <https://www.egnyte.com/data-protection-addendum> (the “DPA”). The DPA may be updated from time to time on written notice to reflect changes in applicable law or enhancements in the security and availability of the cloud infrastructure used to provide the Services. On an annual basis and upon Customer’s written request, Egnyte will provide Customer with relevant Services-related SSAE18 reports. Customer acknowledges and agrees that all SSAE18-related reports constitute Confidential Information of Egnyte or its providers. Egnyte’s storage provider(s) utilize methods to help ensure availability and redundancy of Content. Additional details pertaining to Egnyte’s commitment to privacy can be found in its Privacy Policy at the following link: <https://www.egnyte.com/privacy-policy>.
3. Customer’s Responsibilities Relating to Use of the Services.
- a. Content. Customer (i) is responsible for the accuracy and quality of Content; (ii) will ensure that Content and the usage thereof complies with this Agreement and applicable laws; (iii) will promptly handle and resolve any notices or claims from a third party claiming that Content violates such party’s rights, including take-down notices pursuant to the U.S. federal Digital Millennium Copyright Act; and (iv) will ensure that any and all permissions are secured for Egnyte to access, copy, and/or use Content as necessary to perform the Services, including, but not limited to, consent of Users to process Content in general and any personal data in particular (and Customer’s acceptance of this Agreement confirms that Users’ consent has been secured), along with consent of Users for any communications integral to the Services.
  - b. Third-Party Supplied Storage. Ensuring that storage independently secured by Customer conforms with Customer’s requirements, including those pertaining to availability, durability, security, and costs associated with such storage, is the sole responsibility of Customer. Customer acknowledges and accepts that associated costs to Customer can be impacted by the interaction between Egnyte’s Services and Customer-supplied storage. Egnyte disclaims any responsibility for such Customer storage requirements and shall not be liable to Customer for any failures of the third-party storage provider or costs imposed on Customer by the provider.
  - c. Passwords and Accounts. Without derogating from Egnyte’s confidentiality and security obligations hereunder, Customer is responsible for all activities under its User and Administrator logins and for safeguarding the confidentiality of usernames and passwords. Egnyte will have no liability to Customer or any third party as a result of any unauthorized disclosure or access to Customer’s Account or Content as a result of Customer, Administrator, or User misuse or loss, or the theft of, any login credentials (except to the extent the theft was due to Egnyte’s negligence). Customer will promptly notify Egnyte of any unauthorized use of an Account, Content, or the Services of which Customer becomes aware, and Customer will take all steps necessary to terminate such unauthorized use. In addition, Customer will provide Egnyte with any cooperation and assistance reasonably requested by Egnyte related to such unauthorized use.

