

Egnyte Terms of Service

http://www.egnyte.com/corp/terms_of_service.html

EGNYTE INC. USER AGREEMENT

IMPORTANT - READ CAREFULLY

THIS USER AGREEMENT (THIS "AGREEMENT") IS A LEGAL AND BINDING CONTRACT BETWEEN YOU, THE USER, AND EGNYTE INC. ("EGNYTE") GOVERNING YOUR ACCESS TO AND USE OF EGNYTE'S WEBSITE LOCATED AT www.egnyte.com (THE "WEBSITE") AND OF EGNYTE'S EGNYTE SOFTWARE LOCATED AT <yourcompanyname>.egnyte.com (AS FURTHER DEFINED BELOW, THE "SOFTWARE" OR "EGNYTE").

PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING AND USING THE WEBSITE AND BY INSTALLING AND USING EGNYTE, YOU INDICATE YOUR ACCEPTANCE OF THE TERMS, CONDITIONS AND LIMITATIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THE TERMS, CONDITIONS AND LIMITATIONS OF THIS AGREEMENT, YOU MUST PROMPTLY (A) DELETE THE SOFTWARE FROM ANY AND ALL OF YOUR COMPUTERS ON WHICH IT IS INSTALLED AND DESTROY ALL COPIES OF EGNYTE IN YOUR POSSESSION AND ALL ACCOMPANYING MATERIALS, INCLUDING PACKAGING AND DOCUMENTATION, AND (B) CEASE ALL OF YOUR USE OF THE WEBSITE.

THIS AGREEMENT APPLIES TO THAT VERSION OF EGNYTE THAT YOU HAVE LICENSED, WHETHER OBTAINED BY YOU DIRECTLY FROM EGNYTE THROUGH THE WEBSITE, OR FROM AN AUTHORIZED EGNYTE RESELLER. EGNYTE IS LICENSED, NOT SOLD. YOU MAY USE ONLY THE VERSION OF EGNYTE THAT YOU HAVE LICENSED FROM EGNYTE AND HAVE PAID FOR, AND MUST USE IT STRICTLY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT.

EGNYTE RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS PRIVACY POLICY, AT ANY TIME, EFFECTIVE UPON MAKING THE MODIFIED PROVISIONS AVAILABLE ON THE WEBSITE. YOU ARE RESPONSIBLE FOR REGULARLY REVIEWING THESE TERMS AND CONDITIONS, AND WE STRONGLY URGE YOU TO DO SO. CONTINUED USE OF THIS WEBSITE AFTER ANY CHANGES TO THIS AGREEMENT SHALL CONSTITUTE YOUR CONSENT TO SUCH CHANGES. EGNYTE DOES NOT AND WILL NOT ASSUME ANY OBLIGATION TO NOTIFY YOU OF ANY CHANGES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1. DEFINITIONS.

1.1 "Client Computer" shall mean any computer on which Egnyte Client is installed.

1.2 "Egnyte Uploader" shall mean the client interface component of EGNYTE's Egnyte software which is installed on a Client Computer.

1.3 "Egnyte Server" shall mean the server component of EGNYTE's Egnyte software which is installed on EGNYTE's host server and is accessible by using either the Egnyte Uploader or a web browser.

1.4 "Software" or "Egnyte" shall mean EGNYTE's Egnyte software collectively (including Egnyte Uploader and Egnyte Server), and each separate component of the foregoing individually, any updates, upgrades or enhancements to the Software or a Software component provided to you by EGNYTE, including, without limitation, any support software provided to you by EGNYTE via the Internet or by any other means.

2. EGNYTE LICENSE GRANT. Provided that you fully comply with this Agreement and other terms of use regarding Egnyte, EGNYTE hereby grants to you, subject to the terms and conditions of this Agreement, a nonexclusive, limited, non-transferable right and license (a) to install the Egnyte Uploader on a Client Computer for the sole purpose of permitting you to access, and utilize those services provided by, the Egnyte Server access, and (b) to utilize those services provided by, the Egnyte Server from any Client Computer.

3. LICENSE RESTRICTIONS. Notwithstanding anything to the contrary herein, the license grants of Section 2 are subject to the following restrictions:

3.1 Representations. You certify that if you are an individual (i.e., not a corporation) you are at least 18 years of age. You also certify that you are legally permitted to use the services and access the website, and you take full responsibility for the selection and use of the services and access of the website. This Agreement is void where prohibited by law, and the right to access Egnyte and the website is revoked in such jurisdictions. You shall be responsible for obtaining and maintaining any equipment or ancillary services needed to connect to, access or otherwise use Egnyte, including, without limitation, modems, hardware, software, and long distance or local telephone service. You shall be responsible for ensuring that such equipment or ancillary services are compatible with the Services.

