

# Terms of Service

Updated on October 16<sup>th</sup>, 2023

This document, the SysCloud Terms of Service ("Terms"), outlines the terms regarding your use of SysCloud's cloud backup and data protection solutions for businesses and educational institutions and all related add-ons (collectively, the "Service" or "Services"). These Terms are a legally binding contract between you and SysCloud, Inc. ("SysCloud") so please read carefully. References to "Purchaser," "you", and "your" refer to the individual, company, or other entity that accepts these Terms, by executing an ordering document provided to you by us, placing an order using online functionality SysCloud makes available like clicking a box, creating an account, or otherwise affirmatively accepting the Terms through another means SysCloud offers you. SysCloud and the Purchaser are sometimes herein after referred to collectively as the "Parties" and individually as a "Party."

If the Purchaser does not agree with these Terms, do not register for or use any of the Services.

By using, accessing, or browsing the SysCloud platform and products (including applications, mobile, software, websites) ("Services") or other properties owned or operated by SysCloud, or by registering for a SysCloud account, the Purchaser agrees to be bound by these Terms.

If you are a company or other entity, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms, unless that

organization has a separate paid contract in effect with SysCloud, in which event the terms of that contract will govern the Purchaser's use of the Services.

In order to use the Service, the Purchaser must be legally permitted to accept these Terms. If you are not eligible, or do not agree to the terms and conditions of these Terms, then you do not have our permission to use the Service. Your use of and our provision of the Service to you, constitutes an agreement by SysCloud and by you to be bound by these Terms.

If Purchasers purchases the Service from an authorized partner or reseller of SysCloud ("Reseller"), Purchaser's use of the Service will be governed by these Terms, subject to Section titled "Reseller Orders" below.

### **Overview of SysCloud Services**

Our Services include cloud backup as a service ("BaaS") and related add-ons for various applications, which may include Microsoft 365, Google Workspace, Google Classroom, Slack, HubSpot, QuickBooks Online, Salesforce, and other applications as SysCloud may support over time and cloud data protection ("Data Protection Services") for Google Workspace and other applications as SysCloud may support over time. The features and functionality of the Services are further described in SysCloud's website, brochures and FAQs that SysCloud makes generally available to SysCloud's customers (the "Documentation").

### **Privacy Policy**

In order to operate and provide the Services, SysCloud collects certain information about the Purchaser. We use and protect that information as described in the SysCloud [Privacy](#)

Policy. The Purchaser acknowledges that by using Services, the Purchaser is subject to the SysCloud Privacy Policy and understands that it identifies how SysCloud collects, stores, and uses certain information.

### **Access**

To access most features of the Service, Purchaser and its authorized users must register for an account and, in doing so, may be required to provide SysCloud with information (such as name, email address, or other contact information). Purchaser agrees that the information it provides to SysCloud is accurate, complete, and not misleading and that it will keep it accurate and up to date at all times. Only authorized users, using the mechanisms designated by SysCloud (“Log-in Credentials”), may access and use the Service. Each authorized user must keep its Log-in Credentials confidential and not share them with anyone else. Purchaser is responsible for its authorized users’ compliance with these Terms and all actions taken through their Log-in Credentials (excluding misuse of the Log-in Credentials caused by SysCloud’s breach of these Terms). Purchaser will promptly notify SysCloud if it becomes aware of any compromise of any Log-in Credentials. SysCloud may process Log-in Credentials in connection with SysCloud’s provision of the Service or for SysCloud’s internal business purposes. Purchaser represents and warrants to SysCloud that: (a) it has not previously been suspended or removed from the Service; and (b) its registration and use of the Service is in compliance with all applicable laws.

### **Changes to Terms of Service**

SysCloud reserves the right to modify these Terms. SysCloud will post the most current version of these Terms at [www.syscloud.com](http://www.syscloud.com). If SysCloud makes material changes to these Terms, SysCloud will notify the Purchaser via the Services and/or by email to the address associated with the Purchaser's SysCloud account. If the Purchaser objects to the changes, Purchaser's sole remedy is to stop using and cancel the SysCloud account by emailing [helpdesk@syscloud.com](mailto:helpdesk@syscloud.com). To exercise this cancellation right, Purchaser must notify SysCloud of its objections within 30 days after SysCloud's notice of the modified Terms. If the Purchaser continues to use Services after SysCloud the modified Terms take effect, the Purchaser consents to the updated terms. SysCloud may require Purchaser to click to accept the modified Terms.

