

IBM - SYSDIG SAAS END USER AGREEMENT

PLEASE NOTE THAT THE TERMS OF THIS SAAS SUBSCRIPTION AGREEMENT SHALL GOVERN YOUR USE OF THE SAAS SERVICE. PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION.

This IBM-Sysdig SaaS End User Agreement, including all attachments, exhibits, schedules, addenda ("**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 online purchasing form ("**Customer**"). This Agreement shall be effective on the date when the purchase is completed by you online ("**Effective Date**").

By registering for and/or accessing, using, or subscribing to use the SaaS Service, or by clicking "I Agree" or otherwise affirmatively manifesting your intent to be bound by this Agreement, whether directly or via International Business Machines Corporation or its authorized affiliates (collectively "**IBM**"), you represent and warrant that you have: (a) all necessary rights and authority necessary to enter into this Agreement on behalf of Customer; (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; and (c) Customer's obligations under this Agreement are binding and enforceable.

1. GENERAL

This Agreement specifies general terms and conditions pursuant to which Sysdig grants Customer access to the Service, as defined below. Specific terms for a transaction, including fees, payment terms, subscription terms, renewal terms and other applicable terms and conditions, shall be set forth in a quote, schedule or order entered into with Sysdig or IBM, that references this Agreement and is mutually executed by Sysdig (or IBM) and Customer, which Customer acknowledges that Sysdig is a third party beneficiary to, with rights to enforce and with interest ("**Order**"). Any claims made by Customer against IBM relating to the Order may only be made directly against IBM, and Sysdig shall have no responsibility with respect thereto. Each Order is governed by the terms of this Agreement. There will be no force or effect to any different or inconsistent terms of any related purchase order, ordering document or similar form of Customer, even if signed by the parties after the date hereof. If there is a conflict between the terms of this Agreement, and the terms in the Order, the terms in this Agreement shall control.

2. DEFINITIONS

"**Agent**" means a Sysdig's kernel application that runs on Customer's operating system and captures systems calls and events.

"**Authorized User**" means a named individual that: (a) is an employee, representative, consultant, contractor of Customer; (b) is authorized to use the SaaS Service pursuant to this Agreement; and (c) has been supplied a user identification and password by Customer. Customer shall be responsible for all access and use of the SaaS Service by the Authorized Users.

"**Customer Data**" means any data that Customer submits to the Service, including data that is collected by the Agent.

"**Documentation**" means the end user technical documentation provided with the Service, as may be modified from time to time.

"**Sensitive Personal Information**" means any of the following: (i) credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards ("**PCI DSS**"), or other financial account numbers or credentials; (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act ("**HIPAA**"); (iii) social security numbers, driver's license numbers or other government ID numbers; (iv) any information deemed to be "special categories of data" of an EU resident (as defined in European Union Regulation 2016/679); or (v) other personal or sensitive information subject to regulation or protection under the Gramm-Leach-Bliley Act, Children's Online Privacy Protection Act.

"**SaaS Service**" means Sysdig's hosted service solution as specified on the Order, available at www.sysdig.com.

"**Service**" means the specific ordered SaaS Service and the Agent.

"**Subscription Term(s)**" means the subscription period(s) specified in the Order, during which Authorized Users may use the Service, subject to the terms of this Agreement.

"**Support Services**" means the maintenance and support services provided by Sysdig to Customer during the Subscription Term.

2.1. Provision of the Service. Conditioned upon Customer's payment of all fees due hereunder, Sysdig grants Customer a limited, non-exclusive, non-sublicenseable, nontransferable (except as specifically permitted in this Agreement) right to access and use the Service during the applicable Subscription Term, and in scope of use restrictions as set forth in the applicable Order, solely for Customer's internal business purposes. This includes the right to implement the Agent for use with the SaaS Service. If Customer requests trial of the Service, Customer may use the Service only for internal evaluation purposes and with non-production environment or data ("**Evaluation License**") for period of thirty (30) days, unless otherwise agreed by Sysdig or IBM ("**Evaluation Period**").

2.2. Use Restrictions. Customer shall not (and shall not permit any third party to: (a) sublicense, sell, transfer, assign, distribute or otherwise grant or enable access to the Service in a manner that allows anyone to access or use the SaaS Service without an Authorized User subscription, or to commercially exploit the Service; (b) use the Service to provide, or incorporate the Service into, any product or service provided to a third party; (c) use the Service to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code except to the extent expressly permitted by applicable law (and then only upon advance notice to Sysdig); (e) copy, modify or create any derivative work of the Service or any Documentation; (f) remove or obscure any proprietary or other notices contained in the Service; (g) allow Authorized User subscriptions to be shared or used by more than one individual Authorized User (except that Authorized User subscriptions may be reassigned to new Authorized Users replacing individuals who no longer use the SaaS Service for any purpose, whether by termination of employment or other change in job status or function); (h) publicly disseminate performance information regarding the Service; or (i) access to or use of the SaaS Service: (i) to send or store infringing, obscene, threatening, or otherwise unlawful material, including material violative of third-party privacy rights; (ii) in violation of applicable laws; (iii) to send or store material containing software viruses, worms, trojan horses or other harmful computer