3.2 Derivative Works. You may not modify or make derivative works of the Egnyte Uploader, the documentation thereof, or any other component that may be included in the Software or provided with the Software, nor rent, lease or otherwise distribute the Software or the documentation thereof.

3.3 Transfer of Rights. You shall not assign, sublicense, rent or otherwise transfer your access and use rights under this Agreement regarding Egnyte without the prior written approval of EGNYTE.

3.4 Reverse Engineering and Software Development. You may not reverse engineer, decompile, or disassemble Egnyte, directly or indirectly, in whole or in part. Furthermore, Egnyte shall only be used in accordance with the accompanying documentation and shall not be used for software development.

3.5 Ownership. All worldwide ownership of and all rights, title and interest in and to Egnyte, and all copies and portions thereof, including without limitation, all copyrights, patent rights, trademark rights, trade secret rights, inventions and other proprietary rights therein and thereto, are and shall remain exclusively in EGNYTE and its licensors. The only rights you acquire under this Agreement are the licenses set forth in this Agreement.

3.6 Other Restrictions. You may not use Egnyte or the Website to:

- (a) defame, abuse, harass, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
- (b) conduct or forward illegal contests, pyramid schemes, chain letters, unsolicited or unauthorized advertising, promotional materials, unsolicited e-mail or multi-level marketing campaigns;
- (c) publish, post, distribute, disseminate or link to any: (i) defamatory, infringing, or unlawful topic, name, material or information; (ii) software or other material protected by intellectual property laws, copyright licenses, rights of privacy or publicity, or other proprietary rights, unless you own, control such rights or have received all necessary consents for your use of such software and other materials;
- (d) harvest user names or email addresses for any purpose;
- (e) restrict or inhibit any other user from using and enjoying its rights with respect to Egnyte or the Website, interfering with or disrupting the Website, the Egnyte service servers or network connected to Egnyte; or (f) violate any applicable government laws or regulations.

4. USE OF EGNYTE. EGNYTE has no special relationship with or fiduciary duty to you. You acknowledges that EGNYTE has no control over, and no duty to take any action regarding: what you access via Egnyte; what effects the content you access may have on you; how you may interpret or use the content; or what actions you may take as a result of having been exposed to the content. You are solely responsible for your activities in using the Egnyte services including the activities of you employees, contractors and all parties that you allow to have access to Egnyte. You are solely responsible for the contents, modification, management and/or deletion of any and all files and data used by you in conjunction with Egnyte. Further, you are responsible to ensure that such files and data are not used in conjunction with Egnyte in violation of any copyright or any other proprietary right of any third party. EGNYTE may access your account, including its data, to respond to service or technical problems or as stated in this Agreement. You, not EGNYTE, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all data stored in your account. Furthermore, EGNYTE shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any data.

5. USE OF COMMUNICATION SERVICES. The Website contains bulletin board services, forums, communities, personal web pages, electronic mail postings and/or other message or communication facilities designed to enable you to communicate with the public at large or with a group (collectively, "Communication Services"). You agree to use the Communication Services only to post, send and receive messages and material that are proper and related to the particular Communication Service, and to comply in your use of the Communication Services with all applicable laws and regulations and the terms and conditions of this Agreement, including, but not limited to, Section 3.5. In addition, you agree that when using a

Communication Service, you shall not:

- (a) Restrict or inhibit any other user from using and enjoying its rights in the Communication Services;
- (b) Upload, post or otherwise transmit (including by linking to websites that so upload or post) files that contain viruses, spyware, worms, Trojan horses, or any other programs that may damage the operation of anyone's computer, are designed to program anyone's computer to perform any function which is unwanted by its owner, are designed to collect or transmit any information about a computer's owner without his or her knowledge, or are designed to perform any other illegal or illicit function;
- (c) Impersonate any person or entity, including EGNYTE, EGNYTE employees or other industry professionals;
- (d) Use racially, ethnically, or otherwise offensive language;
- (e) Violate any code of conduct or other guidelines that may be applicable for any particular Communication Service; or
- (f) Link the Communication Services to any unsolicited communication sent to any third party, or otherwise use or mention the Communications Services in connection with any such unsolicited communication. EGNYTE is not a publisher of information and material posted by users of the Communication Services ("User Content"). Accordingly, EGNYTE has no more editorial control over such content than does a library or newsstand. Any opinions, advice, statements, services, offers, or other information or content expressed or made available as part of such User Content are those of the respective users and not of EGNYTE. EGNYTE does not guarantee the accuracy, completeness, or usefulness of any User Content, nor its merchantability or fitness for any particular purpose. Under no circumstances will EGNYTE be liable for any loss or damage caused by your reliance on any User Content. It is your responsibility to evaluate the accuracy, completeness and/or usefulness of any User Content. You agree that any User Content is provided by you on a non-proprietary and non-confidential basis.