### **Free Trial**

If Purchaser or its users receive access to or use of Services or features thereof on a free or trial basis, the Purchaser can access the SysCloud application for no cost during the 30-days trial (the "Trial"). The Purchaser is bound by the Terms during the duration of the Trial and SysCloud can terminate the Trial with an email notice to the Purchaser for any reason. SysCloud reserves the right to restrict access to any features in the service and impose usage limits, and storage limits during the Trial. SysCloud can, at its own discretion, extend the duration of the Trial or limit the duration of the Trial.

When the Trial ends or is terminated by SysCloud, the Purchaser's SysCloud account along with all the data associated with the account will be permanently deleted unless the Purchaser chooses to upgrade the Trial by making a purchase before the end of the Trial period. If the Purchaser does not upgrade the Trial by making a purchase, the Purchaser

Data is sent to a deletion queue for permanent deletion. SysCloud will not be able to expedite the deletion of data backed up during the free trial and will not provide any written confirmation on data deletion.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, SYSCLOUD PROVIDES NO WARRANTY, OR INDEMNITY FOR TRIALS, AND SYSCLOUD'S LIABILITY FOR TRIALS WILL NOT EXCEED US \$50.00.**

### **Subscription of Services, Fees, Cancellations and Refunds**

The Purchaser can subscribe to the Services by creating an account on SysCloud and making a payment via one of the following options.

1. Self-Service Purchase online from a SysCloud account via credit card.
2. Guided Purchases from a SysCloud associate or affiliated partner organization may submit a price quotation and/or order form that includes online and offline methods to transfer payment to SysCloud.

For Self-Service Purchases, Purchaser authorizes SysCloud to automatically charge the Purchaser's credit card for all payments and fees, including all applicable Taxes (as defined below), owed by the Purchaser. For Guided Purchase, the invoice submitted by SysCloud is payable immediately unless otherwise agreed to by SysCloud in writing or by signing a custom contract. You agree that SysCloud may seek pre-authorization of the credit card account Purchaser provides to SysCloud for payment prior to any purchase to verify that the credit card is valid and has the necessary funds or credit available to cover such purchase.

In either case, the Purchaser agrees that the Purchaser's payment or billing information is correct and will notify SysCloud when billing or payment information changes.

The Purchaser agrees that SysCloud may suspend and/or terminate access to the Service if, at any time, the Purchaser has not paid all Fees that the Purchaser owes to SysCloud. In the event Purchaser fails to pay any amounts or fees owed to SysCloud, Purchaser's account will be charged a service charge of 1.5% per month or the maximum amount allowed by applicable law, whichever is less and Purchaser will also be responsible for fees or charges that are incidental to any chargeback or collection of any the unpaid amount including any collection fees. All fees and other expenses are non-refundable unless otherwise set forth herein. Purchaser is responsible for any sales, use, GST, value-added, withholding, or similar taxes or levies that apply to its purchase of Services, whether domestic or foreign, other than SysCloud's income tax ("Taxes"). Fees are exclusive of all Taxes.

The duration of the subscription for the Service ("Service Period") can be monthly, yearly, or a duration that's agreed mutually between the Parties and stated in an order form or a custom contract. For Self-Service Purchases, the Purchaser can choose to cancel the subscription at any point during the subscription by sending a written notice to [helpdesk@syscloud.com](mailto:helpdesk@syscloud.com)

For Guided Purchases, the Purchaser can choose to cancel the subscription by sending a written notice to [helpdesk@syscloud.com](mailto:helpdesk@syscloud.com) before the cancellation notice period indicated in the price quote, order form, or customer contract.

SysCloud will not issue any refund for subscription cancellations and the Services will remain in force for the duration of the Service Period. Notwithstanding the foregoing, in the event Purchaser chooses to downgrade their subscription level during a Service Period,

SysCloud may issue a pro-rata credit to Purchaser for any unused amounts pre-paid for the higher subscription level (“Credit”). The Credit can only be applied to subscriptions for the next renewal Service Period. The Credit has no cash value and SysCloud will not issue a refund to Purchaser in the amount of the Credit if Purchaser elects not to renew the Service.

If the Purchaser does not cancel in accordance with these Terms, the subscription for the Services will automatically renew at the then-current price and term length for the next subscription period of the same duration. SysCloud will charge the Purchaser’s credit card on file with SysCloud on the first day of the renewal of the subscription period or submit an invoice for the payment due for subscription renewal.