code, files, scripts, or agents; (iv) in a manner that interferes with or disrupts the integrity or performance of the SaaS Service (or the data contained therein); (v) to gain unauthorized access to the Service (including unauthorized features and functionality) or its related systems or network; (vi) disable or bypass the measures that Sysdig may use to prevent or restrict access to the Service, or in applicable, use the Service in excess of certain license restrictions and limits set forth in the Order(s). Customer acknowledges that the Services may include features to prevent use after the applicable Subscription term, Evaluation Period and/or use inconsistent herewith.

2.3. Support Services. During the Subscription Term, Sysdig may provide certain Support Services to the Customer in accordance with the purchased Support Services level.

2.4. Sysdig reserves the right to suspend Customer's access to the Service: (i) for scheduled or emergency maintenance or (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due.

2.5. Customer will cooperate with Sysdig in connection with the performance of the Agreement by making available such personnel and information as may be reasonably necessary and taking such other actions as Sysdig may reasonably request. Customer will cooperate with Sysdig in establishing a password or other procedure for verifying that only designated Authorized Users of Customer have access to any administrative functions of the Service.

2.6. Customer will designate an employee who will be responsible for all matters relating to the Agreement ("Primary Contact"). Customer may change the individual designated as Primary Contact at any time, by providing written notice to Sysdig.

2.7. The Agent may contain third-party software that is governed by open source license. If there are provisions in those open source licenses that expressly conflict with this Agreement, the relevant open source license terms will apply, but solely with respect to such open source software. Further, Customer acknowledges and agrees that all third-party content is governed by its respective terms and such terms are solely between Customer and the applicable licensor. Customer agrees to comply with such third-party terms (including open source license terms), as applicable, and Sysdig has no liability with respect to third-party software under the Agreement.

2.8. Customer acknowledges and agrees that the Service operates on, with or using application programming interfaces (APIs) and/or other services operated or provided by third parties ("Third-Party Services"). Sysdig is not responsible for the operation of any Third-Party Services nor the availability or operation of the Service to the extent such availability and operation is dependent upon Third-Party Services. Customer is solely responsible for procuring any and all rights necessary for it to access Third - Party Services and for complying with any applicable terms and conditions thereof. Sysdig does not make any representations or warranties with respect to Third-Party Services or any third-party providers. Any exchange of data or other interaction between Customer and a third-party provider is solely between Customer and such third-party provider and is governed by such third-party terms and conditions.

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

3. CUSTOMER OBLIGATIONS

3.1. Data Collection. Customer has exclusive control and responsibility for determining what data Customer submits to the SaaS

Service and for obtaining all necessary consents and permissions for submission of Customer Data and processing instructions to Sysdig.

3.2. Rights in Customer Data. Customer is solely responsible for the accuracy, content and legality of all Customer Data and agrees to comply with all applicable laws in its use of the Service. Customer represents and warrants that Customer has all necessary rights, consents and permissions to collect, share and use Customer Data as contemplated in this Agreement, without violation or infringement of any third-party intellectual property, publicity, privacy rights or any laws and regulation.

3.3. Customer acknowledges and agrees that Sysdig has no obligation to monitor the content provided by Customer or Customer's use of the Service, however Sysdig may do so and may remove any such Customer Data or content and prohibit any use of the Service Sysdig believes may be (or alleged to be) in violation of this Agreement.

4. OWNERSHIP.

4.1. Customer Data. As between the parties, Customer shall retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data. Subject to the terms of this Agreement, Customer hereby grants to Sysdig a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and display the Customer Data solely to the extent necessary to provide the Service to Customer during the Subscription Term.

4.2. Sysdig Technology. The Service and Documentation, all copies and portions thereof, and all intellectual property rights therein, including, but not limited to derivative works, enhancements, inventions, discoveries, modifications software, code, and other technology and material created, developed or reduced to practice by or on behalf of Sysdig in the course of providing the Service shall be owned by Sysdig, and Customer hereby makes all assignments necessary to accomplish the foregoing. Customer is not authorized to use (and shall not permit any third party to use) the Service, Documentation or any portion thereof except as expressly authorized by this Agreement. Sysdig reserves all rights not expressly granted to Customer pursuant to this Agreement.

5. FEES & PAYMENT

5.1. Fees and Payment. All fees are as set forth in the applicable Order and shall be paid by Customer within thirty (30) days of date of invoice, unless otherwise specified in the applicable Order. Except as expressly set forth in the Order: (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.

