



LICENSE SUBSCRIPTION AGREEMENT (On-Premise)

This License Subscription Agreement, including all exhibits, schedules, Statements of Work and Order Forms (as defined below) (collectively, the “**Agreement**”) are the terms under which Sysdig, Inc. (“**Sysdig**”) agrees to grant the customer (“**Customer**”) use of the Software and access to the Support Services and Services (as defined below). By indicating Customer’s acceptance of this Agreement, executing an Order Form that references this Agreement, or using the Software, Support Services and/or Services, Customer agrees to be bound by this Agreement. If you are entering into this Agreement on behalf of an entity, such as the company you work for, then you represent to Sysdig that you have the legal authority to bind the Customer to this Agreement. Sysdig and Customer are each a “**Party**” and collectively, the “**Parties**”, hereunder.

1. DEFINITIONS

"Affiliate" means with respect to a Party, any person or entity that controls, is controlled by, or is under common control with such Party, where "control" means ownership of fifty percent (50%) or more of the outstanding voting securities.

"B2B Relationship Data" means any administrative, transactional or account related data or communications provided by or on behalf of Customer to Sysdig in connection with the creation, purchase, maintenance, or support of Customer’s account with Sysdig.

"Contractor(s)" means any third-party provider, agents, outsourcers or contractors performing services on Customer’s behalf.

"Customer Data" means any data or other information which is provided by (or on behalf of) Customer directly or indirectly in connection with the Software, Services or Preview Releases, and shall not include Customer Personal Data or Service Analytics as defined hereunder.

"Customer Personal Data" means any Customer Data which (i) qualifies as “Personal Data” “Personal Information” “Personally Identifiable Information” or any substantially similar term under applicable privacy laws and (ii) is processed by Sysdig on behalf of Customer in connection with the Agreement. For the avoidance of doubt, Customer Personal Data shall not include B2B Relationship Data or Service Analytics as defined hereunder.

"Documentation" means the online help materials, including technical specifications, describing functionality of the Software located at Sysdig Docs.

"Intellectual Property Rights" means all current and future worldwide intellectual property rights, including without limitation, all patents, copyrights, trademarks, service marks, trade names, domain name rights know-how and other trade secret rights, and all other intellectual property rights and similar forms of protection, and all applications and registrations for any of the foregoing.

"License Entitlement" means the quantity of the license metrics pursuant to which the Software is licensed by Sysdig, as set forth in Order Form, which may include servers, agents, containers or hosts.

"License Keys" means an alphanumeric code that enables use of the Software.

"Open Source Software" means a program in which source code is made publicly and freely available for use and modification pursuant to certain license terms.

"Order Form" means a document executed by and between Sysdig and Customer or electronically accepted by Customer that references this Agreement, purchase confirmation or any other

document which details the Software and Services to be provided by Sysdig, the fees associated therewith, and any other transaction-specific terms and conditions.

"Statement of Work" or “**SOW**” means a statement of work or other such executed document that references this Agreement, whereby Customer engages Sysdig to perform certain training, consulting, technical account management, professional, or similar services related thereto.

"Services" means any of the training services, technical account management services, onboarding services, and/or consulting or other professional services, pursuant to one or more Order Forms and SOW(s), if applicable.

"Software" means any current and future Sysdig branded software that is licensed for use on Customer’s premises or in Customer’s cloud, during the Subscription Term, including all Updates thereto.

"Subscription Term" means the subscription period(s) specified in an Order Form during which Customer is licensed to use and deploy the Software, subject to the terms of this Agreement.

"Support Services" means the maintenance and support services provided by Sysdig to Customer for the Software.

"Support Services Subscription" means the level of Support Services purchased by Customer, as set forth in the Order Form. Sysdig’s commitments for each Support Services Subscription are more fully described in the Support Services Policy, a current copy of which is set forth in [Exhibit A](#).

"Update" is a Software release that Sysdig makes generally available to all Sysdig customers, along with any corresponding changes to Documentation. An Update may be an error correction or bug fix; or it may be enhancement, new feature, or new functionality.

2. LICENSE

2.1. License Scope. Subject to the terms of this Agreement, Sysdig grants to Customer a limited, revocable, non-exclusive, non-transferable and non-sublicensable right and license to install and use, in object code form, solely for internal business purposes, the Software in accordance with the purchased License Entitlements as set forth in the Order Form. Customer may permit its Contractors and Affiliates to use and deploy the Software and Documentation solely on behalf of and for the benefit of Customer, provided that the Customer shall be liable for the compliance of all Contractors and Affiliates with this Agreement, Documentation, and the Order Form(s).