- d. Use Restrictions. Customer will not: (i) use or allow use of the Services in any manner not expressly permitted by this Agreement, including, without limitation, allowing Users who should be classified as Power Users to use Standard User subscriptions; (ii) allow multiple individuals to utilize the same User subscription; (iii) reassign an individual to a User subscription after such individual has been disassociated from a User subscription (Customer must purchase an additional User subscription for any future use by such individual); (iv) resell, sublicense, lease, or otherwise commercially exploit the Services; (v) modify, copy, or create derivative works based on the Services; (vi) reverse engineer, disassemble, or decompile the Services, or attempt to derive source code from the Services; (vii) remove, obscure, or alter any proprietary right notice related to the Services; (viii) use or allow use of the Services to send unsolicited or unauthorized junk mail, spam, chain letters, or any other form of duplicative or unsolicited messages; (ix) store or transmit Content: (A) containing unlawful, defamatory, threatening, pornographic, abusive, or libelous material, (B) containing material that encourages conduct that could constitute a criminal offense, or (C) that violates the intellectual property, publicity, or privacy rights of others; (x) use or allow use of the Services to store or transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents, or programs; (xi) interfere with or disrupt use of the Services by other Egnyte customers or other servers or networks connected to the Services, or violate the regulations, policies, or procedures of such other networks; (xii) access or attempt to access, through password mining or other means, Egnyte's accounts, computer systems, or networks not covered by this Agreement; (xiii) access, use, or allow access or use of the Services in a way intended to avoid incurring fees or exceeding the usage rights granted under the Agreement; or (xiv) use or allow use of the Services for purposes of product evaluation, benchmarking, or other comparative analysis intended for publication without Egnyte's prior written consent.
- e. Notices. Customer agrees that Egnyte may send it and its Users communications or data regarding the Services using electronic means. These may include, but are not limited to: (i) notices about usage of the Services, including notices concerning violations of use, (ii) updates to the Services, (iii) materials regarding Egnyte's products and services, including announcements for utilizing or maximizing existing and new feature sets, and (iv) information the law requires Egnyte to provide. Egnyte provides Users the opportunity to opt-out of receiving certain of these communications by following the opt-out instructions provided in the message, and Administrators may block communications to Users via the Account. However, Egnyte may continue to provide necessary and/or required information by email or other effective means. Notices via email will be deemed given and received when the email is sent. Notices to Egnyte should be sent via email to [legal@egnyte.com](mailto:legal@egnyte.com), with a duplicate copy sent via registered mail, return receipt requested, to the following address: Egnyte, Inc., Attn: Legal Department, 1350 W. Middlefield Road, Mountain View, California 94043. Any notice must specifically reference that it is a notice given under this Agreement.
- f. Third-Party Services and Content. All transactions using the Services are solely between the transacting parties to this Agreement. The Services may contain features and functionalities linking or providing Customer with certain functionality and access to third-party content, including websites, directories, servers, networks, systems, information and databases, applications, software, programs, products, or services. Access to such third-party content may be facilitated by Egnyte through its online app store. Customer acknowledges that Egnyte is not responsible for such third-party content (including any terms and conditions or activities thereunder), and Egnyte is neither an agent of any third party nor a direct party in any such transaction; provided, however, that with regard to purchases

of third-party content made through the Egnyte app store, Egnyte may serve in a limited role as a billing agent with regard to particular transactions initiated by Customer.

#### 4. Fees.

- a. Fees, Upgrades, and Additional Charges.
  - i. Customer will pay fees to Egnyte as set forth in the applicable Order Form. Except as otherwise stated in this Agreement, fees are non-refundable.
  - ii. If Customer upgrades or expands consumption of Services (for example, to obtain additional storage [which is purchased on a per-domain basis], User access, or additional features and functionality), Customer agrees to pay for such overconsumption for the remainder of the Subscription Term at the pricing specified for ordering additional Services in the applicable Order Form (and if not specified in the Order Form, including any linked pricing therein, at Egnyte's then-current list pricing). Any overconsumption shall set a new high-water mark in Customer's Services commitment for the Subscription Term. Payment for overconsumption shall be in accordance with the payment terms then in effect.
  - iii. Misclassification of Users by Customer (i.e. classifying individuals who should be Power Users as Standard Users) may result in fee adjustments based on proper User classification.
  - iv. Customer acknowledges that Egnyte has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential part of the bargain between the parties.
- b. Price Increases. Egnyte reserves the right to increase pricing, provided that any increase in pricing for Services ordered under the applicable Order Form will take effect at the beginning of the next renewal Subscription Term. For Agreements with an auto-renewal provision (other than a monthly click-through plan, which may be updated on thirty days' advance written notice via email), Egnyte shall provide Customer with at least forty-five days' advance written notice (via email) of such prospective increase in pricing. Pricing for upgrades and renewal terms may be defined in the applicable Order Form, which shall control in case of conflict with this Section 4.b.
- c. Payment Terms. All fees will be due and payable as specified in the applicable Order Form. Customer shall keep its billing information current. In the event Customer disputes any fees, Customer must provide written notice of the disputed amount within the payment period and timely pay any undisputed portion. The parties shall cooperate in good faith to resolve any disputed amount. Amounts payable by Customer will be made without setoff or counterclaim and without deduction or withholding. At Egnyte's discretion, past due amounts may accrue a late fee equal to 1.5% per month or the maximum amount allowed by applicable law, whichever is less. Customer will pay for all reasonable costs incurred by Egnyte in collecting past due amounts, including reasonable attorneys' fees and other legal fees and costs. In addition to its other rights and remedies and in Egnyte's sole discretion, Egnyte may suspend Customer's access to or cancel the Services and/or amend Customer's payment terms for future billings under the Agreement via written notice if Customer's account remains past due ten days after Egnyte provides Customer written notice of a past due amount.
- d. Taxes. Fees are exclusive of Taxes, and Customer shall pay or reimburse Egnyte for all Taxes arising out of this Agreement. For purposes of this Agreement, "**Taxes**" means any value-added tax (VAT), goods and services tax (GST), sales or use tax, withholding, digital service taxes and other taxes (other than taxes on Egnyte's income), export and import fees, customs duties, and similar charges applicable to the transactions contemplated by this Agreement that are imposed by any government