5.2. Effect of Nonpayment. This Agreement or Customer's access to the SaaS Service may be suspended or terminated if Customer's account falls into arrears. 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 all collection costs including reasonable attorney fees.

5.3. Taxes. All fees stated on Order 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 or IBM 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 SaaS Service. 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 will pay any required withholding itself and will not reduce the amount paid to Sysdig or IBM on account thereof.

6. TERM AND TERMINATION

6.1. Term. This Agreement commences on the Effective Date and shall continue for the duration of the initial Subscription Term, and then shall automatically renew for subsequent one (1) year terms unless either party notifies the other, no less than sixty (60) days prior to the end of the initial Subscription term or any such renewal term, of its intention not to renew or unless otherwise terminated in accordance with this Agreement.

6.2. Termination for Cause. Either party may terminate this Agreement (and all existing Orders) (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 2.2 ("Use Restrictions") or 10 ("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).

6.3. Treatment of Client Data Following Expiration or Termination. Upon termination of the Agreement or expiration of the applicable Subscription Term or Evaluation Period, Customer shall cease access to and use of the Service and shall return or destroy any Agents, Proprietary Information or related documentation. Additionally, Sysdig may delete Customer's account, including Customer's Data, from Sysdig's site. Notwithstanding the foregoing, Customer understands that Sysdig may retain copies of Customer Data in regular backups or as required by law, which will remain subject to the security standards in Section 11 ("Security").

6.4. Effect of Termination. Upon expiration or termination of this Agreement by Sysdig for Customer's uncured material breach pursuant to Section 6.2, fees relating to the Service applicable to any applicable Subscription Term will be immediately due and payable. 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 Service will terminate (including any and all rights related to the Agent); and (b) any payment obligations accrued pursuant to this Agreement, as well as the provisions of Section 6, 8, 10, and 13 of this Agreement will survive such expiration or termination.

7. WARRANTY DISCLAIMER

THE SERVICE, SYSDIG'S PROPRIETARY INFORMATION AND ALL RELATED SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS IS", WITHOUT ANY WARRANTY OF ANY KIND. NEITHER SYSDIG NOR ITS SUPPLIERS MAKES ANY OTHER

WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, THOSE ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. FURTHER, SYSDIG DOES NOT WARRANT THE SERVICE WILL BE ERROR-FREE OR THAT THE USE OF THE SAAS SERVICE WILL BE UNINTERRUPTED.

8. LIMITATION OF LIABILITY

IN NO EVENT WILL SYSDIG (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICE OR ANYTHING PROVIDED IN CONNECTION WITH THE AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICE OR ANYTHING PROVIDED IN CONNECTION WITH THE AGREEMENT OR OTHERWISE ARISING FROM THE AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF SYSDIG, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE GREATER OF (I) TEN THOUSAND DOLLARS, OR (II) THE FEES PAID OR PAYABLE TO SYSDIG IN CONNECTION WITH THE ORDER PURSUANT TO WHICH THE CLAIM AROSE IN THE TWELVE-MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. INDEMNIFICATION

9.1. By Sysdig. Sysdig shall hold Customer harmless from liability of unaffiliated parties resulting from infringement of the SaaS Service of any copyright enforceable in the jurisdiction of Customer's use of the SaaS Service, or misappropriates a trade secret (but only to the extent that such misappropriation is not a result of Customer's actions) ("Infringement Claim"), provided Sysdig is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement. Sysdig will have no obligation and assumes no liability under this Section 9 or otherwise with respect to any claim based on: (a) if the Service is modified by any party other than Sysdig, but solely to the extent the alleged infringement is caused by such modification; (b) if the Service is combined, operated or used with any Customer Data or any Customer or third party products, services, hardware, data, content, or business processes not provided by Sysdig; (c) to any action arising as a result of Customer Data or any third-party deliverables or components contained within the Service; (d) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; (e) if Customer settles or makes any admissions with respect to a claim without Sysdig's prior written consent; (f) where Customer's use is not strictly in accordance with the Agreement and all related Documentation; or (g) to any use provided on a no-charge or evaluation basis. Customer will indemnify Sysdig from all damages, costs, settlements, attorney's fees and expenses related to any claim excluded from Sysdig's indemnity obligation by the preceding sentence. THIS SECTION 9 SETS FORTH SYSDIG'S AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE



AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

9.2. Remedies. If Customer's use of the Service 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: (a) procure for Customer the right to use the Service in accordance with this Agreement; (b) replace or modify, the Service to make it non-infringing; or (c) terminate Customer's right to use the Service and discontinue the related Support Services, and upon Customer's certification of deletion of the Service, refund prorated pre-paid fees for the remainder of the applicable Subscription Term for the Service.