6. ACCESS RESTRICTION. EGNYTE reserves the right to deny to any user, in its sole discretion, access to Egnyte or any portion thereof without notice. You are responsible for safeguarding the confidentiality of your password(s) and user name(s) created by you for use with Egnyte, and for any use or misuse of your Egnyte account resulting from any third party using a password or user name created by you.

7. WARRANTY DISCLAIMER. THE SOFTWARE, THE WEBSITE AND ALL OF THE CONTENTS THEREOF ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESSED, IMPLIED OR STATUTORY, AND EGNYTE HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS, WITH RESPECT THE WEBSITE AND ALL CONTENTS THEREOF, EGNYTE, THE ACCOMPANYING DOCUMENTATION, AND ANY ACCOMPANYING SUPPORTING MATERIALS. YOU EXPRESSLY ACKNOWLEDGE THAT THE WEBSITE AND/OR THE SOFTWARE MAY CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS. NO EMPLOYEE, AGENT, RESELLER, DEALER OR DISTRIBUTOR IS AUTHORIZED TO MODIFY THIS LIMITED WARRANTY OR TO MAKE ANY ADDITIONAL WARRANTIES. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED

WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

8. LIABILITY DISCLAIMER; NO LIABILITY FOR CONSEQUENTIAL DAMAGES. YOU ARE SOLELY RESPONSIBLE FOR INPUTS INTO THE SOFTWARE, VERIFYING THE RESULTS OF THE USE OF THE SOFTWARE AND HOW THE OUTPUT FROM THE SOFTWARE IS USED BY YOU. EGNYTE SHALL NOT BE RESPONSIBLE OR LIABLE TO YOU OR ANY THIRD PARTY FOR THE RESULTS OR WORK PRODUCT OBTAINED FROM YOUR USE OF THE SOFTWARE. IN NO EVENT SHALL EGNYTE OR ITS SUPPLIERS OR LICENSORS BE LIABLE OR OBLIGATED TO YOU IN ANY MANNER FOR ANY SPECIAL, NON-COMPENSATORY, CONSEQUENTIAL, INDIRECT, INCIDENTAL, STATUTORY OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST DATA OR PROGRAMS, BUSINESS INTERRUPTIONS, LOST PROFITS AND LOST REVENUE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF EGNYTE IS AWARE OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, EGNYTE SHALL NOT BE LIABLE TO YOU IN AN AMOUNT IN THE AGGREGATE GREATER THAN THE AMOUNT THAT RECEIVED BY EGNYTE FOR THE SOFTWARE LICENSED BY YOU. THE LIMITATIONS SET FORTH ABOVE SHALL BE DEEMED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDIES SET FORTH IN THIS AGREEMENT.

THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK AND FIND IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

9. INDEMNIFICATION. You agree to defend, indemnify and hold harmless EGNYTE, and its employees, officers, directors, licensors and affiliates from and against any and all claims, losses, liability, costs and expenses (including but not limited to attorneys' fees) arising from your violation of any warranty, representation or covenant under this Agreement, your infringement of any third-party's rights, (including, without limitation, infringement of any copyright, violation of any proprietary right and invasion of any privacy rights), and/or the use or misuse of your Egnyte account by you or any third party using your password(s) and/or user name(s). These obligations will survive any termination of your relationship with EGNYTE.

10. US GOVERNMENT RESTRICTED RIGHTS. If you are the United States Government or are acquiring the right to access and use Egnyte on behalf of the United States Government, then the United States Government agrees that: (a) if the right to access and use Egnyte is acquired by or supplied to the Department of Defense ("DOD"), Egnyte shall be classified as "Commercial

Computer Software" and the government is acquiring only "restricted rights" in Egnyte and its documentation, as defined in Clause 252.227-7013(c)(1) of the DFARS; (b) for any part of the United States Government other than DOD, the government's rights in Egnyte and its documentation will be as defined in Clause 52.227-19(c)(2) of the FAR or, for NASA, in Clause 18-52.227-86(d) of the NASA Supplement to the FAR.

11. **TERMINATION.** The license granted herein is effective until this Agreement is terminated. This Agreement shall terminate immediately, without notice, in the event you (i) fail to comply with any of the terms and conditions set forth in this Agreement, (ii) being a business entity, you cease doing business, (iii) EGNYTE does not receive in a timely manner (whether from you or a from a reseller responsible to collect your payment and remit it to Egnyte) any payment owing under your Egnyte account, or (iv) you cease using Egnyte service and notify EGNYTE thereof. Egnyte reserves the right to refuse service to anyone at its sole discretion and to terminate this Agreement immediately. Egnyte does not refund any part of the payment made by you for your monthly or annual subscription. Upon termination you must immediately (y) cease all of you use of the Website, and (z) (i) destroy all copies of the Software and Software documentation in your possession, or (ii) return the Software and documentation according to the instructions of EGNYTE. . Upon termination by EGNYTE will close your account and delete all your data within seven (7) days of termination. EGNYTE shall have no obligation to maintain any data stored in your account or to forward any data to you or any third party.