2.2. Delivery and Acceptance. Promptly following execution of an Order Form and receipt of Customer’s purchase order, if applicable, Sysdig shall make the Software available for download or deliver License Keys, which enable the Customer to download



the Software. The Software will be deemed to have been delivered to Customer upon provision of the License Key or making the Software available for download.

2.3. Restrictions. Customer acknowledges that the Software and its structure, organization and source code constitute valuable trade secrets of Sysdig. Accordingly, except as otherwise expressly set forth in this Agreement, Customer may not and shall not permit any third party to: (a) translate, disclose, modify or create any derivative works based on the Software; (b) market, sell, license, sublicense, distribute, publish, display, reproduce, rent, lease, loan, assign or otherwise transfer to a third party the Software or Documentation or any copy thereof, in whole or in part; (c) except to the extent permitted by law, decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part; (d) operate the Software on behalf of or for the benefit of any third party, including the operation of any service that is accessed by a third party, for third-party training, commercial time-sharing or service bureau use; (e) remove any product identification, proprietary copyright or other notices contained in the Software; (f) access or use the Software for the purpose of building a product or service in competition with the Software; (g) circumvent or attempt to circumvent contractual usage restrictions, and (h) represent that output generated by the Software was human-generated when it is not.

2.4. Open Source Software and Third-Party Software. Customer acknowledges and agrees that certain Open Source Software libraries, components and utilities, and other third-party software not owned or developed by Sysdig are embedded in the Software. The publicly available open source license terms governing the Open Source Software shall take precedence over this Agreement to the extent that the Agreement imposes greater restrictions on Customer. Customer hereby acknowledges that Sysdig disclaims and makes no representation or warranty with respect to the Open Source Software, or any portion thereof, and assumes no liability for any claim that may arise with respect to such Open Source Software or Customer's use or inability to use the same.

2.5. License Entitlement Review. Customer shall monitor and ensure that use and deployment of the Software under this Agreement is consistent with the applicable License Entitlement, as set forth in the relevant Order Form. Sysdig may, upon reasonable notice, review Customer's records of Software usage to verify that Customer has: (a) used the Software solely in the manner authorized herein; (b) paid all applicable license fees; and (c) otherwise complied with the terms of this Agreement and Order Form(s). In general, Sysdig does not require physical access to Customer's premises, computing devices or systems in connection with any such review. If, as a result of the review, it is determined that Customer is utilizing more licenses than it is entitled under the License Entitlement as set forth in the Order Form, Customer will promptly pay directly to Sysdig all underpayments revealed by such review.

2.6 Use of Services Deliverables. Subject to Customer's payment of all fees due hereunder, Sysdig grants Customer a limited, non-exclusive, royalty-free, non-sublicensable, non-transferable license (except as specifically permitted in this Agreement), to use those elements of the Sysdig Technology (as defined below) embodied in the Services deliverables, if any, in

Customer's ordinary course of business, solely as so embodied. Sysdig reserves all other rights in and to Sysdig Technology.

2.7 Affiliates. The Parties agree that their respective Affiliates may also conduct business under this Agreement by entering into Order Forms, subject to this Agreement. Accordingly, where Affiliates of the Parties conduct business hereunder, references to Customer herein shall include any applicable Affiliate of Customer.

3. SUPPORT SERVICES

3.1. Sysdig will provide Customer with Support Services in accordance with the purchased Support Services Subscription, as set forth in the Order Form.

3.2. Support Services will be delivered to Customer as set forth in this Agreement, provided that the Customer: notifies Sysdig of issues in accordance with the Support Services Policy; engages with Sysdig in good faith to resolve any issues with the Software by making necessary resources and information available to Sysdig; makes reasonable efforts to apply the solution recommended by Sysdig; and has deployed all of the major and minor releases of the Software issued by Sysdig as set out in the Sysdig On Premise Release Support policy in [Sysdig Docs](#). Customer shall be entitled to Updates to the extent Sysdig incorporates such Updates into the Software subject to the applicable Order Form during the Subscription Term.

4. SOFTWARE PURCHASED THROUGH

RESELLERS. If Customer acquires the Software, Support Services, or Services from a Sysdig authorized distributor, reseller, or marketplace ("**Partner**"), then this Agreement is not exclusive of any rights Customer obtains under Partner's sale agreement. If a Partner has granted Customer any rights that Sysdig does not also directly grant to Customer in this Agreement, or that conflict with this Agreement, then Customer's sole recourse with respect to such rights is against the Partner. The provisions of Section 5.1-5.3 do not apply to Customer, and Customer's billing and payment rights and obligations are governed by the Partner sale agreement. However, if the Partner from whom Customer purchased the Services fails to pay Sysdig any amounts due in connection with the Services, then Sysdig may suspend Customer's rights to use the Services, with notice to Customer. Customer acknowledges that Customer's remedy in the event of such suspension is solely against the Partner.

