Sysdig

LICENSE SUBSCRIPTION AGREEMENT
(On-Premise)

PLEASE NOTE THAT THE TERMS OF THIS LICENSE SUBSCRIPTION AGREEMENT SHALL GOVERN YOUR DOWNLOAD, USE AND DEPLOYMENT OF THE SOFTWARE. PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION.

This License Subscription Agreement, including all attachments, exhibits, schedules, addenda, (this "Agreement"), is entered into by and between **Sysdig, Inc.**, a Delaware company with its principal place of business at 85 Second Street, Suite 800, San Francisco, CA 94105, USA ("Sysdig") and the organization on whose behalf you are agreeing to this Agreement, as set forth in the Order Form or online purchasing form ("Customer"). This Agreement shall be effective on the date the initial Order Form is fully executed by the parties or when the purchase is completed by you (the "Effective Date").

By downloading, registering for, using, or subscribing to use the Sofware, or by clicking "I Agree" or otherwise affirmatively manifesting your intent to be bound by this Agreement, you represent and warrant that you have: (a) all necessary rights and authority necessary to enter into this Agreement on behalf of Customer; and (b) read, understood, and agree to be bound by this Agreement on Customer's behalf, as well as all other agreements referenced herein and any future modification hereto.

EVALUATION LICENSE. If you are licensing the Software for evaluation purposes, your use of the Software in only permitted in a non-production environment and for the period limited by the Order Form or license key. Notwithstanding any other provision in this Agreement, an evaluation license of the Software is provided "AS IS" without indemnification, support or warranty of any kind, expressed or implied.

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.

"Contact Details" means Customer personnel's details that are obtained by Sysdig in the ordinary course of maintaining its business relationship with Customer.

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

"Customer Personal Data" means any Personal Data owned, licensed, or otherwise controlled by Customer (including data maintained by Customer or Customer' Affiliate(s) on behalf of a third party), but does not include Contact Details.

"Documentation" means the online help materials, including technical specifications, describing functionality of the Software provided by Sysdig on a publicly available website and updated from time to time.

"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 which source code is made publicly and freely available for use and modification pursuant to certain license terms.

"Order Form" means an ordering document entered into by and between Sysdig and Customer that references this Agreement and details the Software and Support Services Subscription to be provided by Sysdig, the fees associated therewith, and any other transaction specific terms and conditions.

"Personal Data" means any information relating to an identified or identifiable natural person (or, to the extent that applicable privacy laws apply to information about legal persons, an identified or identifiable legal person);

"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.\.

"Updates" means any releases of Software created or made available on or after the Effective Date, including bug fixes, improvements, configurations, extensions, enhancements, translations, localizations, ports, new versions or releases, releases on additional operating environments, derivative works of the foregoing and other changes thereto.

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 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; and (g) circumvent or attempt to circumvent contractual usage restrictions.

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. **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 that are no more than two releases back or six (6) months old from the date of their release.

4. **Software Purchased Through Resellers.** The parties agree that Customer may purchase through Resellers Software that are governed by this Agreement. Where Customer purchases a Software through a Reseller, the Reseller will enter into an Order Form with Sysdig for the purchase of a Software that shows Customer as the "ship to" party and Reseller as the "bill to" party, and Reseller and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to Reseller for such Software, as well as any other terms or conditions that apply between them. Sysdig hereby agrees that, subject to receiving payment from the Reseller, it shall be responsible to Customer, pursuant to the terms and conditions of this Agreement, for providing the Software under any such Order Form. Customer hereby acknowledges that Sysdig will not be responsible for the obligations of any Reseller to Customer under such separate agreement, for the acts or omissions of Reseller, or for any third-party products or services furnished to Customer by any Reseller. For the avoidance of doubt, Section Payment and Taxes will be of no effect where Customer purchases Software through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and Customer.

5. **Ownership.** The Software and Documentation, all copies and portions thereof, and all Intellectual Property Rights therein, including, but not limited to derivative works therefrom, 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 Software, Documentation or any portion thereof except as expressly authorized by this Agreement.

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.   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 the 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.

6.3.   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 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 Schedule) (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") 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.   Termination for Convenience. Either party may terminate this Agreement for any reason or for no reason, by providing the other party at least thirty (30) days' prior written notice.

7.4.   Effect of Termination. Upon early termination of this Agreement by Customer for Sysdig's uncured material breach pursuant to Section 7.2 or by Sysdig pursuant to Section 7.3, 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 or by Customer pursuant to Section 7.3, fees relating to the Software 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 and the Software will terminate; and (b) any payment obligations accrued pursuant to this Agreement, as well as the provisions of Section 2.5,5, 6, 7.4, 9, 11, and 12 of this Agreement will survive such expiration or termination. Within thirty (30) days after termination of this Agreement, the Recipient 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 (where Sysdig is the Discloser, including but not limited to the Software, including all copies thereof).

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 Service Support 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 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 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, THOSE 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.