SysCloud reserves the right to change its prices at any time. We will use reasonable efforts to keep pricing information with respect to the Service that is published on SysCloud’s pricing page available at <https://www.syscloud.com/cloud-backup-pricing/> up to date, and SysCloud encourages Purchasers to check it regularly for current pricing information.

Purchasers accessing the Trial will be required to pay the current prices on the day the Purchaser chooses to subscribe to the paid subscription. For Purchasers who have already made the full payment and subscribed to the Services, changes in pricing will come into effect only when the subscription is due for renewal.

If the Purchaser does not agree to these changes, the Purchaser must stop using the Service and send a cancellation request via email to [helpdesk@syscloud.com](mailto:helpdesk@syscloud.com).

Upon expiration or termination of a Service Period, SysCloud reserves the right to delete the Purchaser’s SysCloud account and delete all data, information, content or materials that Purchaser (including its users) submits or inputs to the Service or otherwise or stores

through the Services (collectively, “Purchaser Data”). SysCloud will not maintain/store/forward Purchaser Data to another account or alternate service provider. Please read SysCloud’s [Data Retention Policy](#), which is hereby incorporated by reference, to learn more.

### **Intellectual Property & Data Rights**

Subject to the terms and conditions of these Terms and any order or custom contract, SysCloud will make the Service available to Purchaser and, if Purchaser is a company or entity, to Purchaser’s authorized users during the Service Period. Purchaser may only use the Service internally and in accordance with the Documentation, which is hereby incorporated by this reference.

Purchaser grants SysCloud the non-exclusive, worldwide, sublicensable right to access, use, copy, store, transmit, transfer, modify, process and create derivative works from Purchaser Data (a) during the Service Period strictly as necessary to provide the Service; (b) in de-identified or aggregate form strictly for internal business purposes during and after the Service Period, including to track use of Service for billing purposes, to provide support for Service, to monitor the performance and stability of the Service, to improve the Service, SysCloud’s other products and services, and to develop new products and services, and for all other lawful business practices, such as analytics, benchmarking, and reports; or (c) as otherwise required by applicable laws or as agreed to in writing between the parties.

Neither Party grants the other any rights or licenses not expressly set out in these Terms. Except as expressly provided in these Terms, as between the Parties, Purchaser retains all intellectual property rights and other rights in Purchaser Data (other than with respect to



de-identified or aggregate data derived from Purchaser Data). Except for Purchaser's use rights in these Terms, SysCloud and its licensors retain all intellectual property rights and other rights in the Service and related software, documentation, and SysCloud's technology, templates, formats, and dashboards, including any modifications or improvements to these items made by SysCloud. If Purchaser provides SysCloud with feedback or suggestions regarding the Service or its other offerings, SysCloud may use the feedback or suggestions without restriction or obligation.

### **Data Export for BaaS Services**

Purchasers who subscribe to SysCloud BaaS Services can export data backed up by SysCloud. Purchasers are entitled to a free data export of up to 1TB per SysCloud account for a 12-month period if the Service Period is either 1 month (monthly subscription) or 12 months (annual subscription). The permitted free export limit will be increased on a prorated basis if the Service Period is more than 12 months, paid in advance.

If the Purchaser intends to export more than 1TB of backup data from the Purchaser's SysCloud account (or such higher limit as described above), the Purchaser can purchase an additional export quota by contacting [sales@syscloud.com](mailto:sales@syscloud.com).

### **Subscription Limits for BaaS Services**

SysCloud may offer storage-based, user-based, or object-based licenses for its Services. The license type may vary depending on the Services chosen by the Purchaser for a subscription. For Self-Service Purchases, Purchasers can choose the number of licenses to

be purchased to start the paid subscription. For Guided Purchases, the number of licenses to be purchased will be listed in the price quote, order form, or custom contract.

The Services offered by SysCloud will have a limit based on the number of licenses purchased by the Purchaser. Once the subscription limits are reached, the Purchaser will be notified via the Services and/or by email to the address associated with the Purchaser's SysCloud account and the BaaS Service will automatically stop backup for new data that's eligible to be backed up if the Purchaser fails to purchase additional licenses needed to continue the backup. It is the Purchaser's responsibility to monitor such notifications and either reduce the usage of licenses or purchase additional licenses to continue the BaaS service.