5. OWNERSHIP. The Software, Support Services, Services and Documentation, all copies and portions thereof, and all Intellectual Property Rights therein, including, but not limited to derivative works therefrom ("Sysdig Technology"), are and shall remain the sole and exclusive property of Sysdig notwithstanding any other provision in this Agreement. Customer is not authorized to use (and shall not permit any third party to use) the Sysdig Technology or any portion thereof except as expressly authorized by this Agreement.

5.1. Service Analytics. Sysdig may process Service Analytics for internal business purposes to deliver, enhance, secure and support Sysdig products and services, including Software and Services. Customer can configure the Software to limit the Service Analytics that are collected. Customer may refer to the Documentation and/or Customer's account representative for more information. "**Service Analytics**" means all information and data that the Software generates or otherwise obtain from Customer's use of the foregoing, including but not limited to usage statistics, telemetry and analytics



and similar information, collected by cookies, web beacons, and other similar applications. Sysdig may disclose the aggregated results, of its analysis of the Service Analytics publicly or to third parties in connection with our marketing and promotion efforts, provided that such results do not contain any personally identifiable information, or enable a third Party to determine the source of such information.

6. PAYMENT; TAXES

6.1. Fees and Payment. All fees are as set forth in the applicable Order Form and shall be paid by Customer within thirty (30) days from the date of the invoice, unless otherwise specified in the applicable Order Form. Except as expressly set forth in an Order Form: (a) payment obligations are non-cancelable and fees are non-refundable, unless specifically provided herein; and (b) Customer may not decrease the purchased number of subscription rights during the applicable Subscription Term. Where Customer designates use of a third-party payment processor network, Customer shall be responsible for payment of all fees and charges associated with use of such network (including registration, participation, and payment processing fees) and Sysdig may invoice for such fees together with the subscription fees or on separate invoice.

6.2. Travel and Expenses. Customer will pay any reasonable and actual pre-approved out-of-pocket expenses incurred in connection with the Services according to Sysdig's Travel Policy, including, without limitation, transportation, lodging, and any incidentals associated with the Services provided to Customer such as airfare, hotel, and meals. Sysdig shall provide Customer invoices and receipts for such costs.

6.3. Rescheduling Policy Applicable to Services. Sysdig and Customer will commence Services on a start date to be mutually agreed to between the Parties. Customer may reschedule Services by notifying Sysdig in writing (which can include by email) with fifteen (15) business days' prior notice and Sysdig will make commercially reasonable efforts to reschedule. If performance of the Services is delayed due to Customer's failure to provide required access, personnel availability or is otherwise canceled with less than fifteen (15) business days' notice once ordered by Customer, Sysdig may charge Customer the then prevailing daily charge, plus reimbursement of all travel-related expenses (if applicable), for each day (up to a maximum of 15 days) for each person assigned by Sysdig to provide the Services. Sysdig strongly recommends scheduling the Services engagement in a single instance over a period of consecutive days. However, in no event shall Services be scheduled in fewer than in one full day increments, unless otherwise set forth in an SOW. No Services shall be scheduled in partial day increments.

6.4. Effect of Nonpayment. If Customer's account fails into arrears and continues to remain unpaid for ten (10) days after Sysdig provides notice to Customer of its delinquency, Sysdig reserves the right to suspend or terminate this Agreement, Customer's right and license to the Software and Customer's access to the Support Services. In the case of termination, Customer shall uninstall all copies of the deployed Software immediately after termination. Unpaid amounts may be subject to interest at the lesser of one and one-half percent (1.5%) per month or the maximum permitted by law, plus collection costs.

6.5. Taxes. All fees stated on Order Form are exclusive of any taxes, levies, or duties ("Taxes"), and Customer will be responsible for payment of all such Taxes excluding taxes based solely on Sysdig income. Unless Customer provides Sysdig with a valid state sales/use/excise tax exemption certificate, Customer will pay and be solely responsible for all Taxes. Sysdig may invoice Taxes in accordance with the applicable law together on one invoice or a separate invoice. Sysdig reserves the right to determine the Taxes for a transaction based on Customer's "bill to" or "ship to" address, or other information provided by Customer on the location of Customer's use of the Software. Customer will be responsible for any Taxes, penalties or interests that might apply based on Sysdig's failure to charge appropriate tax due to incomplete or incorrect location information provided by Customer. If Customer is required by any foreign governmental authority to deduct or withhold any portion of the amount invoiced for the delivery or use of the Service under this Agreement, Customer shall increase the sum paid to Sysdig by an amount necessary for the total payment to Sysdig equal to the amount originally invoiced.