9.3. By Customer. Customer will defend, indemnify and hold Sysdig harmless from and against any damages, losses, liabilities, settlements, expenses and costs (including reasonable attorneys' fees and costs) arising from or in connection with any claim or action alleging violation of any of the foregoing or otherwise from Customer's use of the Service.

9.4. Indemnity Process. Each Party's indemnification obligations are conditioned on the indemnified Party: (a) promptly giving written notice of the claim to the indemnifying Party; (b) giving the indemnifying Party sole control of the defense and settlement of the claim; and (c) providing to the indemnifying Party all available information and assistance in connection with the claim, at the indemnifying Party's request and expense. The indemnified Party may participate in the defense of the claim, at the indemnified Party's sole expense (not subject to reimbursement). Neither Party may admit liability for or consent to any judgment or concede or settle or compromise any claim unless such admission or concession or settlement or compromise includes a full and unconditional release of the other Party from all liabilities in respect of such claim.

10. CONFIDENTIAL INFORMATION

10.1. Each party (as "Receiving Party") agrees that all code, Customer Data, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it 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 Service, pricing information, any Sysdig technology, performance information relating to the Service, and the terms and conditions of this Agreement shall be deemed Confidential Information of Sysdig without any marking or further designation. Except as expressly authorized herein, the Receiving Party shall: (a) hold in confidence and not disclose any Confidential Information to third parties and (b) 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 10 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 10. 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.

10.2. Customer acknowledges that Sysdig does not wish to receive any Proprietary Information from Customer that is not necessary for Sysdig to perform its obligations pursuant to this Agreement, and, unless the parties specifically agree otherwise, Sysdig may reasonably presume that any unrelated information received from Customer is not confidential or Proprietary Information.

10.3. Sensitive data. Customer agrees that it will not use the Service to collect, store, process or transmit any Sensitive Personal Information. Where Customer's use of the SaaS Service includes the processing of personal data (as described in the EU data protection directive 95/46/EC and which excludes Sensitive Personal Information), within the European Economic Area, Customer will enter into a separate data processing agreement (including the European Commission's Standard Contract Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection) with Sysdig prior to submission of such personal data to the SaaS Service. Customer represents and warrants that it has obtained all necessary consents and permissions from data subjects for the submission and processing of personal data in the SaaS service. Sysdig shall have no liability under this Agreement for Sensitive Personal Information, notwithstanding anything to the contrary herein.

11. SECURITY. During the Subscription Term, Sysdig will maintain reasonable administrative, physical, and technical safeguards designed for the protection, confidentiality, and integrity of Customer Data at least as rigorous as the measures standard in the industry. Sysdig will not use Customer Data except to provide the Service or Support Services in accordance with this agreement or as instructed by Customer. If Sysdig detects or becomes aware of a breach of its obligations under this Section 11 resulting in unauthorized access effecting Customer Data, Sysdig will promptly report such breach to Customer.

12. EU SUPPORTED CLOUD. Customer may purchase the Service and Support Services specifically designated for European Union ("EU"), provided that Customer: (a) enables the "IBM EU Support" in Customer's IBM cloud account; (b) deploys the "IBM EU Supported Cloud Service" in an EU support eligible region; and (c) adheres to the following data access controls: (i) any required IBM access to Customer Data will be privileged access restricted to authorized EU-based personnel only; (ii) if non-EU based personnel require temporary access, such access will be provided only if approved and monitored by authorized EU-based personnel in accordance with IBM's internal privileged user monitoring and auditing program.

13. GENERAL TERMS

13.1. 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 (a) an affiliate that is able to satisfy the



obligations of the assignor under this Agreement or (b) 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 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.

13.2. 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.

13.3. Governing Law; Jurisdiction and Venue. This Agreement will be governed by the law of California, USA (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 courts in San Francisco, California, USA. 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.

13.4. 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.

13.5. 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.

13.6. 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. Customer acknowledges that the SaaS Service is an on-line, subscription-based product, and that in order to provide improved customer experience Sysdig may make changes to the Service. The support service level 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).

13.7. Subcontractors. Sysdig may use the services of subcontractors and permit them to exercise the rights granted to Sysdig in order to provide the Service under this Agreement. These subcontractors may include, for example, Sysdig's hosting infrastructure. Sysdig remains responsible for compliance of any such subcontractor with the terms of this Agreement and the overall performance of the Service as required under this Agreement.

13.8. 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 Service or Support Services (collectively, "Feedback") provided by Customer, its affiliates and Authorized Users.

13.9. 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.

13.10. 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.

13.11. 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, (a) 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, (b) Customer shall not (and shall not permit any of its users to) access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (c) Customer shall not submit to the Service any information that is controlled under the U.S. International Traffic in Arms Regulations.

13.12. Government End-Users. Elements of the Service are commercial computer software. If the user or licensee of the Service is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Service, 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 Service was developed fully at private expense. All other use is prohibited.