or other authority. If Egnyte is required to charge VAT or GST, Customer will pay it in addition to the price, based on a valid invoice issued by Egnyte. Customer will promptly provide Egnyte with legally sufficient tax exemption certificates for each taxing jurisdiction in which it claims exemption. In the event any government or authority imposes withholding taxes on Egnyte's fees, Customer shall increase the amount of fees payable to Egnyte in a manner such that Egnyte receives the full amount of committed fees pursuant to the applicable Order Form. If applicable, Customer hereby certifies that it is a duly registered VAT/GST payer and will provide a confirmation of VAT/GST registration prior to, or at the time of, execution of the order.

#### 5. Ownership.

- a. Customer Ownership. As between Egnyte and Customer, Customer or its licensors own all right, title, and interest in and to the Content.
- b. Egnyte Ownership. As between Egnyte and Customer, Egnyte or its licensors own all right, title, and interest in and to the Services, Egnyte Clients, and all hardware, software, and other items used to provide the Services. No title to or ownership of any proprietary rights related to the Services or Egnyte Clients are transferred to Customer via this Agreement or any transaction contemplated by this Agreement. Egnyte reserves all rights not explicitly granted to Customer under this Agreement. Egnyte is free to use any comments, suggestions, recommendations, improvements, and other feedback provided by Customer or its Users regarding the Services for any purpose, without obligation.

#### 6. Professional Services.

- a. General. Customer may purchase certain professional services from Egnyte. Such services may include a rollout plan, project management, data and permissions migration, integrations, and customizations, all as described in a mutually-agreed Statement of Work ("SOW") accompanying the applicable Order Form. If payment terms are not specified in the SOW, the payment terms in the Order Form shall apply. Even if executed contemporaneously with an Order Form, an SOW represents a separate and severable contractual commitment between the parties.
- b. Professional Services Ownership. Unless otherwise set forth in the applicable SOW, Egnyte shall own all rights, title, and interest in and to the PS Tools (excluding any Customer information and Content), and related intellectual property rights. During the Subscription Term and to the extent contemplated in the SOW, Egnyte provides Customer with a limited, non-exclusive, non-transferable, and terminable license to use the PS Tools solely in connection with its authorized use of the Services. Nothing herein shall be construed to assign or transfer any intellectual property rights in the PS Tools. "**PS Tools**" means the proprietary techniques, databases and libraries, know-how, scripts, and expertise utilized by Egnyte in providing professional services to Customer.
- c. Professional Services Warranty. With regard to professional services only, Egnyte warrants that: (i) each of its employees, consultants, and subcontractors, if any, that it uses to perform professional services has the necessary knowledge and experience to perform in accordance with the relevant SOW; and (ii) professional services will be performed in a professional and workmanlike manner and in accordance with applicable laws and regulations. Customer acknowledges that Egnyte's ability to successfully perform professional services is dependent upon Customer's provision of timely information, access to resources, and participation. If the professional services do not conform to the foregoing warranty without fault of Customer, Egnyte will, without prejudice to its other rights and

remedies under this Agreement or at law, re-perform the non-conforming portions of the professional services at no cost to Customer.