7. TERM AND TERMINATION

7.1. Term. This Agreement commences on the Effective Date and unless earlier terminated pursuant to the terms of this Agreement, the Agreement will continue for so long as there is an Order Form in effect between the Parties.

7.2. Termination for Cause. Either Party may terminate this Agreement (or any affected Order Form or Statement of Work) (a) upon the other Party's material breach that remains uncured for thirty (30) days following notice of such breach, except that termination will take effect on notice in the event of a breach of Section 2.3 ("Restrictions"), Section 2.6 ("Use of Services Deliverables") or 11 ("Confidential Information"); or (b) immediately in the event the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors (and not dismissed within sixty (60) days thereafter).

7.3. Effect of Termination. Upon early termination of this Agreement by Customer for Sysdig's uncured material breach pursuant to Section 7.2, Customer is entitled to a prorated refund of prepaid fees relating to the Software applicable to the remaining period in the applicable Subscription Term. Upon expiration or termination of this Agreement by Sysdig for Customer's uncured material breach pursuant to Section 7.2, fees applicable to the duration of any applicable Subscription Term will be immediately due and payable. Notwithstanding the terms and conditions of an Order Form, Sysdig reserves the right not to renew any Order Form. In addition, upon expiration or termination of this Agreement for any reason: (a) all rights granted to Customer under this Agreement, and Sysdig's obligation to provide Support Services, Services, the Software and Preview Releases will terminate; and (b) any payment obligations accrued pursuant to this Agreement, as well as the provisions of Section 2.5, 5, 6, 7.3, 9, 11, and 12 of this Agreement will survive such expiration or termination. Within thirty (30) days after termination of this Agreement, the Recipient (as defined below) shall return or destroy (or in the case of electronic data, use commercially reasonable efforts to delete or render practicably inaccessible by Recipient) all Confidential Information and



materials containing any Confidential Information of the Discloser (as defined below). Within thirty (30) days after termination of this Agreement, Customer shall return or destroy all copies of the Software and Preview Releases, and upon Sysdig request, provide written certification of compliance with such request.

8. LIMITED WARRANTY

8.1. Mutual Warranties. Each Party represents and warrants that it has the power and authority to enter into this Agreement.

8.2. Limited Performance Warranty. Sysdig warrants to the Customer that the Software will, for a period of ninety (90) days following its initial delivery ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times and in accordance with the applicable Documentation; and (b) has not been altered or modified by anyone other than Sysdig or its designee. Sysdig will, at its own expense correct any reproducible error in the Software reported to Sysdig by Customer in writing during the Warranty Period. If Sysdig determines that it is unable to correct the error, Sysdig will replace the Software in accordance with the Support Services Policy. This Section 8.2 represents Customer's exclusive remedy, and Sysdig's entire liability, for any breach of the warranties set forth herein.

8.3. Malicious Code. Sysdig warrants that Sysdig will not knowingly introduce, software viruses, worms, Trojan horses or other code, files, scripts, or agents intended to do harm.

8.4. Warranty Disclaimer. EXCEPT FOR THE EXCLUSIVE WARRANTIES SET FORTH IN THIS SECTION 8, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE SOFTWARE, DOCUMENTATION SERVICES AND SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND SYSDIG MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH REGARDING OR RELATING TO THE SOFTWARE, DOCUMENTATION, SERVICES OR SUPPORT SERVICES. SYSDIG SPECIFICALLY AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, WARRANTIES THAT THE SERVICES WILL BE ACCURATE, COMPLETE OR ERROR FREE OR WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. FURTHER, SYSDIG DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED. SYSDIG'S SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN RESPECT OF ANY MAINTENANCE OR SUPPORT ISSUE SHALL BE LIMITED TO THE PROVISION OF SUPPORT SERVICES.