### **Notifications for Data Protection Services**

Purchasers who subscribe to the Data Protection Services may receive notifications regarding the potential data loss threats via the Services and/or via email based on how the Purchaser has configured the Services. SysCloud does not warrant the accuracy of such notifications and the Purchaser will take complete responsibility to validate the accuracy and act on such notifications. SysCloud will not be liable for any data loss, life threat, or security incident related to the Purchaser's data. In all such instances, the Purchaser waives any claim for refund or Service Period extension. Please read our [Service Level Agreement \(SLA\)](#), which is hereby incorporated by reference, to learn more.

### **Responsibility for Account Security and Backup Data for BaaS Services**

The Purchaser will be solely responsible for keeping the SysCloud account password secure; each user must keep its log-in credentials confidential and not share them with anyone else. Purchaser is responsible for its users' compliance with these Terms and all actions taken through their log-in credentials (excluding misuse of the log-in credentials caused by SysCloud's breach of these Terms). If the Purchaser loses the password, the Purchaser may use the forgot password feature to retrieve the password. SysCloud does not guarantee that the Purchaser can retrieve lost or forgotten passwords via the forgot password feature.

The Purchaser will be solely responsible for any data deletions done by the Purchaser or other users of the Service within the Purchaser's organization.

The Purchaser will be solely responsible for the loss of backup data stored in the SysCloud account due to malicious actors, phishing attacks, or any unauthorized login to the Purchaser's SysCloud account.

Purchaser will promptly notify SysCloud if it becomes aware of any compromise of any log-in credentials. SysCloud may process log-in credentials in connection with SysCloud's provision of the Service or for SysCloud's internal business purposes. Purchaser represents and warrants to SysCloud that: (a) it has not previously been suspended or removed from the Service; and (b) its registration and use of the Service is in compliance with all applicable laws.

### **Access to SysCloud Account**

SysCloud will not be liable for any downtime due to maintenance or forces beyond its reasonable control. While SysCloud agrees to use commercially reasonable efforts to

provide and maintain the Services, SysCloud cannot guarantee Services availability due to the following reasons:

- Outages in the cloud infrastructure where SysCloud servers are provisioned have an outage
- Services are down due to maintenance or any other reason beyond our control.

Examples of such instances will be:

- Purchaser changes the domain security key (OAuth)
- SysCloud has been restricted/denied access to the Purchaser Data for any reason
- The cloud service that's backed up or scanned restricts or denies access to the Purchaser Data for SysCloud to backup data or scan data for any known reason such as API limits or for any unknown reason

### **Backup Coverage, Restore, and Export for BaaS Services**

SysCloud's BaaS Services is not a real-time backup and data backed up may not include all the data that may be eligible for backup.

Data exports and restores initiated via SysCloud BaaS Services may not always be completed successfully due to any restriction placed by the cloud service in backing up the data or allowing data to be restored.

In all such instances, the Purchaser waives any claim for refund or Service Period extension. Please read our [Service Level Agreement \(SLA\)](#) to learn more.

## **Security Incidents**

Purchaser acknowledges that the Services are not invulnerable to security breaches or other threats and agrees that if SysCloud believes that an account is being used for any illegal purpose, SysCloud has the right to inspect and/or deny access to the account belonging to the Purchaser. For questions related to security, availability, confidentiality, and integrity, the Purchaser can write to SysCloud via email at [incident@syscloud.com](mailto:incident@syscloud.com).

## **Fair Usage Policy**

This policy sets forth SysCloud's expectations for the fair use of our systems to ensure the integrity of the system for all customers and maintain SysCloud's business viability.

The Purchaser is prohibited from transferring, renting, reselling, charging for, or otherwise commercializing its SysCloud subscription, in whole or in part, unless otherwise expressly permitted by agreement between SysCloud and the Purchaser.

### False or Misleading Acts

Purchasers may not use SysCloud to falsely or misleadingly identify themselves or information about themselves (e.g. employer, title, or affiliations).

### Competitor Benchmarking and Security Testing

Overburdening SysCloud Services or attempting to circumvent access limitations or monitoring mechanisms for SysCloud or its related systems and networks is prohibited. Performance and disclosure of competitor comparison or benchmarking tests, security tests, vulnerability scanning, penetration testing, or similar activities conducted without the prior written consent of SysCloud is prohibited.

