

License Agreement

Thank you for your interest in using Sysdig Monitor and/or Sysdig Secure (the “Service”). The following constitutes a valid and binding agreement (“Agreement”) between Draios Inc., a Delaware corporation with principal offices at 1949 5th Street Suite 104, Davis, CA 95616, doing business as Sysdig (“Sysdig”); and the end user listed in the corresponding registration for the Service (the “Customer” or “you” or “your”). Please read this Agreement carefully as it contains the legal terms and conditions that govern your use of, and access to, the Service. By registering for or using the Service you are agreeing to all of the terms and conditions of this Agreement.

1. Services and Support

- A. Subject to the terms and conditions of this Agreement, Customer will be provided access to the Service (as described on www.sysdig.com) and any related software (“Software”), including the Sysdig Monitor and/or Sysdig Secure agent(s), and materials provided by Sysdig for Customer’s use as part of the Services.
- B. Sysdig may in its discretion modify, enhance or otherwise change the Service and/or Software or this Agreement from time to time, and reserves the right to do so with or without notice. Unless Sysdig provides otherwise, the then current version of this Agreement that generally applies to use of the Services and/or Software shall also apply to your use of any modified or new version of the Service or Software; or your use of any updates, upgrades, changes, enhancements or new features added to the Service or Software.
- C. Sysdig will undertake commercially reasonable efforts to provide the Services. Notwithstanding the foregoing, Sysdig reserves the right to suspend Customer’s access to the Services: (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 to Sysdig.
- D. Subject to the terms hereof and during the term of this Agreement, other than for Services provided under a free evaluation, Sysdig will use commercially reasonable efforts to provide Customer with its standard support services.

2. Restrictions and Responsibilities

- A. Access to the Services may require the Customer to install certain software applications. Subject to the terms hereof, payment of all applicable fees, and any applicable user/use limitations, Sysdig grants Customer a personal, nonsublicensable, and nonexclusive right to download and use such software applications in object code form only.
- B. Customer will not, and will not permit any third party to: reverse engineer,

decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software or software applications, documentation or data related to the Services (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Services or Software; use the Services or Software for “benchmarking,” timesharing or service bureau purposes or for any purpose other than its own use for its own benefit; use, distribute or otherwise provide the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any European privacy, intellectual property, consumer and child protection, obscenity or defamation laws); or use the Services or Software in excess of any limitations or restrictions set forth in an Order Form (if applicable). Unless otherwise specified in an Order Form, Customer shall not use the Services or Software with more than 15 Containers for each Host licensed by Customer from Sysdig. Please refer to Sysdig website for the definitions of Container and Host.

- c. Customer will not, and will not permit any third party to (a) take any action that imposes, or may impose at Sysdig’ discretion an unreasonable or disproportionately large load on Sysdig’ infrastructure; (b) uploading invalid data, viruses, worms, or other software agents through the Services; (c) impersonating another person or otherwise misrepresenting Customer’s affiliation with a person or entity; (d) interfering with the proper working of the Services; or (e) bypassing the measures that Sysdig may use to prevent or restrict access to the Services. **CUSTOMER ACKNOWLEDGES THAT THE SERVICES AND SOFTWARE MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE LICENSE PERIOD AND/OR USE INCONSISTENT HEREWITH.**
- D. Customer acknowledges that Sysdig uses, or may use, third party vendors and hosting partners to provide the necessary hardware, software, networking and related technology required to run the Service and that Sysdig also makes no warranties with respect to such third party materials and that Sysdig shall not be responsible for any failures attributable to such third party materials.
- E. Customer agrees to defend, indemnify and hold harmless Sysdig and its employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys’ fees) arising out of or related to: (a) Customer’s use of and access to the Service; (b) Customer’s

violation of any term of this Agreement; (c) Customer's violation of any third-party right, including without limitation any right of privacy, publicity rights or IP Rights; (d) Customer's violation of any law, rule or regulation; (e) any claim or damages that arise as a result of any Customer Data; or (f) any other party's access and use of the Service through provided Customer.

- F. Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer's knowledge or consent.
- G. Customer further acknowledges, agrees to and is bound by the Privacy Policy on Sysdig's website (as they may be updated from time to time), except to the extent expressly and directly in conflict with the terms hereof.

3. Confidentiality

- A. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Confidential Information" of the Disclosing Party).
- B. The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, Sysdig may collect and generate data with respect to and report on the aggregate response rate and other aggregate measures of the Services'

performance, and use and make available such data for Sysdig's business purposes.