9. LIMITATION OF REMEDIES AND DAMAGES

9.1. Liability Cap. EXCEPT WITH RESPECT TO: (A) SYSDIG'S OBLIGATIONS UNDER SECTION 10 ("INDEMNIFICATION") (FOR WHICH THE LIABILITY LIMITATION SHALL BE ONE MILLION DOLLARS

(\$1,000,000) IN THE AGGREGATE); AND (B) CUSTOMER'S BREACH OF SECTION 2 ("LICENSE") OR INFRINGEMENT OF SYSDIG'S INTELLECTUAL PROPERTY, IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY EXCEED THE AMOUNTS PAID BY AND/OR DUE FROM CUSTOMER FOR THE THEN-CURRENT ANNUAL SUBSCRIPTION TERM, UNDER THE APPLICABLE ORDER FORM(S) RELATING TO THE CLAIM.

9.2. Consequential Damages. EXCEPT FOR CUSTOMER'S INFRINGEMENT OF SYSDIG'S INTELLECTUAL PROPERTY, IN NO EVENT SHALL EITHER PARTY, OR SYSDIG'S AFFILIATES OR ITS LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTIONS, LOSS OF DATA, REVENUE, GOODWILL, PRODUCTION, ANTICIPATED SAVINGS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN OF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3. Limitations Fair and Reasonable. EACH PARTY ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 9 REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES UNDER THIS AGREEMENT, AND THAT IN THE ABSENCE OF SUCH LIMITATIONS OF LIABILITY, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SIGNIFICANTLY DIFFERENT.

10. INDEMNIFICATION

10.1. By Sysdig. Sysdig shall defend Customer from and against any claim by a third party alleging that the Software, when used as authorized under this Agreement, infringes any trademark or copyright of such third party, enforceable in the jurisdiction of Customer's use of the Software, or misappropriates a trade secret (but only to the extent that such misappropriation is not a result of Customer's actions) ("Infringement Claim") and shall indemnify and hold harmless Customer from and against any damages and costs awarded against Customer by a court of competent jurisdiction or agreed in settlement by Sysdig (including reasonable attorneys' fees) resulting from such Infringement Claim, provided that Customer: (a) promptly provides Sysdig with a written notice of the Infringement Claim; (b) allows Sysdig sole control of the defense and settlement of the Infringement Claim; and (c) reasonably cooperated in response to Sysdig's requests for assistance and information. The Customer may participate in the defense of the Infringement Claim, at the Customer's sole expense (not subject to reimbursement). Customer will not, without Sysdig's prior written consent, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgement with respect to any pending or threatened Infringement Claim.

10.2. Exclusions. Sysdig shall have no obligation and assumes no liability under this Section 10 or otherwise with respect to any claim based on: (a) any modification of the software that is not performed by or on behalf of Sysdig, or was performed in



compliance with customer's specifications; (b) the combination, operation or use of the software with any other products, services, or equipment not provided by Sysdig where there would be no infringement claim but for such combination; (c) use of the applicable software other than in accordance with the terms and conditions of this agreement and the documentation; (d) use of any older version of the software when use of a newer revision would have avoided the infringement claim; (e) any claim that relates to the Open Source Software, freeware and any derivatives or other adaptations thereof; or (f) any software provided on a no-charge, preview or evaluation basis. THIS SECTION 10 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SYSDIG'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

10.3. Remedies. If Customer's use of the Software is (or in Sysdig's opinion is likely to be) enjoined, if required by settlement or if Sysdig determines such actions are reasonably necessary to avoid material liability, Sysdig may, at its option: (i) procure for Customer the right to use the Software in accordance with this Agreement; (ii) replace or modify, the Software to make it non-infringing; or (iii) terminate Customer's right to use the Software and discontinue the related Support Services, and upon Customer's certification of deletion of the Software, refund prorated pre-paid fees for the remainder of the applicable Subscription Term for the Software.

11. CONFIDENTIAL INFORMATION

11.1. "Confidential Information" means information and/or materials provided by one party ("Discloser") to the other party ("Recipient") which is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. The following information shall be considered Confidential Information whether or not marked or identified as such: this Agreement, the Sysdig Technology, License Keys, pricing information, any Preview Releases, product roadmap or strategic marketing plans, non-public material relating to the Software. Except as expressly authorized herein, the Receiving Party shall (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 11 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 11. The Receiving Party's confidentiality obligations shall not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort

to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

11.2 Customer Personal Data. Except for the limited amount of Customer Personal Data outlined in Exhibit A of the DPA (as referenced in Section 11.4), Customer acknowledges that the Software and Services do not require Customer to input or otherwise transmit Customer Personal Data and Customer agrees not to input or otherwise transmit any Customer Personal Data to the Software and Services without Sysdig's explicit consent or as otherwise set forth in the applicable Order Form or other written agreement between the Parties.