### Entitlements for Storage for BaaS Services

SysCloud may offer unlimited storage plans with subscription costs tied to the number of users backed up or secured. In such cases, Purchasers may not misuse the unlimited storage plan by modifying the usage of the SaaS application being backed up on SysCloud.

Examples of such actions include:

- Buying a single-user backup license to back up data belonging to all users via shared apps such as SharePoint or Shared Drive
- Moving app data for all users to a single user account or a common user account to minimize the subscription cost

### **Beta Participation**

A separate Beta Participation Agreement shall apply if the Purchaser chooses to sign up for the beta version of the products made available by SysCloud. Please [click here](#) to read the terms of the Beta Participation Agreement.

### **No Warranty or Conditions**

There are certain things that SysCloud does not promise about its Services. Other than as expressly stated, SysCloud does not make any commitments about the specific functionality available through the Services or; the Services' reliability, availability, or ability to meet the Purchaser's needs.

TO THE EXTENT NOT PROHIBITED BY LAW, SYSCLOUD AND ITS AFFILIATES (AND ASSOCIATED SERVICE PROVIDERS) (A) PROVIDE THE SERVICES AND DOCUMENTATION "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE", (B) MAKE NO REPRESENTATIONS OR

WARRANTIES OR CONDITIONS WHETHER EXPRESS OR IMPLIED WITH RESPECT TO THE SERVICES OR DOCUMENTATION (E.G. WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT), AND (C) DO NOT GUARANTEE THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, OR THAT THE CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

WITHOUT LIMITING THE FOREGOING, PURCHASER ACKNOWLEDGES AND AGREES THAT THE DATA PROTECTION SERVICES USE PATTERN MATCHING TECHNOLOGY WHICH RELIES ON THIRD PARTY TECHNOLOGY AND DATA RECEIVED FROM THIRD PARTIES. SYSCLOUD DOES NOT CONTROL SUCH THIRD PARTY TECHNOLOGY OR THE AVAILABILITY OF SUCH THIRD PARTY DATA AND SYSCLOUD MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OR RESULTS OBTAINED THROUGH THE DATA PROTECTION SERVICES. SYSCLOUD SHALL HAVE NO LIABILITY FOR ANY ISSUES OR DELAYS WITH RESPECT TO THE DATA PROTECTION SERVICES TO THE EXTENT ARISING OR RELATING TO SUCH THIRD PARTY TECHNOLOGY OR DATA.

IF THE PURCHASER IS DISSATISFIED WITH ANY PORTION OF THE SERVICE OR WITH THESE TERMS OF SERVICE, THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE THE USE OF THE SERVICES.

### **Confidentiality**

"Confidential Information" means information disclosed to the receiving Party ("Recipient") under these Terms that is marked by the disclosing Party ("Discloser") as

proprietary or confidential or, if disclosed orally, is designated as proprietary or confidential at the time of disclosure. Our Confidential Information includes any technical or performance information about the Service.

As Recipient, each Party will: (a) hold Confidential Information in confidence and not disclose it to third parties except as permitted in these Terms; and (b) only use Confidential Information to fulfill its obligations and exercise its rights in these Terms. At Discloser's request, Recipient will delete all Confidential Information, except, in the case where SysCloud is the Recipient, SysCloud may retain the Purchaser's Confidential Information to the extent required to continue to provide the Services. Recipient may disclose Confidential Information to its employees, agents, contractors, and other representatives having a legitimate need to know, provided it remains responsible for their compliance with this confidentiality section and they are bound to confidentiality obligations no less protective than these terms.

These confidentiality obligations do not apply to information that Recipient can document: (a) is or becomes public knowledge through no fault of the receiving Party; (b) it rightfully knew or possessed prior to receipt under these Terms; (c) it rightfully received from a third party without breach of confidentiality obligations; or (d) it independently developed without using Confidential Information.

Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each Party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this confidentiality section.



Nothing in these Terms prohibits either Party from making disclosures, including of Purchaser Data and other Confidential Information, if required by applicable law, subpoena, or court order, provided (if permitted by applicable law) it notifies the other Party in advance and cooperates in any effort to obtain confidential treatment.