- c. Customer acknowledges that Sysdig does not wish to receive any Proprietary Information from Customer that is not necessary for Sysdig to perform its obligations under 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.
- D. Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

4. Intellectual Property Rights

- A. Except as expressly set forth herein, Sysdig alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Service or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Service and/or the Software, which are hereby assigned to Sysdig. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. Customer is hereby granted a non-exclusive, nontransferable, revocable right to use all data generated by the Software and Service ("Resulting Data") for its internal analysis purposes only. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service or Software, or any intellectual property rights.
- B. Sysdig may list Customer as a customer and use Customer's name and logo on Sysdig' website, on publicly available customer lists and in media releases.

5. Third Party Content

Sysdig may provide you with software that may include third-party content that is governed by an 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 content under this Agreement. Please review our documentation, which lists licenses governing third party content at: <http://support.sysdigcloud.com/hc/en-us/articles/208276103-Third-Party-Open-Source-Content>

6. Payment of Fees

- A. As applicable, Customer shall pay Sysdig for use of the Service in accordance with the service plan selected by Customer. Unless otherwise specified in an Order Form, the payment shall be in accordance with Sysdig's then current published rates and policies (available at www.sysdig.com) for the service plan selected by Customer, which are incorporated by reference into this Agreement. All fees are nonrefundable and due and payable in U.S. dollars. To the extent applicable, Customer will pay Sysdig for additional services, such as integration fees or other consulting fees. If not otherwise specified, payments will be due within thirty (30) days of invoice.
- B. If an Order Form limits or otherwise constrains use of the Services or Software (e.g., the Order Form limits or the pricing is based on the number of containers monitored through the Service), and Customer exceeds such limit or constraint, Sysdig shall promptly notify Customer, and the fees due from Customer shall be increased to account for such excess use; such fees to be calculated at Sysdig's then current published rates and policies (available at www.sysdig.com) for the service plan selected by Customer. Subject to any additional excess use by Customer, such adjusted fees shall continue to apply thereafter during the remainder of the Term.
- C. Unpaid Fees are subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys' fees. Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property and similar taxes, if any. Customer agrees to pay such taxes (excluding US taxes based on Sysdig's net income) unless Customer has provided Sysdig with a valid exemption certificate. In the case of any withholding requirements, Customer will pay any required

withholding itself and will not reduce the amount paid to Customer on account thereof.

7. Term and Termination

- A. Unless otherwise specified in an Order Form, the term of this Agreement shall commence as of the date on which this Agreement is entered into by you registering for or using the Service, and will remain in effect until terminated by either party as set forth below.
- B. Sysdig may terminate this Agreement at any time, with or without cause, by providing at least thirty (30) days prior written notice (the "Notice Period") to you. Termination shall take effect upon the expiration of the Notice Period. In addition Sysdig may terminate this Agreement on written notice (i) if your payment of any invoiced amount is overdue, and you do not pay the overdue amount within five (5) business days of Sysdig's notice, or (ii) if you breach any material terms of this Agreement; provided, however, for any such breach that is capable of being remedied, such termination shall not become effective if you remedy such breach within ten (10) days of Sysdig's notice. You may terminate this Agreement by emailing support@sysdig.com. Your termination shall be effective at month end regardless of the day of the month that you terminate and without refund of any amounts that had already been paid for such month.
- C. Upon termination of this Agreement, you acknowledge and agree that all rights to use the Service shall terminate and you will no longer have access to any electronic communications and/or data that you published, posted, uploaded or otherwise transmitted to the Service.
- D. All sections of this Service Agreement which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability.

8. Warranty Disclaimer

THE SERVICES AND SYSDIG CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. SYSDIG (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED,

INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, CUSTOMER SHALL REMAIN WHOLLY RESPONSIBLE FOR THE SECURITY OF CUSTOMER'S PRODUCTS, SERVICES AND NETWORK.

9. Limitations 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 ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS 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 SYSDIG 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 LESSER OF (i) ONE THOUSAND DOLLARS, OR (ii) THE FEES PAID TO SYSDIG HEREUNDER IN THE THREE 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.

10. U.S. Government Matters

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office

of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated Nationalist. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by Sysdig are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Service Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11. Miscellaneous

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Sysdig's prior written consent. Sysdig may transfer and assign any of its rights and obligations under this Agreement with written notice to Customer. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Sysdig in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys'

fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Sysdig will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the laws of the State of California, U.S.A. without regard to its conflict of laws provisions. The federal and state courts sitting in San Francisco County, California, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement, provided that either party may seek injunctive relief in any court of competent jurisdiction. Customer agrees to participate in press announcements, case studies, trade shows, or other forms reasonably requested by Sysdig. Sysdig is permitted to disclose that Customer is one of its customers to any third-party at its sole discretion.