11.3 Data Processing Agreement. Subject to Section 11.2, and so long as Customer has separately executed the same, the terms of the Sysdig Global Data Processing Agreement located at www.sysdig.com/legal ("DPA") are hereby incorporated by reference and shall apply to Sysdig's processing of Customer Personal Data on behalf of Customer. Customer represents and warrants that it has obtained all necessary consents and permissions from data subjects for the submission and processing of Customer Personal Data.

11.4 B2B Relationship Data; Service Analytics. For the avoidance of doubt and subject to the terms hereunder, Sysdig processes Service Analytics and B2B Relationship Data in its role as an independent controller and in accordance with applicable laws and Sysdig's privacy policy.

12. GENERAL TERMS

12.1. Assignment. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party, provided that no such consent will be required to assign this Agreement in its entirety to (i) an Affiliate that is able to satisfy the obligations of the assignor under this Agreement or (ii) a successor in interest in connection with a merger, acquisition or sale of all or substantially of the assigning Party's assets, provided that the assignee has agreed to be bound by all of the terms of this Agreement and all fees owed to the other Party are paid in full. If Customer is acquired by, sells substantially all its assets, or undergoes a change of control in favor of, a direct competitor of Sysdig, then Sysdig may terminate this Agreement upon thirty (30) days prior written notice.

12.2. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

12.3. Governing Law; Jurisdiction and Venue. This Agreement will be governed by the Applicable Law described below as applicable (without regard to the conflicts of law provisions of any jurisdiction), and claims arising out of or in connection with this Agreement will be subject to binding arbitration in accordance with Section 12.4 located in the Arbitration Tribunal and Venue described below based on the Customer's country of residence, as provided in the following table:

Customer's Residence	Applicable Law	Arbitration Tribunal and Venue
Americas	State of California, USA	American Arbitration Association in San Francisco, California, USA
Outside of the Americas	England & Wales	London Court of International Arbitration, London, England

Each Party irrevocably submits to the personal jurisdiction and venue of and agrees to service of process issued or authorized by any court in the Jurisdiction in any action or proceeding. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement.

12.4. Arbitration. All disputes, claims or causes of action, in law or equity, including without limitation, claims arising out of or related to the Parties' negotiations and inducements to enter into this Agreement, enforcement, breach, performance or interpretation of this Agreement will be submitted to mandatory, binding arbitration under the auspices of the Arbitration Tribunal applicable above, or its successors, under its then-current commercial arbitration rules and procedures. **Both Parties acknowledge that by agreeing to arbitration, they waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding.** Nothing in this Agreement is intended to prevent either Party from obtaining injunctive relief in any competent court to prevent irreparable harm pending the conclusion of any such arbitration. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator(s) or any other court may, in its discretion, award reasonable costs and fees to the prevailing Party. This Agreement is subject to the operation of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

12.5. Notice. Notices to a Party will be sent by first-class mail, overnight courier or prepaid post to the address for such Party as identified on the first page of this Agreement and will be deemed given seventy-two (72) hours after mailing or upon confirmed delivery or receipt, whichever is sooner. Customer will address notices to Sysdig Legal Department, with a copy to legalnotices@sysdig.com. Either Party may from time to time change its address for notices under this Section by giving the other Party at least thirty (30) days prior written notice of the change.

12.6. Force Majeure. Neither Party will be in default or liable under this Agreement by reason of any failure in performance of this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the reasonable control of such Party, including acts of God or of the public enemy, terrorism, political unrest, U.S. or foreign governmental acts in either a sovereign or contractual capacity, fire, flood, failure of third Party connections, epidemic, pandemic or virus, utilities or networks, earthquake, hostile attacks, restrictions, strikes, and/or freight embargoes.

12.7. Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed

in writing by a duly authorized representative of each Party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the Party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

12.8. Entire Agreement; Interpretation. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes all previous written and oral agreements and communications relating to the subject matter of this Agreement. In this Agreement, headings are for convenience only and "including", "e.g.", and similar terms will be construed without limitation. In the event of a conflict between the terms of this Agreement and the terms of any Order Form, or Exhibit hereto, such conflict will be resolved in the following order, except to the extent expressly specified otherwise in the applicable Order Form or SOW: (a) this Agreement; (b) the Exhibits (c) Order Form and (d) Statement of Work. Any preprinted terms on any Customer ordering documents or terms referenced or linked therein will have no effect on the terms of this Agreement and are hereby rejected, including where such Customer ordering document is signed by Sysdig. The Support Service Policy may be updated from time to time upon reasonable notice to Customer to reflect process improvements or changing practices (but the modifications will not materially decrease Sysdig's obligations).