### **Purchaser Conduct Restrictions**

Purchaser will not (and will not permit its users or anyone else to) do any of the following: (a) provide access to, distribute, sell, or sublicense the Service to a third party (other than authorized users); (b) use the Service on behalf of, or to provide any product or service to, third parties; (c) use the Service to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or seek to access the source code or non-public APIs to the Service, except to the extent expressly permitted by applicable law (and then only with prior notice to SysCloud); (e) modify or create derivative works of the Service or copy any element of the Service; (f) remove or obscure any proprietary notices in the Service; (g) publish benchmarks or performance information about the Service; (h) interfere with the operation of the Service, circumvent any access restrictions, or conduct any security or vulnerability test of the Service; (i) transmit any viruses or other harmful materials to the Service; (j) take any action that risks harm to others or to the security, availability, or integrity of the Service; or (k) access or use the Service in a manner that violates any applicable law; SysCloud shall not be liable for any damages, liabilities, losses, fines, or costs resulting from the Purchaser's violation of the Purchaser Conduct Restrictions.

## **Indemnification**

To the extent not prohibited by law, the Purchaser will indemnify, defend and hold SysCloud harmless against any cost, loss, damage, or other liability arising from any third-party demand or claim that any data or information provided by the Purchaser, or the Purchaser's use of the Services to upload third-party content: (a) infringes a registered patent, trademark, copyright, or other intellectual property rights of a third party, or misappropriates a trade secret (to the extent that such misappropriation is not the result of SysCloud's actions); or (b) violates applicable law or these Terms. SysCloud will reasonably notify the Purchaser of any such claim or demand that is subject to the Purchaser's indemnification obligation of which it becomes aware.

## **Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SYSCLOUD AND ITS AFFILIATES, RESELLERS, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, OR LICENSORS BE LIABLE FOR: ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, COVER, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, REVENUE, GOODWILL, USE OR CONTENT) HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BUSINESS INTERRUPTION, LOSS OF OPPORTUNITY, WARRANTY, NEGLIGENCE OR OTHERWISE, EVEN IF SYSCLOUD HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF SYSCLOUD AND ITS AFFILIATES, OFFICERS, RESELLERS, EMPLOYEES,

AGENTS, SUPPLIERS, OR LICENSORS, RELATING TO THE SERVICES, WILL BE LIMITED TO THE FEES ACTUALLY PAID BY PURCHASER TO SYSCLOUD IN THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE APPLICABLE CLAIM GIVING RISE TO THE LIABILITY AROSE UNDER THESE TERMS.

THE LIMITATION OR EXCLUSION OF INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES WILL NOT APPLY TO THE PURCHASER TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

NOTHING IN THESE TERMS AFFECTS CONSUMER RIGHTS THAT CANNOT BY LAW BE WAIVED OR LIMITED BY ANY CONTRACT OR AGREEMENT.

Nothing in these Terms shall exclude or limit the liability of the Purchaser or SysCloud and its affiliates, officers, employees, agents, licensors, resellers, suppliers, and distributors for gross negligence or willful misconduct, or any liability that cannot be excluded or limited by law.

The provisions of this "Limitation of Liability" section allocate the risks under these Terms between the Purchaser and SysCloud, and the Purchaser and SysCloud have relied on these limitations in determining whether to enter into these Terms and the pricing for the Services.

### **Suspension**

SysCloud may immediately suspend Purchaser's and its users' access to the Service if: (a) Purchaser breaches the Section entitled Purchaser Conduct Restrictions; (b) Purchaser's account is 30 days or more overdue; (c) changes to applicable laws or new applicable laws require that SysCloud suspend the Service or otherwise may impose additional liability on

us; or (d) Purchaser or its users actions risk harm to any of SysCloud's other customers or the security, availability, or integrity of the Service. Where practicable, SysCloud will use reasonable efforts to provide Purchaser with prior notice of the suspension. If the issue that led to the suspension is resolved, SysCloud will use reasonable efforts to restore your access to the Service.

### **Modifications to the Service**

SysCloud may modify or discontinue all or any part of the Service at any time (including by limiting or discontinuing certain features or functionality of the Service), temporarily or permanently, without notifying Purchaser; provided, that SysCloud will use commercially reasonable efforts provide Purchaser with 30 days' prior notice in the event of any deprecation of any material feature or functionality of the Service. SysCloud will have no liability for any change or modification to the Service or any suspension or termination of access to or use of the Service as a result thereof. Notwithstanding the foregoing, any such change or modification will only apply on a going-forward basis with respect to any order entered into or renewed after SysCloud's implementation thereof.

### **Reseller Orders**

Reseller Orders. This Section applies to any access to or use of the Service purchased by Purchaser through a Reseller.