#### 7. Warranties, Representations, and Disclaimers.

- a. Mutual Representations and Warranties. Each party represents and warrants that (i) it has the legal power to enter and perform under this Agreement; and (ii) the execution and performance of this Agreement does not violate the terms of any other agreement to which it is otherwise bound.
- b. Egnyte Representations and Warranties.
  - i. Egnyte represents and warrants that the Services will perform in all material respects in accordance with the Documentation. Egnyte may modify the Documentation in its sole discretion so long as the functionality of the Services is not materially decreased. In the event the Services are nonconforming, Egnyte will fix, provide a work around, or otherwise repair or replace the nonconforming Services, or, if Egnyte is unable to do so, terminate Customer's access to the Services following reasonable notice and return fees for the Services previously paid to Egnyte for the period beginning with Customer's notice of nonconformity through the remainder of the then-current Subscription Term.
  - ii. Egnyte shall make best efforts to meet the requirements in the Service Level Agreement ("SLA") at the following link: <https://www.egnyte.com/service-level-agreement/10-2022>. In the event of any failure to meet the SLA requirements, Egnyte will provide the remedies set forth therein. This subsection shall not apply to any Customers on Egnyte's Business or Team plans.
- c. Customer Representations and Warranties. Customer represents and warrants that (i) it has all rights in its Content necessary to grant the rights of access, copying, and/or usage needed for Egnyte to perform the Services, and (ii) such access, copying and/or usage does not violate any law or third-party rights.
- d. Disclaimer of Warranties. EXCEPT AS SET FORTH IN THIS SECTION 7, EGNYTE AND ITS SUPPLIERS AND LICENSORS MAKE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. EGNYTE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. EGNYTE DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE CONTENT WILL BE SECURE BEYOND ANY POSSIBLE THREAT.

#### 8. Confidentiality.

- a. Confidential Information Defined. "**Confidential Information**" means information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, but is not limited to, the terms of this Agreement (including pricing), the Content, the Services, business and marketing plans, technical information, product designs, and business processes. Confidential Information also includes information Disclosing Party has received from others which Disclosing Party is obligated to treat as confidential or proprietary. Confidential Information does not include information that, in each case without breach of any obligation owed to Disclosing Party: (i) is or becomes generally known to the public; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party; (iii) was

independently developed by Receiving Party; or (iv) is received from a third party not subject to an obligation of confidentiality to Disclosing Party.

- b. Confidentiality Obligations. Absent Disclosing Party's prior written consent, Receiving Party shall not use or disclose Confidential Information for any purpose outside the scope of this Agreement. Receiving Party shall protect the confidentiality of Confidential Information in substantially the same manner that it protects its own confidential information of like kind (and in no event using less than reasonable care). Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual, or reasonably suspected, unauthorized disclosure of Confidential Information. The DPA contains the terms pertaining to any Security Breach. For clarity, the non-disclosure/non-use provisions herein shall not constrain Egnyte from responding to Customer's or Users' instructions while utilizing the Services (e.g. Users can direct the Services to share Content with a third party outside Customer's organization, and Egnyte shall not be liable for the Services taking such action).
- c. Compelled Disclosures. If Receiving Party is compelled by law to disclose Confidential Information, Receiving Party shall, to the extent legally permitted, provide Disclosing Party with prior notice of such compelled disclosure and reasonable assistance, at Disclosing Party's cost, with any request by Disclosing Party to contest the disclosure. Receiving Party will (i) take reasonable steps to limit any such disclosure to the specific Confidential Information required and (ii) continue to otherwise protect, per this Section 8, all Confidential Information disclosed.
- d. Injunctive Relief. If Receiving Party discloses, or threatens to disclose, any Confidential Information in breach of this Agreement, Disclosing Party may, in addition to any other remedies available, seek injunctive relief to enjoin such acts (without the need for posting a bond or other guarantee), it being acknowledged by the parties that other remedies are inadequate.
- e. Return of Confidential Information. Upon termination of this Agreement, Receiving Party shall continue to maintain the confidentiality of Confidential Information and, upon Disclosing Party's request, return or destroy (at Disclosing Party's election) all materials containing Confidential Information. The destruction of Content upon termination is governed by Section 11.c below.