12.9. Feedback. Sysdig will be free to use, irrevocably, in perpetuity, for free and for any purpose, all suggestions, ideas and/or feedback relating to the Software, Support Services, Services or Preview Releases (collectively, "Feedback") provided by Customer, its Affiliates and Contractors.

12.10. Independent Contractors. The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the Parties. Neither Party will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent.

12.11 Preview Releases. From time to time, Sysdig may grant Customer access to "alpha", "beta", "technical preview" or other early-stage products ("Preview Releases"). Customer may choose to opt in to use Preview Releases at Customer's own discretion. Customer shall comply with all terms related to any Preview Releases as posted or otherwise made available to Customer. Sysdig may add or modify terms related to access or use of the Preview Release at any time. While Sysdig may assist with Preview Releases in its discretion, notwithstanding anything to the contrary in this Agreement, CUSTOMER AGREES THAT ANY PREVIEW RELEASE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTY, SUPPORT SERVICES, MAINTENANCE, STORAGE, OR SERVICE LEVEL OBLIGATIONS OF ANY KIND. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT PREVIEW RELEASES MAY NOT BE COMPLETE OR FULLY FUNCTIONAL AND MAY CONTAIN BUGS, ERRORS, OMISSIONS, AND OTHER PROBLEMS FOR WHICH SYSDIG WILL NOT BE RESPONSIBLE. Sysdig makes



no promises that future versions of a Preview Release will be released. Customer's use of the Preview Release will automatically terminate upon the release of a generally available version of the applicable Preview Release or upon notice of termination by Sysdig. Either Party may suspend or terminate access or use of any Preview Release at any time for any reason or no reason. Notwithstanding anything to the contrary in the Agreement, after suspension or termination of Customer's access to or use of any Preview Release for any reason Customer will not have any further right to access or use the applicable Preview Release. Notwithstanding anything contained to the contrary in this Agreement, Sysdig and its licensors' cumulative and aggregate liability arising out of or relating to the Preview Releases is limited to \$1,000 USD.

12.12 Export Control. In its use of the Software, Support Services, Services, and Preview Releases, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, and (ii) Customer shall not (and shall not permit any of its users to) deploy or use the Software or Preview Releases in violation of any U.S. export embargo, prohibition or restriction.

12.13 Government End-Users. Elements of the Software, Services, Support Services and Preview Releases are commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this

Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software, Support Services, Services and Preview Releases were developed fully at private expense. All other use is prohibited.

12.14 References. Unless otherwise specified in the applicable Order Form, Sysdig may refer to Customer as one of Sysdig's customers and use Customer's logo as part of such reference, provided that Sysdig complies with any Customer trademark usage requirements provided by Customer. Upon reasonable request, Customer will serve as a reference account for Sysdig, provided, however, that Sysdig will provide Customer with reasonable notice and obtain Customer's consent before scheduling any reference activity. Furthermore, if so specified in the applicable Order Form, Sysdig may either: (a) issue a press release announcing the relationship between Sysdig and Customer, or (b) submit a joint press release to Customer for Customer's approval, such approval not to be unreasonably withheld or delayed.

12.15 Counterparts. This Agreement may be executed in counterparts, which taken together shall form one binding legal instrument. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.



SUPPORT SERVICES POLICY **(On Prem)**

1. DEFINITIONS

1.1 “**Error**” means a failure of the Software to conform to the specifications set forth in the Documentation, resulting in the inability to use, or material restriction in, the use of the Software.

1.2 “**Start Time**” means the time at which Sysdig receives the Customer technical support ticket through the Customer Support Center.

2. SUPPORT SERVICES POLICY

Sysdig will provide Support Services to Customer through the portal located at <https://support.sysdig.com> or through other customer support center contacts, set forth below (the “**Customer Support Center**”). Customer will receive Updates, other software modifications or additions, procedures, or routine or configuration changes that may solve, bypass or eliminate the practical adverse effect of the Error. Customer will designate a certain number of employees or agents that will interface with the Customer Support Center, and submit Errors, requests or support tickets (the “**Technical Support Contacts**”). Customer is permitted to name as many Technical Contacts as allowed pursuant to the purchased Support Service Subscription. Customer’s non-named Technical Contacts may contact the Customer Support Center only in case of an emergency or on an exception basis, and Sysdig will respond to such Error submission and cooperate with the non-named Technical Contact, subject to later verification and involvement of a named Technical Support Contact. Additional named Technical Support Contacts may be permitted upon mutual agreement of the Parties.