Commercial Terms. Instead of paying SysCloud, Purchaser will pay applicable amounts to the Reseller as agreed upon between Purchaser and the Reseller. Purchaser's order details (*e.g.*, scope of use, Service Period, and fees) will be as stated in the order placed by Reseller

with SysCloud on Purchaser's behalf. The Reseller is responsible for the accuracy of the order. SysCloud may suspend or terminate Purchaser's rights to access and use the Service if it does not receive the corresponding payment from the Reseller. If Purchaser is entitled to a refund under these Terms, SysCloud will refund any applicable fees to the Reseller, and the Reseller will be solely responsible for refunding the appropriate amounts to Purchaser, unless otherwise specified.

Relationship with SysCloud. These Terms are directly between SysCloud and Purchaser and governs all use of the Service by Purchaser and its authorized users. Resellers are not authorized to modify these Terms or make any promises, representations, warranties, or commitments on SysCloud's behalf, and SysCloud is not bound by any obligations to Purchaser other than as set forth in these Terms. SysCloud is not party to (or responsible under) any separate agreement between Purchaser and Reseller and is not responsible for the Reseller's acts, omissions, products, or services. The amount paid or payable by the Reseller to SysCloud for Purchaser's use of the applicable Service under these Terms will be deemed the amount paid or payable by Purchaser to SysCloud under this Agreement for purposes of the Section titled Limitations of Liability.

### **Miscellaneous**

This agreement shall be binding upon and inure to the benefit of SysCloud and the Purchaser, their legal representatives, successors, and assigns.

This agreement, with the other related agreements referenced herein, embodies and constitutes the entire understanding between the Parties with respect to the transactions contemplated herein. All prior or contemporaneous agreements, understandings, and

representations, oral or written, are superseded by this agreement unless explicitly included as an attachment.

Except as provided herein, neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated without a signed written agreement between the parties.

Neither Party is liable for any delay or failure to perform any obligation under these Terms (except for a failure to pay fees) due to events beyond its reasonable control, such as a strike, pandemic, epidemic, health emergency, blockade, war, pandemic, act of terrorism, riot, Internet or utility failures, refusal of government license, or natural disaster.

All legal notices related to these Terms will be deemed to have been properly given and will be effective when and if sent by U.S. regular mail, postage prepaid, U.S. certified mail, electronic mail, and/or by personal delivery or by courier, to the address of the other Party.

By using the Service, Purchaser consents to receiving certain electronic communications from SysCloud as further described in SysCloud's Privacy Policy. Please read SysCloud's Privacy Policy to learn more about SysCloud electronic communications practices.

Purchaser agree that any notices, agreements, disclosures, or other communications that SysCloud sends to Purchaser electronically will satisfy any legal communication requirements, including that those communications be in writing.

Except as otherwise provided for in this section, the Parties agree that controversies or claims arising out of or relating to this agreement, or any alleged breach hereof, shall be resolved by binding arbitration as prescribed herein, applying California law. A single arbitrator engaged in the practice of law, who is knowledgeable about software as a service, shall conduct the arbitration under the current rules of the American Arbitration

Association (“AAA”) unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the city of San Jose, California, and all expedited procedures prescribed under the AAA rules shall apply. The arbitrator shall only have the authority to award compensatory damages and shall not have the authority to award punitive damages, other non-compensatory damages, or any other form of relief. Each Party shall bear its own costs and attorneys’ fees and disbursements. The arbitrator’s decision and award shall be final and binding, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Notwithstanding the foregoing, the following disputes are not subject to the above provisions concerning binding arbitration: (a) any disputes seeking to enforce or protect, or concerning the validity of, any of the intellectual property rights of a Party; (b) any dispute related to, or arising from, allegations of theft, piracy, invasion of privacy, or unauthorized use of the Services; and (c) any claim for injunctive relief.

The provisions of this agreement are for the benefit only of the Parties, and no third party may seek to enforce or benefit from these provisions.

If one or more provisions of this agreement are held to be unenforceable under applicable law, such provision shall be excluded from this agreement and the balance of the agreement shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.

Notice to California Residents. If you are a California resident, then under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N.

Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at +1-800-952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.

Neither party is liable for any delay or failure to perform any obligation under these Terms (except for a failure to pay fees) due to events beyond its reasonable control, such as a strike, blockade, war, pandemic, act of terrorism, riot, Internet or utility failures, third party service providers, refusal of government license, or natural disaster.

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