12. **DATA AVAILABILITY:** Company currently provides to the Customer several mechanisms to restore data from the software. In the exceptional event of shutdown of operations, Company will notify the Customer in advance and allow 7 days for it to retrieve its data from the Company servers.

13. **THIRD-PARTY WEB SITES.** The Website may contain links to third-party web sites that may be framed within the Website, but these are not under EGNYTE's control. Please note that when you click on these links you are moving to another website. EGNYTE makes no representations about third-party websites. When you access a third party website, you do so at your own risk. EGNYTE is not responsible for the reliability of any data, programs, opinions, advice, or statements made on third-party websites. EGNYTE provides these links merely as a convenience. The inclusion of such links does not imply that EGNYTE endorses, recommends, or accepts any responsibility for the content of such sites.

14. **THIRD-PARTY PRODUCTS AND SERVICES.** The Website may contain mention of third-party products and services for informational purposes. EGNYTE makes no recommendations or endorsements about third-party products and services. References to third-party services and products are provided by EGNYTE "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, BUT WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

15. **PRIVACY POLICY.** Your use of the Website and any information submitted by you is subject to and governed by the Privacy Policy for the Website which is available at http://www.egnyte.com/corp/privacy_policy.html and is incorporated here-in by this reference.

16. TRADEMARKS. EGNYTE, Egnyte, Egnyte Uploader and their respective designs, trademarks and logos are trademarks or registered trademarks of EGNYTE, Inc. All other trademarks and/or service marks are the property of their respective owners.

17. COPYRIGHT MATTERS. EGNYTE respects the intellectual property of others, and we ask you to do the same. We reserve the right to disable the accounts of users who we believe to be infringing the intellectual property rights of others and to remove any such infringing materials. If you believe that your copyrighted work has been copied and is accessible on the Website in a way that constitutes copyright infringement, please notify EGNYTE's copyright agent by email at inquiry@egnyte.com, by regular mail at SUPPORT, EGNYTE Inc., 1890 N. Shoreline Blvd., 1st Floor, Mountain View, CA 94043, and provide the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (b) a description of the copyrighted work that you claim has been infringed, including the URL (i.e., web page address) of the location where the copyrighted work exists or a copy of the copyrighted work; (c) identification of the URL or other specific location on the Site where the material that you claim is infringing is located; (d) your address, telephone number, and email address; (e) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. EGNYTE You hereby agree that you shall not assert any claim against EGNYTE, Inc. or its officers or directors with respect to such content unless and until: (1) you have fully completed the process set forth above; and (2) EGNYTE, Inc. has failed to remove the offending content within thirty (30) days after such notification without a reasonable explanation for its failure to do so. It is EGNYTE, Inc's policy to (1) block access to or remove content that it believes in good faith to be copyrighted material that has been illegally copied, displayed or distributed by any of our advertisers, affiliates, content providers, members or users; and (2) remove and discontinue services to repeat offenders.

18. GENERAL. This Agreement embraces the full, complete understanding of the parties as to the subject matter hereof, and may not be altered or modified, except by written amendment or collateral agreement which expressly refers to this Agreement and which is duly executed by EGNYTE and your duly authorized representative. All prior representations, understandings and agreements regarding the subject matter hereof whether written or oral, expressed or implied, are superseded and shall be of no effect. In the event of conflicting provisions between this Agreement and a duly executed collateral agreement, the duly executed collateral agreement shall control. This Agreement shall be construed and governed in accordance with the laws of the state of California, excluding the application of its conflicts of law rules. You acknowledge that a breach of this Agreement will cause irreparable and continuing damage to EGNYTE for which money damages are insufficient, and EGNYTE shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including money damages if appropriate). In the event of litigation between you and EGNYTE concerning the Software or any other item which is subject to this Agreement, the prevailing party in the litigation will be entitled to recover attorney fees and expenses from the other party. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. If any part of this Agreement is found

void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. You agree that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export law, restrictions or regulations. No waiver by EGNYTE of any breach or default by you of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default. BY ACCESSING AND USING THE WEBSITE AND BY INSTALLING, ACCESSING AND USING EGNYTE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE UNCONDITIONALLY TO BE BOUND BY ITS TERMS AND CONDITIONS.