## 9. Indemnification.

- a. Indemnification by Egnyte. Egnyte will defend (subject to Section 9.c below) Customer from and against all claims, suits, or actions brought by a third party (each, a "**Claim**") against Customer alleging that the Services infringe the intellectual property rights of that third party and will indemnify Customer against any final judgment awarded (including reasonable attorneys' fees) or final settlement made with respect to such Claim which imposes a financial obligation on Customer. In addition to Egnyte's indemnification obligation, if the Services become or, in Egnyte's opinion, are likely to become the subject of an infringement claim, Egnyte may, at its sole option and expense, either procure for Customer the right to continue using the Services or replace or modify the Services to be non-infringing without material decrease in functionality. If neither of the foregoing options is reasonably practicable in Egnyte's judgment, Egnyte may terminate Customer's access to the infringing Services upon sixty days' written notice and refund Customer all prepaid subscription fees for the remainder of the Subscription Term on a pro rata basis. Egnyte shall have no liability for any Claim to the extent the Claim is based upon (i) the Content; (ii) the Services in combination with any other product, service, or device not furnished, recommended, or approved by Egnyte, if such Claim would have been avoided without such combination; or (iii) Customer's use of the Services other than in



accordance with this Agreement. This Section 9.a states Customer's exclusive remedy for any intellectual property claim regarding the Services.

- b. Indemnification by Customer. Customer will defend (subject to Section 9.c below) Egnyte against any Claim brought against Egnyte alleging that the Content, or Customer's use of the Services in breach of this Agreement, infringes the intellectual property rights of a third party and will indemnify Egnyte against any final judgment awarded (including reasonable attorneys' fees) or final settlement made with respect to such Claim which imposes a financial obligation on Egnyte.
- c. Indemnification Process. A party's obligation of indemnification is subject to the indemnified party: (i) promptly notifying the indemnifying party in writing of the existence of the Claim for which indemnification is sought; (ii) upon indemnifying party's written request, granting the indemnifying party sole control over the defense, negotiation, and settlement of the Claim, provided that the indemnifying party shall not bind the indemnified party to any final judgment or settlement without the prior written consent of such indemnified party, with such consent not to be unreasonably withheld; and (iii) cooperating with the indemnifying party with respect to any such Claim. The indemnified party may elect to participate in a Claim with an attorney of its own choice and at its own expense.

#### 10. Limitation of Liability.

- a. Limitation of Liability. Except for liability for indemnification Claims, property damage, personal injury, or fraud, neither party's aggregate liability arising out of or related to this Agreement (whether in contract or tort or under any other theory of liability) shall exceed the cumulative fees paid or payable by Customer under this Agreement during the twelve months preceding the incident giving rise to liability. With respect to an indemnification Claim, in no event will either party's aggregate liability arising out of or related to this Agreement (whether in contract or tort or under any other theory of liability) exceed two times the amount paid or payable by Customer under this Agreement during the twelve months preceding the date of the event giving rise to such Claim. The foregoing shall not limit Customer's payment obligations under Section 4.
- b. Exclusion of Consequential and Related Damages. Except in the event of i. indemnification Claims, ii. property damage or personal injury, or iii. fraud, in no event shall either party have any liability to the other for lost profits or revenues (excluding Customer's duty to pay fees hereunder) or for any indirect, special, incidental, consequential, cover, or punitive damages, however caused, whether in contract or tort or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages. The foregoing disclaimer shall not apply to the extent prohibited by applicable law.

#### 11. Term and Termination.

- a. Initial Term and Auto-Renewal. This Agreement will commence on the Agreement Effective Date and will continue for the period designated in the Order Form ("**Subscription Term**"). Upon expiration of the initial Subscription Term of an Order Form, the Order Form shall automatically renew as described therein unless either party elects to terminate this Agreement by giving the other party at least thirty days' written notice prior to the end of the then-current Subscription Term, in which case the Services shall end at the conclusion of the then-current Subscription Term following the stated notice. Notwithstanding the foregoing, for any Customer with a monthly subscription period, the Agreement

shall automatically renew for successive one-month periods unless either party gives notice of non-renewal in accordance with this section. If Customer attempts to terminate the Agreement during a Subscription Term other than for cause, Egnyte will not provide Customer with a refund for any pre-paid fees; this, without derogating from Egnyte's right to bring a claim for all fees Customer is committed to paying under the Agreement, with such fees accelerating and becoming due on the date of termination.