3. SUPPORT SERVICES SUBSCRIPTION

Customers are required to purchase a subscription to Premium Support Services for On-Premise. Customer will have access to the Customer Support Center 24 hours per day, 7 days a week. Submitted Errors will be classified by priority as set forth in the table below. Customer may assign eight (8) Technical Support Contacts, which may contact the Customer Support Center through any of the Customer Support Center Contacts, as set forth below.

4. CUSTOMER SUPPORT CENTER CONTACT

a) Live Text-Based Support (Premium Support Services only):

- Support Service requests are assigned a priority level 3 (as further detailed below), unless initially opened with a different priority using the built-in ticket form.
- Available Sunday 4:00PM to Friday 4:00PM US Pacific time. Outside of those hours, please use the case portal or email to open a ticket.
- Customer must use “Slack Connect” to participate in this support experience, by linking a Slack channel between Customer’s Slack organization and Sysdig’s chosen Slack organization.
- Customer acknowledges Sysdig currently provides live text-based Support Services through Slack and uses third-party plugins to deliver this enhanced experience. However, Sysdig reserves the right to change the platform and methods used to deliver this service at its sole discretion.

b) Email: Create support ticket via email to support@sysdig.com. Support Service requests received via email are initially assigned as priority level 3 (as further defined below).

c) Portal: <https://support.sysdig.com> and each Technical Support Contact must register with the Customer Support Center on the portal, prior to submitting a ticket.

d) Language: Support Services will be provided in the English language.

5. CUSTOMER RESPONSIBILITIES

Customer is responsible for the prompt installation of all Updates to the Software, as provided by Sysdig. Customer shall provide commercially reasonable cooperation and full information to Sysdig to enable Support Services. Customer’s employees or agents who interface with the Customer Support Center, submit Errors, requests or support tickets (the “**Technical Support Contacts**”) are required to be named administrators on Customer’s account in Sysdig’s records. Customer’s non-named Technical Support Contacts may contact the Customer Support Center only in case of an emergency or on an exception basis, and Sysdig will respond to such Error submission and



cooperate with the non-named Technical Support Contact, subject to later verification and involvement of a Technical Support Contact. Customer's Technical Support Contacts are required to submit Support tickets through an account or email address registered with the Sysdig Services' platform.

6. **EXCLUDED SUPPORT SERVICES.**

Sysdig shall not be obligated to fix any Error or problem:

- a) where the Software is not used for its intended purpose;
- b) where the Software has been altered, damaged, modified or incorporated into other software in a manner not approved by Sysdig;
- c) where the Software is a release that is no longer supported by Sysdig;
- d) which is caused by Customer's or a third party's software or equipment or by Customer's negligence, abuse, misapplication, or use of the Software other than as specified in the Documentation; or
- e) which would be resolved by the Customer using an Update or newer version of the Software, or by adding hardware.

If Sysdig determines that it has no obligation to fix the reported incident for one of the reasons stated above, the Parties may enter into a separate agreement authorizing Sysdig to provide additional services at Sysdig's then-current professional services rates plus expenses.

7. **END OF LIFE/END OF SUPPORT POLICY.** Customer acknowledges that new features may be added to the Software based on market demand and technological innovation. Accordingly, as Sysdig develops enhanced versions of the Software, Sysdig will support the Software in compliance with the Sysdig On Premise Release Support policy in [Sysdig Docs](#).

8. **ERROR RESPONSE SERVICE LEVELS**

Customer shall submit each ticket with a priority level designation based on the definitions in the table below. Priority response times do not vary, whether Customer contacts the Customer Support Center via email or the portal. Sysdig shall respond to such ticket in accordance with the priority designation and validate Customer's priority level designation, or notify Customer of a proposed change in the severity level designation with justification for the change. Sysdig will provide continuous efforts to resolve Priority 1 issues until a workaround or resolution can be provided or until the incident can be downgraded to a lower priority. Sysdig will use reasonable efforts to meet the target response times for the Errors stated in the table below.

Priority 1 (Critical)	Description	Premium Support Services
		Response Times
	Any Error in the Software causing the Software to be unusable, resulting in a critical impact on the operation of the Software and there is no workaround. Sysdig will promptly: (i) assign a specialist to correct the Error; (ii) provide ongoing communication on the status of an Update; and (iii) begin to provide a temporary workaround or fix.	Within 30 minutes
Priority 2 (Serious)	Description	Response Times
		Within 2 hours
Priority 3 (Moderate)	Description	Response Time
		Within 4 hours
Priority 4 (Low)	Description	Response Time
		Next business day