9. LIMITATION OF REMEDIES AND DAMAGES

9.1. Liability Cap. EXCEPT WITH RESPECT TO: (A) EITHER PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 11 ("CONFIDENTIAL INFORMATION") (FOR WHICH THE LIABILITY LIMITATION SHALL BE ONE MILLION DOLLARS ($1,000,000) IN THE AGGREGATE); (B) SYSDIG'S OBLIGATIONS UNDER SECTION 10 ("INDEMNIFICATION") (FOR WHICH THE LIABILITY LIMITATION SHALL BE ONE MILLION DOLLARS ($1,000,000) IN THE AGGREGATE); AND (C) 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 EITHER PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 11 ("CONFIDENTIAL INFORMATION") OR CUSTOMER'S INTELLECTUAL PROPERTY INFRINGEMENT, 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, beta 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 Software, License Keys, pricing information, any Sysdig technology, 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. **Data privacy.** Sysdig does not seek or require, and Customer shall not provide Sysdig with, access to (or the means to access) Customer Personal Data. Customer herewith agrees that Sysdig may: (a) process the Contact Details for administration and Support Services purposes; and (b) transfer the Contact Details outside the European economic area ("EEA"), and/or allow such Contact Details to be processed by a third party pursuant to the terms of this Agreement. Customer may request that Sysdig provide access to the Contact Details, and the ability to update, modify, or delete the Contact Details upon written request. If Sysdig is nonetheless granted access to Customer Personal Data, then Customer shall promptly notify Sysdig and Sysdig shall promptly and securely return of all such Customer Personal Data as is in its possession or under its control to Customer, and Customer shall terminate such access. Where Sysdig knows of any known loss, or unauthorized acquisition, disclosure, use affecting Customer Personal Data, Sysdig shall notify Customer and reasonably cooperate with Customer, at Customer's request and expense, in any post-breach investigation or remediation efforts.

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 asses to, or undergoes a change of control in a 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 (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 the exclusive jurisdiction of the Jurisdiction based on the Customer's residence, as provided in the following table:

Customer's Residence	Applicable Law	Jurisdiction
Americas	State of California, USA	San Francisco, California, USA
Europe, Middle East, Africa	England & Wales	London, UK
Asia	Singapore	Singapore
Australia, New Zealand	New South Wales, Australia	Sydney, Australia

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. **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.

12.5. **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.

12.6. **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 From, Support Services Policy or other exhibit hereto, such conflict will be resolved in the following order: (a) any Order Form; (b) this Agreement; (c) Support Services Policy; and (d) any other exhibit. 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).

12.7. **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 or Support Services (collectively, "**Feedback**") provided by Customer and its Affiliates.

12.8. **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.

12.9. **Beta Releases.** From time to time, Sysdig may grant Customer access to "alpha", "beta", or other early-stage products ("Beta Releases").   While Sysdig may provide assistance with Beta Releases in its discretion, notwithstanding anything to the contrary in this Agreement, CUSTOMER AGREES THAT ANY BETA 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 BETA 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 Beta Release will be released. Sysdig may terminate Customer's right to use any Beta Release at any time for any reason or no reason in Sysdig's sole discretion, without liability.

12.10. **Export Control**. In its use of the Service, 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 in violation of any U.S. export embargo, prohibition or restriction.

12.11. **Government End-Users**. Elements of the Software 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 was developed fully at private expense.   All other use is prohibited.

12.12. **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 first becomes aware of an Error.

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 SUBSCRIPTIONS

Pursuant to the purchased Support Services Subscription, set forth in the Order Form, Sysdig shall provide the following level of support services:

a) Standard Support Services. Customer will have access to the Customer Support Center, Monday through Friday, 9 a.m. to 5 p.m. (Customer's local time). Submitted Errors will be classified by severity as set forth in the table below. Customer may assign two (2) Technical Support Contacts, which may contact the Customer Support Center through any of the Customer Support Center Contacts, as set forth below.

b) Premium Support Services. Customer will have access to the Customer Support Center 24 hours per day, 7 days a week. Submitted Errors will be classified by severity 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

Pursuant to the purchased Support Services Subscription, Customer may contact the Customer Support Center as follows:

a) **Telephone for Premium Support Services only**:
    a. **USA Toll Free**: 1-888-4-SYSDIG (+1-888-479-7344)
    b. **USA Regular:** +1-415-855-4DIG (+1-415-855-4344)
    c. **UK Toll Free:** +44-808-168-9DIG (+44-808-168-9344)
    d. **UK Regular:** +44-20-8049-7800

b) **Email:** Create support ticket via email to support@sysdig.com.

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 English language

5. ERROR RESPONSE SERVICE LEVELS

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

	Description	Standard Support Services	Premium Support Services
Severity 1 (Critical)	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.	**Response Times** **Standard**: Within 2 hours.	**Response Times** **Premium**: Within 30 minutes.
Severity 2 (Serious)	An Error in a Software where the Software will operate but its operation is severely restricted. No workaround is available, and performance may be degraded, or functions are limited. Sysdig will promptly: (i) assign a specialist to correct the Error; and (ii) provide additional escalated Support Services as determined necessary by Sysdig.	**Response Time** **Standard**: Within 4 hours.	**Response Times** **Premium**: Within 2 hours.
Severity 3 (Moderate	An Error in the Software where the Software will operate with limitations that are not critical to the overall operation, such as a workaround forces user and or a systems operator to use a time-consuming procedure to operate the system; or removes a non -essential feature. Sysdig will triage the request and may include a resolution in the next Update.	**Response Time** **Standard**: Within 8 hours.	**Response Time** **Premium**: Within 4 hours.
Severity 4 (Low)	An Error in the Software where the Software can be used with only slight inconvenience. All Software feature requests fall into this severity level. Sysdig will triage the request and may include a resolution in the next Update.	**Response Time** **Standard**: Next business day.	**Response Time** **Premium**: Next business day.