- b. Termination for Cause. A party may terminate this Agreement for cause immediately upon written notice: (i) for a material breach of this Agreement by the other party if the breach remains uncured thirty days after receipt of the initial written notice setting forth the breach in reasonable detail, or (ii) if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors, or similar proceeding (except to the extent a party is prohibited by law from terminating under such conditions). Upon any termination for cause by Customer, Egnyte will refund Customer any prepaid subscription fees for the post-termination period on a pro rata basis. Because pricing is based on Customer's commitment for the full Subscription Term, Egnyte cannot agree to waive Customer's payment obligations if Egnyte is forced to terminate this Agreement for cause.
- c. Post-Termination Obligations. Within ninety days of any termination of this Agreement, Egnyte shall destroy all copies of Content that remain within Egnyte's Services infrastructure.
- d. Survival. Terms that, by their nature, are intended to extend beyond termination, including, but not limited to, Sections 5 (Ownership), 7.d (Disclaimer of Warranties), 8 (Confidentiality), 9 (Indemnification), 10 (Limitation of Liability), 11.c (Post-Termination Obligations), and 12 (General Provisions), will survive any termination of this Agreement.

## 12. General Provisions.

- a. Governing Law. This Agreement will be construed and enforced in all respects in accordance with the laws of the State of California, without reference to its choice of law rules.
- b. Government Users. If Customer is a U.S. government entity, Customer acknowledges that elements of the Services constitute software and documentation and are provided as "**Commercial Products**" as defined at 48 C.F.R. 2.101 and are being licensed to U.S. government end users as commercial computer software subject to the restricted rights described in 48 C.F.R. 2.101 and 12.212.
- c. Independent Contractors. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties is created hereby. There are no third-party beneficiaries to this Agreement. Egnyte may subcontract portions of the Services in accordance with the terms set forth in the DPA.
- d. Waiver and Severability. No failure or delay in exercising any right hereunder will constitute a waiver of such right. Except as otherwise provided, remedies provided in this Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be construed, as nearly as possible under applicable law, to reflect the parties' intentions regarding the invalid or unenforceable provision, with all other provisions remaining in full force and effect.
- e. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (which shall not be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety,

without consent of the other party, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party. Any attempted assignment in breach of this section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

- f. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform its obligations under this Agreement (excluding payment obligations) if the delay or failure arises from any cause or causes beyond that party's reasonable control, including, but not limited to, natural disasters, war or acts of terrorism, industry-wide labor disruptions, and governmental decrees.
- g. Public Announcement. Egnyte reserves the right to release a press announcement regarding the execution of this Agreement and to include Customer's name on Egnyte's customer lists and in its marketing materials, including on Egnyte's websites; provided, however, that Egnyte shall first coordinate any such actions with Customer.
- h. General Compliance. Without derogating from any other U.S. restrictions on dealings with foreign countries or persons, the countries listed on the following website are excluded from the scope of this Agreement: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. Customer commits at all times to remain in compliance with such restrictions, and Customer and/or its Users' interactions with countries and/or persons banned under any export control laws or regulations shall be at Customer's sole risk and liability. Further, Customer hereby takes notice of and will, to the extent applicable, follow the principles expressed in Egnyte's Business Conduct and Ethics Policy, which can be found at the following link: <https://www.egnyte.com/business-conduct-and-ethics>.
- i. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements between the parties regarding the subject matter herein, including any non-disclosure agreement (with the confidentiality provisions of this Agreement to govern prior disclosures of Confidential Information). In the event of any conflict of terms, this Agreement supersedes any click-through terms (including trial terms) included for the Egnyte Client. Except as expressly provided herein, this Agreement may not be amended or modified except by a writing signed by both parties.